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Environmental justice beyond anthropocentrism: A case for the recognition of the Ogoni river, Lake Bogoria, the Monchongoi forest and similar natural entities as rights holders under the African Charter on Human and Peoples' Rights

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Abstract: *Article 24 of the African Charter on Human and Peoples' Rights (African Charter) guarantees peoples' right to a general satisfactory environment. However, recognition of natural entities as legal entities with rights to preservation, conservation and restoration is not explicit in the African Charter. The cases of* SERAC *and* Endorois *affirmed the inextricable link between indigenous peoples, people in local communities and their environment. The environment includes natural entities such as the Ogoni rivers in Nigeria, Lake Bogoria and the Monchongoi forest in Kenya. Mineral extraction impacts the environment. Remedy for environmental damage is key for accountability and the integrity of the environment which are principles in the Guiding Principles on Critical Energy Transition Minerals. Actual and potential damage to the Ogoni rivers, Lake Bogoria and the Monchongoi forest was found in* SERAC *and* Endorois*. However, remedy for the harmed Ogoni rivers, Lake Bogoria and the Monchongoi forest was not distinctively addressed because of the anthropocentric approach of the claims. Anthropocentric approach of the claims is to the effect that the claims were exclusively about addressing the violations of the rights of the human beings because the rivers, the lake and the forest were not considered rights holders deserving of distinct remedy. By an anthropocentric approach to environmental justice, claims to remedy the harmed environment can only be brought when there is actual or potential injury to human beings. The fact that distinct claims on behalf of the Ogoni rivers, Lake Bogoria and the Monchongoi forest were not submitted to the African Commission is the result of the lack of explicit mention of their rights to preservation, conservation and remedy in the African Charter, and consequent non-recognition of natural entities as rights holders under the African Charter. Accountability for environmental harm in Africa cannot be achieved using only an anthropocentric approach without an eco-centric approach that aims to protect the natural entities based on their intrinsic worth. This chapter examines the extent to which the Ogoni rivers, Lake Bogoria, the Monchongoi forest and other similar natural entities are rights holders under the African Charter, and the extent to which distinctive claims can be filed on their behalf before the African Commission and the African Court to remedy harm caused to them. Thus, using a doctrinal method of research, it is argued that implicit in 'peoples' in article 24 of the African Charter*

is the recognition of the Ogoni rivers, Lake Bogoria, the Monchongoi forest and other similar natural entities as rights holders. Rights of the natural entities to preservation, conservation and restoration are also implicit in article 24 of the African Charter. In addition, by applying the concept of biocultural rights used in the Colombian Constitutional Court's Atrato River *case, it is further argued that the concept of biocultural rights (which is a combination of nature and culture) is inherent in article 24 of the African Charter. Consequently, the protection of the rights of natural entities to preservation, conservation and restoration falls within the protective mandates of the African Commission and the African Court. Therefore, indigenous peoples, people in local communities and CSOs can on behalf of the natural entities submit claims to the African Commission and the African Court.*

Résumé : *L'article 24 de la Charte africaine des droits de l'homme et des peuples (Charte africaine) garantit le droit des peuples à un environnement globalement satisfaisant. Cependant, la reconnaissance des entités naturelles en tant que personnes morales jouissant de droits à la préservation, à la conservation et à la restauration n'est pas explicitement mentionnée dans la Charte africaine. Les affaires SERAC c. Nigeria et Centre for Minority Rights Development c. Kenya (Endorois) ont confirmé le lien indissociable entre les peuples autochtones, les membres des communautés locales et leur environnement. L'environnement comprend des entités naturelles telles que les rivières ogoni au Nigeria, le lac Bogoria et la forêt de Monchongoi au Kenya. L'extraction minière a des répercussions sur l'environnement. La réparation des dommages environnementaux est essentielle à la responsabilité et à l'intégrité de l'environnement, principes inscrits dans les Principes directeurs relatifs aux minéraux essentiels à la transition énergétique. Des dommages réels et potentiels causés aux rivières Ogoni, au lac Bogoria et à la forêt de Monchongoi ont été constatés dans les affaires SERAC c. Nigeria et Endorois. Cependant, la réparation des dommages subis par les rivières Ogoni, le lac Bogoria et la forêt de Monchongoi n'a pas été abordée de manière spécifique en raison de l'approche anthropocentrique des requêtes. L'approche anthropocentrique de ces recours consiste à considérer que ceux-ci portaient exclusivement sur les violations des droits des êtres humains, les rivières, le lac et la forêt n'étant pas considérés comme*

des titulaires de droits méritant une réparation distincte. Selon une approche anthropocentrique de la justice environnementale, les recours visant à réparer les dommages causés à l'environnement ne peuvent être introduits qu'en cas de préjudice réel ou potentiel subi par des êtres humains. Le fait qu'aucune plainte distincte au nom des rivières ogoni, du lac Bogoria et des forêts de Monchongoi n'ait été déposée auprès de la Commission africaine et de la Cour africaine résulte de l'absence de mention explicite de leurs droits à la préservation, à la conservation et à la réparation dans la Charte africaine, ainsi que de la non-reconnaissance qui en découle des entités naturelles en tant que titulaires de droits au titre de la Charte africaine. La responsabilité des dommages environnementaux en Afrique ne peut être établie en recourant uniquement à une approche anthropocentrique, sans une approche écocentrique visant à protéger les entités naturelles en fonction de leur valeur intrinsèque. Le présent article examine donc dans quelle mesure les rivières Ogoni, le lac Bogoria, la forêt de Monchongoi et d'autres entités naturelles similaires sont des titulaires de droits au titre de la Charte africaine, et dans quelle mesure des requêtes distinctes peuvent être déposées en leur nom devant la Commission africaine et la Cour africaine afin d'obtenir réparation pour les dommages qui leur ont été causés. Ainsi, en recourant à une méthode de recherche doctrinale, il est soutenu que le terme « peuples » figurant à l'article 24 de la Charte africaine implique la reconnaissance des rivières ogoni, du lac Bogoria, de la forêt de Monchongoi et d'autres entités naturelles similaires en tant que titulaires de droits. Les droits des entités naturelles à la préservation, à la conservation et à la restauration sont également implicites dans l'article 24 de la Charte africaine. En outre, en appliquant le concept de droits bioculturels utilisé par la Cour constitutionnelle colombienne dans l'affaire du fleuve Atrato, il est également soutenu que le concept de droits bioculturels (qui allie nature et culture) est inhérent à l'article 24 de la Charte africaine. Par conséquent, la protection des droits des entités naturelles à la préservation, à la conservation et à la restauration relève des mandats de protection de la Commission africaine et de la Cour africaine. Ainsi, les peuples autochtones, les membres des communautés locales et les organisations de la société civile peuvent, au nom des entités naturelles, introduire des requêtes auprès de la Commission africaine et de la Cour africaine.

Key words: *right to development; mineral extraction; rights of natural entities; biocultural rights; indigenous peoples; people in local communities; African Commission; African Court; anthropocentric; eco-centric*

1 Introduction

In African societies, natural entities, such as rivers, land, mountains, forests and lakes, are accorded sacredness and have spiritual significance based on which they are accorded 'personhood' deserving of worship, protection and conservation.[1] The significance of the natural entities is the result of their historical, cultural and religious value, such as the dependence of indigenous peoples and people in local communities on them for survival and livelihood, the belief that they inhabit the souls of ancestors, and are responsible for bringing fortune or misfortune to the communities depending on how the people treat and relate with them.[2] Examples of such natural entities include Lake Bogoria in Kenya which the indigenous people of Endorois believe inhabits the spirits of all Endorois people dead and buried; the Monchongoi forest, which the Endorois considered their birth place;[3] the Mau forest, which the Ogiek people in Kenya inhabit;[4] the Ogoni rivers,[5] Ethiope river[6] and the Osun river in Nigeria, of which the Osun river is believed to embody the Osun goddess and it is worshipped because of the good fortunes the

1 JI Onebunne & NI Chijioke 'African sacrality and eco-spirituality' in IA Kanu (ed) *African ecological spirituality: Perspectives in anthroposophy and environmentalism, a hybrid of approaches* (2021) 49; CS Negi 'Religion and biodiversity conservation: Not a mere analogy' (2005) 1 *The International Journal of Biodiversity Science Management* 85.

2 Onebunne & Chijioke (n 1) 51 & 63-65.

3 *Centre for Minority Rights Development & Another v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*) paras 74, 75, 77-80.

4 Amnesty International '*Ogiek* case: Protection of an indigenous community in Kenya' 25 June 2023, https://www.amnesty.org/en/latest/campaigns/2023/06/ogiek-case-protection-of-an-indigenous-community-in-kenya/ (accessed 24 July 2025).

5 *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*) paras 2 & 9.

6 TW Collins 'Rights for the River Ethiope, Nigeria' 28 February 2018, https://www.earthlawcenter.org/blog-entries/2018/2/rights-for-the-river-ethiope-nigeria (accessed 23 September 2026).

river brings to the people.[7] In addition, the Shona people in Zimbabwe believe that land has connections with the ancestors, spirits, the living and those unborn.[8] Other significant natural entities in Africa include the Thathe Vondo forest,[9] Lake Fundudzi, and the valley of eMakhosini in South Africa.[10]

These natural entities are important sources of biodiversity.[11] Forests, rivers, lakes and other similar natural entities are sources of biodiversity that are important for the realisation of a general satisfactory environment favourable for the development of both biotic and abiotic components of the environment.[12] The relationships between human beings,

7 'Sacred ground: The ancient grove where Yoruba traditions are reborn' *The Guardian* 18 August 2022, https://www.theguardian.com/global-development/2022/aug/18/sacred-ground-the-ancient-grove-where-yoruba-traditions-are-reborn (accessed 24 July 2025).

8 Onebunne & Chijioke (n 1).

9 South African History Online 'Thathe vondo holy forest, Limpopo' 27 September 2019, https://sahistory.org.za/place/thathe-vondo-holy-forest-limpopo (accessed 23 September 2025).

10 South African Tourism 'Sacred sites in South Africa', https://www.southafrica.net/gl/en/travel/article/sacred-sites-in-south-africa (accessed 24 July 2025).

11 Secretariat of the Convention on Biological Diversity report 'Sustaining life on earth: How the Convention on Biological Diversity promotes nature and human well-being' (2000) 1, 2, https://www.cbd.int/doc/publications/cbd-sustain-en.pdf (accessed 9 October 2025); MJ Altman 'Biodiversity explained: Facts, myths, & the race to protect it' 4 January 2023, https://shorturl.at/6Rld6 (accessed 5 September 2025); It is pertinent to note that by the African Commission on Human and Peoples' Rights' Resolution 372 (LX) 2017 on the Protection of Sacred Natural Sites and Territories, these natural entities fall in the category of sacred natural sites and territories. Paragraph 3 of the preamble to Resolution 372 provides that the natural entities harbour 'rich biodiversity contributing to connectivity, resilience and adaptability of valuable landscapes and ecosystems.' Thus, paragraph 3 of the Resolution 372 provides that states, civil society, businesses and other stakeholders should recognise and respect the intrinsic value of the natural entities.

12 NI Sinthumule 'Sacred forests as repositories of local biodiversity in Africa: A systematic review' (2024) 20 *Forest Science and Technology* 337; MK Sullivan and others 'Sacred forests biodiversity conservation: A meta-analysis' (2024) 6 *Conservation Science and Practice* 1; KH Madeweya, H Oka & M Matsumoto 'Sustainable management of sacred forests and their potential for eco-tourism in Zanzibar' (2004) 3 *Bulletin of the Department of Forest Policy and Economics, Forestry and Forest Products Research Institute* (FFPRI) 33-34; Food and Agriculture Organisation of the United Nations & UN Environment Programme report 'The state of the world's forests: Forests, biodiversity and people' (2020) 1-7, https://www.unep.org/resources/state-worlds-forests-forests-biodiversity-and-people (accessed 5 September 2025). The biotic components are the living factors such as plants while the abiotic components are non-living factors such as soil.

particularly the indigenous people, the people in local communities[13] and the natural entities in Africa are inextricably linked.[14] Consequently, damage or destruction of these natural entities has negative impacts on the human beings (indigenous peoples and people in local communities) who depend on them for survival, spirituality, culture and connection to ancestral spirits. Harm done to the natural entities also contributes to biodiversity loss.[15]

The exploitation of minerals in a sustainable manner and protection of the environment are central to the realisation of right to development, as 'people', the 'environment' and 'development' are interlinked.[16]

13 For the purpose of this chapter, a distinction is made between indigenous people and people in local communities because the decisions of the African Commission in *Endorois* (n 3*)* paras 150-162, and that of the African Court in *African Commission on Human and Peoples' Rights v Kenya* (Merits) (2017) 2 AfCLR 9 (*Ogiek*) paras 105-108 have established the characteristics that define who indigenous people are. The characteristics of indigenous people are attachment to specific territory or land; cultural distinctiveness; self-identification and the recognition of their distinctiveness by other groups or states authorities; and the experience of subjugation, marginalisation, dispossession, exclusion or discrimination regardless of whether these conditions persist. Thus, not all peoples in local communities which have deep connection with natural entities have these characteristics to be termed indigenous people. The fact that other categories of peoples do not fall in the class of indigenous people does not take away their relationship with the natural entities and the need for the natural entities to be preserved, conserved, maintained and restored; G Sajeva 'The legal framework behind biocultural rights: An analysis of their pros and cons for indigenous peoples and for local communities' in F Girard and others (eds) *Biocultural rights, indigenous peoples and local communities* (2022) 165, 166-168.

14 Kunming-Montreal Global Biodiversity Framework para 1; International Court of Justice (ICJ) *Advisory Opinion on Obligations of States in Respect of Climate Change* (23 July 2025 General List 187) paras 389 & 393 affirmed the interrelation of human rights and environmental protection and stated that clean, healthy and sustainable environment are fundamental to the realisation of human rights.

15 Onebunne & Chijioke (n 1) 65.

16 T Humby 'The right to development-in-environment and its ecological and development threshold' (2016) 32 *South African Journal on Human Rights* 219 229 where, in commenting on sec 24 of the Constitution of the Republic of South Africa, 1996, which guarantees right to healthy and sustainable environment, which is similar in context to art 24 of the African Charter, it was noted that right to healthy environment also guarantees 'the kind of development that responds to critical socio-economic needs whilst maintaining ecological integrity'. The South African Constitutional Court in the case of *Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy & Others; Natural Justice & Another v Minister of Mineral Resources and Energy & Others* (2026) ZACC 33 (*Wild Coast*) paras 2,3, 9 & 10 emphasised the interconnectedness and interdependency between people, the environment and socio-economic development. The Constitutional Court in para 9 of *Wild Coast* referenced its previous decision in *Fuel Retailers Association of Southern Africa v Director-*

However, the extraction of minerals such as crude oil has damaged or polluted some of these natural entities, such as the Ogoni rivers,[17] the Osun river in Nigeria,[18] Lake Bogoria and the Monchongoi forest in Kenya.[19] Although cases linked to an actual or potential damage of the Ogoni rivers, Lake Bogoria, the Monchongoi forest and the Mau forest were litigated before the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court), the remedies sought and granted in the cases focused on addressing the harm done to the human beings. Remedies for the harm done to the natural entities were not distinctively claimed in *SERAC*, *Endorois* and *Ogiek*.[20] The claims filed in the latter cases were filed on behalf of the human victims, not natural entities, which were also victims and are still victims of harm. This is the result of the fact that the rights of natural entities to preservation, conservation and restoration are not expressly mentioned in the African Charter on Human and Peoples' Rights (African Charter) and other African regional instruments relevant to the protection of the environment.[21]

General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province (2007) ZACC 13 para 44 where it was stated that 'unlimited development is detrimental to the environment, and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment. Yet the environment cannot be protected if development does not pay attention to the costs of environmental destruction. The environment and development are thus inexorably linked.'

17 S Folarin 'Niger-Delta: Environment, Ogoni crisis and the state' (2007) 7 *The Constitution* 37, 47; The United Nations Environment Programme Report 'Environmental Assessment of Ogoniland' 17 January 2011 20, 169, https://www.unep.org/resources/report/environmental-assessment-ogoniland (accessed 8 October 2025).

18 E Egbejule & F Iyorah 'Gold and the goddess: How mining polluted Nigeria's sacred Osun river' 2 September 2022, https://www.aljazeera.com/features/longform/2022/9/2/how-mining-polluted-nigerias-world-famous-river-and-upset-life (accessed 8 October 2025); EO Akindele & others 'Gold mining impairs the biological water quality of a culturally important river and UNESCO world Heritage site in Nigeria' (2023) 326 *Environmental Pollution* 1.

19 *Endorois* (n 3) paras 14 & 210.

20 *SERAC* (n 5); *Endorois* (n 3); *Ogiek* (n 13).

21 Examples of other African regional instruments relevant to environmental protection are the Revised African Convention on the Conservation of Nature and Natural Resources (Nature Convention) which though protects nature is not framed in the language of rights to the effect that nature in general and natural entities in particular have enforceable rights; Bamako Convention on the Ban of the Import to Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (Bamako Convention).

By a literal rule of interpretation, articles 2 to 24 of the African Charter suggest that the rights guaranteed in the African Charter are to protect the rights of human beings. Words such as 'individuals', citizens' and 'peoples' used in articles 2 to 24, which guarantee rights in the African Charter, are words commonly used for human beings.[22] This position is affirmed in article 45(1) of the African Charter, which provides that the function of the African Commission is to promote 'human' and 'peoples' rights. Article 45(2) of the African Charter provides that the African Commission is to ensure the protection of 'human' and 'peoples' rights. Also, article 56 of the African Charter on individual communication provides that communications that can be filed for adjudication before the African Commission are communications relating to 'human' and 'peoples' rights. In addition, the African Chater is named the African Charter on 'Human' and 'Peoples' Rights, where 'human' and 'peoples' refer to human beings based on literal interpretation of the words. Consequently, the protective mandates of the African Commission and the African Court are believed to concern only the enforcement of recognised rights of human beings. Thus far, cases submitted to the African Commission and the African Courts are cases linked to violations of the rights of human beings. The possibility that a case can be submitted to the African Commission and the African Court on behalf of natural entities to redress harm done to them is yet to be tested. 'Individuals', 'citizens', 'peoples' and 'human' are words commonly used for human beings, not for natural entities such as rivers, lakes or forests. Thus, it may be believed that natural entities are not rights holders or subjects of rights under the African Charter, as rights guaranteed in the African Charter are for the protection of the rights of human victims based on the literal interpretation of the provisions of the African Charter.

Thus, there may be a challenge to seeking distinct redress for potential or actual harm done to natural entities (apart from human rights

22 According the Merriam-Webster dictionary, 'individual' simply means 'a single human being as contrasted with a social group or institution'; 'citizen' means 'a native or naturalized person who owes allegiance to a government and is entitled to protection from it'; 'Peoples' means 'human beings forming a body and united by a common culture or tradition'; 'human' means 'a bipedal primate mammal (*homo sapiens*): a person' See Merriam-Webster dictionary, https://www.merriam-webster.com/dictionary/people (accessed 30 September 2026). However, it is important to note that the dictionary provided other usages of these words which depends on the context in which they are used.

violations) at the African Commission and the African Court. By a literal interpretation of the African Charter, and specifically its article 24, harm done to natural entities can only be redressed if tied to human rights violations. Injury to human beings must be shown for a claim for redress to violations of the environment to be filed at the African Court and the African Commission. Thus, if human rights violations cannot be established in cases of harm done to the natural entities, justice cannot be sought distinctively for the natural entities at the African regional level. This *status quo* leaves an accountability gap at the African regional level for the protection of the rights of natural entities for their intrinsic worth to preservation, conservation and restoration distinctively of claims to redress violations of human rights.

An anthropocentric approach to the protection of the environment under article 24 of the African Charter is only one side to the coin of environmental justice in Africa. Thus, for a holistic protection of the environment in Africa, recognition of the rights of natural entities, including that natural entities are rights holders under the African Charter, is germane.[23]

Africa is reported to hold about 30 per cent of the world's mineral reserves.[24] Critical minerals such as lithium and cobalt needed for renewable energy technologies are part of mineral reserves in Africa. The demand for these minerals means that mineral resources in Africa will be exploited, which exploitation of these minerals may have adverse effects on natural entities, particularly natural entities with mineral reserves.[25]

23 IC Singhe 'The implications of recognizing the rights of nature in Africa: A necessary paradigm shift in the conservation of life on the continent' 16 March 2024, https://observatoirenature.org/observatorio/en/2024/03/16/the-implications-of-recognizing-the-rights-of-nature-in-africa/ (accessed 27 September 2026). Also, the recognition of the rights of natural entities to conservation and restoration aid the achievement of Goals 14 and 15 of the Sustainable Development Goals which are the protection of life below water and the protection of life on land respectively. In addition, it is important to note that the essence of recognition of the rights of natural entities, including the recognition that they are rights holders under the African Charter, is to enable claims to be filed on their behalf for distinct remedy to be sought and obtained for them even when there is no human victim.

24 MO Ibrahim Foundation 'Africa's critical minerals: Africa at the heart of a low-carbon future', https://mo.ibrahim.foundation/sites/default/files/2022-11/minerals-resource-governance.pdf (accessed 27 September 2026).

25 C Ezgi and others 'Introduction' in C Ezgi and others *Fostering a just transition in the energy transition minerals sector in the eastern and southern Africa region* (2025) 11 on the point that the demand for critical minerals will triple by 2030

The extent to which natural entities can be adversely impacted as a result of exploitation of natural resources is evident in *SERAC*, where the Ogoni rivers are degraded as a result of the exploitation of crude oil in the Ogoni area. To achieve the integrity of the environment provided in Principle 2 of the Guiding Principles on Critical Energy Transition Minerals, environmental justice is essential. Environmental justice includes having redress mechanisms at the regional level to address harm done to the natural entities distinctively of human victims.

Remedies for the actual and potential damage to the natural entities pursued distinctively or independently of human rights violations can only be possible where there is recognition of the rights of the natural entities to preservation, conservation and restoration, and the recognition of natural entities as rights holders or subjects of rights. Peoples' right to a general satisfactory environment is provided in article 24 of the African Charter, and the biotic and abiotic components of the environment are necessary for a general satisfactory environment. This chapter, therefore, assesses the extent natural entities are rights holders under article 24 of the African Charter, and whether the protective mandates of the African Commission and the African Court extend to the protection of the rights of natural entities distinctively or independently of human rights.

In addressing these issues, the chapter is divided into five parts. Part 1 is this introduction; part 2 discusses the right to development and the right to a general satisfactory environment. Part 3 highlights the significance or justification for the recognition of natural entities as rights holders under the African Charter. Part 4 argues that natural entities are rights holders based on a teleological interpretation of 'peoples' and that biocultural rights are inherent in article 24 of the African Charter. Also, part 4 posits that the protective mandates of the African Commission and the African Court extend to the protection of the rights of natural entities to preservation, conservation and restoration in Africa. Part 5 concludes the chapter and provides recommendation.

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and quadruple by 2040; the eastern and southern African regions are rich in these minerals. Although exploitation of critical minerals is an opportunity for economic development, there is also a need to ensure the resource development contributed to a just transition. Just transition in this sense means a transition that is 'socially inclusive, minimises adverse impacts on marginalised groups, and drives peace'.

2 Right to development and the right to a general satisfactory environment under the African Charter

According to article 22 of the African Charter, individuals and peoples have a right to economic, social and cultural development and humans are at the centre of the right to development (RtD).[26] The RtD in Africa generally entails peoples' participation in the developmental process, and African people having the liberty to formulate their own policies that prioritise human rights and justice in the developmental process.[27] The RtD 'represents the right to be allowed the freedom and the opportunity to advance beyond prevailing circumstances'.[28] Although the exploitation of minerals contributes to socio-economic development in Africa, the exploitation of minerals adversely impacts the environment.[29]

The conventional idea of development is for minerals in general, and critical minerals in particular, such as lithium, cobalt and coltan[30] to be exploited for human development.[31] However, mineral extraction in Africa has resulted in harm to natural entities, such as the pollution of rivers, lands[32] and deforestation.[33] The environment, therefore, is impacted in a bid to achieve socio-economic development. Thus, there are actual and potential conflicts between achieving human rights to development and the preservation, conservation and restoration of natural entities harmed because of development. Recognition of the

26 SAD Kamga 'The right to development in the African human rights system: The *Endorois* case' (2011) 44 *De Jure* 381; CC Ngang 'Towards a right-to-development governance in Africa' (2018) 17 *Journal of Human Rights* 107, 113; UN Declaration on the Right to Development (DRtD) Preamble paras 13 & 16 provide: '[R]ecognising that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and the beneficiary of development ... the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations'; DRtD arts 1(1) & 2.

27 Ngang (n 26) 113.

28 As above.

29 L Leonard 'Socio-environmental impacts of mineral mining and conflicts in Southern and West Africa: Navigating reflexive governance for environmental justice' (2024) 19 *Environmental Research Letters* 1.

30 Mo Ibrahim Foundation (n 24).

31 Africa Centre for Strategic Studies 'Africa's critical minerals at a critical juncture' 20 May 2025, https://africacenter.org/spotlight/africas-critical-minerals-at-a-critical-juncture/ (accessed 30 September 2025).

32 *SERAC* (n 5) para 50.

33 *Endorois* (n 3) para 14.

rights of natural entities to preservation, conservation and restoration are essential for the realisation of the right to a general satisfactory environment in article 24 of the African Charter.[34] Natural entities such as rivers, lakes and forests are sources of biodiversity, and biodiversity is important for a general satisfactory environment.[35] Consequently, the realisation of the right to a general satisfactory environment in article 24 of the African Charter will be a challenge if sources of biodiversity are threatened, polluted or damaged.[36]

Socio-economic development and environmental protection are interdependent, and development should not be achieved at the expense of harm to the environment which natural entities are components.[37] Thus, the need to strike a balance between development and the protection of the environment has been emphasised in international instruments such as the African Charter,[38] the Declaration of the United Nations Conference on the Human Environment of 1992 (Stockholm Declaration)[39] and the Rio Declaration on Environment and Development of 1992.[40] Also, the report of the United Nations Special

34 AO Jegede 'Shifting lens: The protection of environment and human rights under the African Charter on Human and Peoples' Rights' (2015) 20 *South African Journal of Environmental Law and Policy* 23.

35 L Willets and others 'Biodiversity, health science, and human right to a healthy environment' (2025) 9 *Lancet Planet Health* 553, 554.

36 J Igamba 'Threats to biodiversity: Biodiversity loss and climate change' (2023) 10 May 2023, https://www.greenpeace.org/africa/en/blog/53486/threats-to-biodiversity-biodiversity-loss-climate-change/ (accessed 28 September 2026); Environmental degradation resulting from development activities affirms states' failure to fulfil their obligation under art 14(2)(a) of the Nature Convention to the effect that states shall 'take all necessary measures to ensure that development activities and projects are based on sound environmental policies and do not have adverse effects on natural resources and the environment in general'; Nature Convention arts 14(2)(b)& (c).

37 Rio Declaration on Environment and Development of 1992 (Rio Declaration) Principle 25, which provides that 'peace, development and environmental protection are interdependent and indivisible'.

38 African Commission on Human and Peoples' Rights (African Commission) 'Explanatory note to the state reporting guidelines on the contents of the rights and obligations under articles 21 and 24 of the African Charter' in African Commission's State Reporting Guidelines and Principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment 19 para 2 provides that the use of natural resources which is aimed to achieve development must be done in an environmentally sustainable manner.

39 Declaration of the United Nations Conference on the Human Environment 1992 (Stockholm Declaration) Principles 4, 8, 13, 14 & 15.

40 Rio Declaration Principles 2, 3, 4 & 7.

Rapporteur on the Right to Development[41] emphasised planet-centred participatory development that is beyond the human beings and present generations. According to the report, abiotic components of the planets such as plants should not be 'left behind in the process of development-either by ignoring them in development planning or sacrificing them for human pleasure and prosperity'.[42] Although human beings are at the centre of development, the human-centred development encompasses the harmony of humans with nature.[43]

Therefore, distinctive rights of natural entities cannot be ignored in the conversation on development. To therefore strike a proper balance in cases of actual or potential conflict between human-centred and the nature-centred approaches to the protection of the environment in development, there is a need for an accountability mechanism at the African regional level that recognises and can enforce the rights of natural entities distinctively of the rights of human beings.

3 Significance or justification for the recognition of natural entities as subjects of rights or rights holders under the African Charter

The over-exploitation of natural resources, deforestation and pollution contribute to biodiversity loss in Africa.[44] Biodiversity loss threatens the survival of the human and the non-human components of the planet.[45] Natural entities such as the forests and rivers are components of biodiversity and their conservation and restoration when damaged or polluted are important in reducing the rate of biodiversity loss in Africa.[46] This affirms the need for the recognition of the rights of natural entities to preservation, conservation and restoration, and the recognition of

41 Report of the Special Rapporteur on the Right to Development, Surya Deva (A/80/206) (Deva's Report).
42 Deva's Report (n 41) paras 31-37.
43 Deva's Report (n 41) para 34.
44 African Centre for Strategic Study 'African biodiversity loss raises risk to human security' 7 December 2022, https://africacenter.org/spotlight/african-biodiversity-loss-risk-human-security/ (accessed 10 October 2025).
45 World Health Organisation 'Biodiversity' 18 February 2025, https://www.who.int/news-room/fact-sheets/detail/biodiversity (accessed 10 October 2025).
46 As above. Eg, the World Health Organisation stated that 'forests store 80% of terrestrial biodiversity absorbing approximately 2.6 billion tons of carbon dioxide annually'.

natural entities as rights holders or subjects of rights under the African Charter.

Before delving into the discussion on the significance of the recognition of natural entities as rights holders or subjects of rights under the African Charter, it is important to establish the existence of the rights of natural entities to preservation, conservation and restoration in the African Charter. Worthy of note is that there is no explicit provision for the rights of natural entities to preservation, conservation and restoration in article 24 of the African Charter. However, as essential sources of biodiversity, natural entities are important to achieve a general satisfactory environment.[47] Thus, using a teleological approach to treaty interpretation[48] to interpret article 24 of the African Charter together with other relevant provisions in the Revised African Convention on the Conservation of Nature and Natural Resources (Nature Convention), the rights of natural entities to preservation, conservation and restoration are implied in article 24 of the African Charter. In an *amicus* brief submitted to the African Court in the matter of a *Request for Advisory Opinion on the Obligations of States with Respect to the Climate Crisis* filed by the Pan-African Lawyers Union (PALU),[49] it was established that drafters of the African Charter were enjoined to reflect African traditional values in the normative standards of the African Charter.[50] The concepts of communitarianism and holism are African traditional values. Communitarianism 'ensures that African approaches are fundamentally more community focused than they are individualistic',

47 Sustainability Directory 'Natural elements', https://lifestyle.sustainability-directory.com/area/natural-elements/ (accessed 5 September 2025).

48 Vienna Convention on the Law of Treaties art 31; A Amin 'A teleological approach to interpreting socio-economic rights in the African Charter: Appropriateness and methodology' (2021) 21 *African Human Rights Law Journal* 204. Unlike textual and intention of parties' approaches to interpretation of treaties, a teleological approach is about interpreting a treaty based on its object and purpose which can be ascertained through various elements such as a treaty's historical background and preparatory, subsequent conduct of state parties, the conditions prevailing at the time the treaty is interpreted, interpretation of the treaty as a whole, using relevant international, regional and national instruments and their jurisprudence and the principle of effectiveness.

49 AM Ibrahim and others '*Amicus curiae* in the matter of a request by the Pan-African Lawyers Union for an advisory opinion on the obligations of states with respect to the climate crisis' 30 March 2026, https://hrp.law.harvard.edu/wp-content/uploads/2026/04/Amicus-AO-No.-001-2025-Climate-Obligations-Online-.pdf (accessed 28 September 2026).

50 Ibrahim and others (n 49) paras 67-70.

and holism 'extends communitarian principles of kinship, community and family to include not only present and future generations of human, but also the dead, the biosphere, ecosystem, and cosmos, thereby emphasising the interconnectedness of humans with non-human realms'.[51] Thus, based on the principles of communitarianism and holism, African societies understand nature, in general, and natural entities, in particular, as part of the African communities. Also, from the Preamble to the African Charter, justice and dignity are 'essential objectives for the achievement of the legitimate aspirations of the African peoples', and virtues of African historical tradition arguably include the preservation, conservation and restoration of the environment as evidenced in the ways of life of indigenous peoples and people in local communities, who have a unique bond with their environment, in general, and natural entities, in particular.[52]

Indigenous peoples and people living in local communities in Africa prioritise the natural entities such as forests, rivers, mountains and lakes on which they depend for their survival, spirituality and livelihood. Thus, by a combined reading of paragraphs 2 and 4 of the Preamble and article 24 of the African Charter on peoples' rights to a general satisfactory environment; paragraphs 1, 4, 5, 6, and 7 of the Preamble and articles 2(1) & (2), 3(1) and 16(1)(d) of the Nature Convention, it is submitted that the rights of natural entities to preservation, conservation and restoration are implied in article 24 of the African Charter. Moreso, natural entities are sources of biodiversity and are necessary for the realisation of the right to a general satisfactory environment.[53] The realisation of peoples' rights to a general satisfactory environment in article 24 of the African Charter will be incomplete without a recognition that the rights of natural entities to preservation, conservation and restoration are implied.[54]

51 Ibrahim and others (n 49) para 68.
52 African Charter Preamble, arts 2 & 4.
53 PA Sandifer and others 'Exploring connections among nature, biodiversity, ecosystem services, and human health and wellbeing: Opportunities to enhance health and biodiversity conservation' (2015) 12 *Ecosystem Services* 1.
54 Annex to the Kunming-Montreal Global Biodiversity Framework (CDB/COP/DEC/15/4) para 1 to the effect that nature which includes natural entities are components of biodiversity, and biodiversity is fundamental to the survival of human beings. Human beings depend on biodiversity for 'food, medicine, energy, clean air and water, security from natural disasters as well as recreation and cultural inspiration, and its support the systems of life on Earth'.

Consequently, the argument in this chapter for the recognition of natural entities as rights holders under the African Charter is significant to adequately address real and potential conflict of interests between rights of humans and the legal rights of natural entities.[55] Conflict of interests are more likely to occur in cases of claims to redress environmental violation where the rights of both human and non-human components of the environment have been violated. For instance, in *SERAC*,[56] the complainants pleaded the fact of pollution of rivers and lands in Ogoni which serve as a source of food and livelihood for the Ogonis. However, the remedies sought in the case were tailored for the benefit of the human beings affected by the pollution, as there was no distinct relief sought for the rivers and the lands themselves. The African Commission's recommendation that Nigeria should undertake clean-up of the lands and rivers[57] was an offshoot of the findings of human rights violations, not specific recognition of the legal rights of the lands and rivers to conservation and restoration. This suggests that if the pollution of the Ogoni rivers and lands had not affected the rights of human beings that depend on them for survival, it was unlikely that any claim would have been brought on behalf of the polluted rivers and lands to enforce their rights to conservation and restoration.

Gleaning from the jurisprudence of human rights body outside Africa, the distinctiveness of the rights of natural entities is affirmed in the 2017 advisory opinion of the Inter-American Court of Human Rights,[58] where the Court stated:[59]

> [T]he right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves,

55 CD Stone 'Should trees have standing? Towards legal rights for natural objects' (1972) 45 *California Law Review* 450.
56 *SERAC* (n 5) paras 9 & 50.
57 *SERAC* (n 5) para 71.
58 Inter-American Court of Human Rights Advisory Opinion OC-23/17 of 15 November 2017 requested by the Republic of Columbia on 'The environment and human rights: State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity-interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the American Convention on Human Rights' (IACHR 2017 Advisory Opinion); African Charter arts 60 & 61 give the African Commission and the African Court a ground to borrow from the jurisprudence of human rights bodies such as the Inter-American Court of Human Rights.
59 IACHR 2017 Advisory Opinion (n 58) para 62.

> even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.

It may be argued, on the other hand, that the African Commission's recommendation in *SERAC* for a clean-up of the rivers and lands is a remedy for rivers and lands in themselves. It is submitted that this is inadequate because if by any chance the human beings are satisfied with monetary compensation that Nigeria and Shell Petroleum Development Company give, there is the possibility that the relief for clean-up of the rivers and lands may be abandoned. Human rights may be prioritised over legal rights of natural entities in some environmental cases where the rights of the natural entities should be prioritised because of the overall impact on biodiversity. Thus, human rights and the legal rights of natural entities must be distinctively recognised, and reliefs distinctively claimed for both categories.[60]

Also, in *Endorois,* despite pleading the high risk of pollution of waterways, upon which the Endorois and their livestock depend for survival,[61] redress for potential and real risk to the waterways was not part of the claims submitted. In fact, article 24 was not part of the provisions in the African Charter claimed to have been violated in the case.[62] Further, in some cases, harm done to natural entities is noticeable in time before its impact on human beings is evident.[63] Thus, legal rights of the natural entities, although interrelated with human rights in some cases, should be recognised as separate rights that can be enforced independently or

60 Stone (n 55) 458 noted that there are three implications for the recognition of natural entities as rights holders. The implications are that legal actions can be instituted on their behalf, a court can take into account the injury done to the natural entities when determining cases of environmental violations, and the reliefs granted by the court must be such that benefit the natural entities themselves.

61 *Endorois* (n 3) paras 14 & 210.

62 *Endorois* (n 3) para 22; In *Ligue Ivoirienne des Droits de l'Homme (LIDHO) & Others v Republic of Côte d'Ivoire* Application 41/2016 (Judgment) (*LIDHO v Côte d'Ivoire*) para 4 it was stated that the dumping of hazardous wastes contaminated the groundwater. However, the issue of the contaminated groundwater was not elaborated on and there was no claim or relief related to the protection of possible natural entities that might have been harmed by the hazardous wastes.

63 SS Shetty and others 'Environmental pollutants and their effects on human health' (2023) 9 *Heliyon* 1.

distinctively in environmental rights cases brought under article 24 of the African Charter.

In addition, the possibility of having a separate enforcement mechanism to redress violations of legal rights of natural entities at the African regional system is a challenge. The challenge arises from the recognition of rights of nature, in general, or the legal rights of specific natural entities, in particular, that are yet to be developed in the African regional system. The creation of a separate body to enforce rights of natural entities may not be welcome at this time in view of the current AU institutional reform.[64] Also, the Nature Convention and the Bamako Convention on the Ban of the Import to Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa (Bamako Convention) are not essentially framed in the language of rights and do not provide for the filing of complaints by individuals and organisations to enforce their provisions.

The dispute resolution mechanisms provided in the Nature Convention and the Bamako Convention are state-centric. Article 30 of the Nature Convention on settlement of dispute arising from the Convention is limited to disputes between state parties. The disputes are to be resolved through negotiation or, where negotiations fail, by the African Court of Justice, which is not yet operational.[65] Although the Nature Convention is not framed in the language of rights for nature in general or natural entities in particular, the African Court in *LIDHO v Côte d'Ivoire* created a window to accommodate individual communication seeking to enforce state obligation under the Nature Convention. By a combined reading of article 3 of the Nature

64 HE Paul Kagame report 'The imperative to strengthen our union: Report on the proposed recommendations for the institutional reform of the African Union' (2017), https://au.int/sites/default/files/documents/33273-doc-report-_institutional_reform_of_the_au.pdf (accessed 2 October 2025).

65 The Protocol on the Statute of the African Court of Justice and Human Rights of 2008 is yet to enter into force because by its art 9(1) it will enter into force 30 days after deposit of the instruments of ratification by 15 member states. From the AU website, 8 member states have ratified and deposited instruments of ratification. African Union treaty status, https://au.int/sites/default/files/treaties/36396-sl-PROTOCOL%20ON%20THE%20STATUTE%20OF%20THE%20AFRICAN%20COURT%20OF%20JUSTICE%20AND%20HUMAN%20RIGHTS.pdf (accessed 21 October 2025). Also, the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights is yet to enter into force. It also requires 15 ratifications of member states for it to enter into force, and only Angola has ratified.

Convention and articles 16 and 14 of the African Charter, the African Court in *LIDHO v Côte d'Ivoire* held that the Nature Convention is a human rights instrument to a limited extent. This is to enable the African Court to exercise material jurisdiction with respect to state obligations on the right to a general satisfactory environment in the case.[66] Further, the settlement of disputes under article 20 of the Bamako Convention is limited to state parties and negotiation is prioritised in resolving disputes between states. If negotiation fails, disputes shall be submitted to an *ad hoc* organ set up by the Conference or the International Court of Justice (ICJ).[67] Thus, sole reliance cannot be placed on the Nature Convention and the Bamako Convention for the enforcement of the rights of natural entities in Africa. In addressing this challenge, there is a need to assess the scope of article 24 of the African Charter to determine the extent to which the protective mandates of the African Commission and the African Court cover the protection of the legal rights of natural entities to preservation, conservation and restoration when there is actual or potential harm to the natural entities. Where the protective mandates of the African Commission and the African Court extend to the protection of the rights of natural entities, persons can submit claims on behalf of the natural entities to the African Court and the African Commission.

There is also very limited judicial remedy to enforce the legal rights of natural entities in African domestic systems. This is because natural entities are not expressly recognised as rights holders or subjects of rights in many African states,[68] except in Uganda which expressly recognised nature and by implication natural entities as rights holders.[69] Section 4(1) of the Ugandan National Environmental Act of 2019 (Ugandan

66 *LIDHO v Côte d'Ivoire* (n 62) paras 33-40.

67 Nature Convention; Bamako Convention.

68 L Seema 'Recognising that nature has legal rights is a key step to slowing the degradation of our planet' 2 May 2023, https://www.dailymaverick.co.za/opinionista/2023-05-02-recognising-that-nature-has-legal-rights-is-a-key-step-to-slowing-the-degradation-of-our-planet/ (accessed 2 October 2025). It is important to note that non-recognition of natural entities as rights holders in African states, except Uganda, is based on the available research at the time of writing this chapter.

69 Ugandan National Environment Act of 2019 sec 4; Cyrus R Vance Centre for International Justice, Earth Law Centre & International Rivers report 'Rights of rivers: A global survey of the rapidly developing rights of nature jurisprudence pertaining to rivers' (2020) 1, 49, https://www.internationalrivers.org/wp-content/uploads/sites/86/2020/09/Right-of-Rivers-Report-V3-Digital-compressed.pdf (accessed 29 September 2026).

NEA) provides that 'nature has the right to exist, persist, maintain and regenerate its vital cycles'. Section 4(2) of the Ugandan NEA provides that 'a person has a right to bring an action before a competent court for any infringement of rights of nature' guaranteed under the NEA. Although the African Commission and the African Court are intended to complement domestic systems, establishing a regional African mechanism for redressing harm to natural entities would help address the accountability gap arising from the lack of effective domestic remedies in many African states.

The recognition of natural entities as rights holders under the African Charter will also aid in holding states accountable for failure to fulfil their obligations to respect, protect and fulfil under article 1 of the African Charter. Holding states accountable can lead to states taking legislative, administrative and other measures to protect the rights of natural entities in their jurisdictions. Also, the recognition of natural entities as rights holders under the African Charter will enable holding the states accountable for failing in their duty to protect against violations perpetrated by private actors (especially corporations) which are major players in the extractive sector. Private actors also have a direct obligation under article 27(2) of the African Charter to respect and protect natural entities.

Jurisprudence developed based on an interpretation of the African Charter can aid law reform at the domestic level in Africa. For a country such as Nigeria, which domesticated the African Charter *verbatim*,[70] recognition of natural entities as rights holders under the African Charter is an opportunity for the development of jurisprudence in that regard in such country pending when a new legislation is enacted which expressly recognises natural entities as rights holders. The rights of natural entities can be protected pending the enactment of new legislation that expressly recognises and provides for their specific enforceable rights.

Finally, the recognition of natural entities as rights holders or subjects of rights under the African Charter will make evident the need for proper framing of environmental rights cases to be submitted to the African Commission or the African Court. It should be noted that the request for advisory opinion on climate change which the Pan-African Lawyers

70 Nigeria's African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 1983.

Union (PALU) submitted to the African Court in May 2025 contained no request for the determination of nature or natural entities as subjects of rights.[71] However, an *amicus* brief filed in the case highlighted the issue of nature as rights holders.[72] Thus, in environmental rights cases, there is a need for the claims and the reliefs in environmental violation cases to be crafted to reflect, distinctively, the human rights violated and the rights of the natural entities that are violated as well where such occur.

4 Natural entities as rights holders: Scope of 'peoples' and implied biocultural rights in article 24 of the African Charter

One of the unique features of the African Charter is its protection of individual and peoples' rights or collective rights.[73] Article 24 of the African Charter provides for peoples' right to a general satisfactory environment with respect to which states have an obligation to respect, protect and fulfil.[74] Although the African Charter protects peoples' rights, the definition of 'peoples' is not provided. The absence of a definition of 'peoples' has resulted in varied interpretations of 'peoples' including that it means a community, sub-set of a population in a country, everyone in the African continent and indigenous peoples.[75]

The cases of *Endorois* and *Ogiek*[76] affirmed that indigenous peoples fall in the definition of 'peoples' in the African Charter. However, the African Commission in *Endorois* noted that the definition of 'peoples' is contested and that meanings thus far given to 'peoples' in the African Charter are non-exhaustive.[77] Commenting on the expansive scope of

71 Pan-African Lawyers Union (PALU) *Request for an Advisory Opinion on the Obligation of States With Respect to the Climate Crisis* (2025) para 92.
72 Ibrahim and others (n 49).
73 EB Liyew 'A critical appraisal of the effectiveness of the African Charter on Human and Peoples' Rights' (2025) *The International Journal of Human Rights* 1, 5-6; AT Chekol & I Dogan 'Championing human rights: Normative insights into the African Charter on Human and Peoples' Rights' (2024) 15 *Beijing Law Review* 1598, 1603.
74 African Charter art 1.
75 SA Dersso 'The jurisprudence of the African Commission on Human and Peoples' Rights with respect to peoples' rights' (2006) 6 *African Human Rights Law Journal* 358, 360.
76 *Ogiek* (n 13) paras 105-108.
77 *Endorois* (n 3) para 147; Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities published jointly by the ACHPR/IWGIA 2005.

'peoples' in the African Charter, the African Court in *Ogiek* also noted that the omission to define 'peoples' in the African Charter is to 'permit a certain flexibility in the application and subsequent interpretation by future users of the legal instrument, the task of fleshing out the Charter being left to the human rights protection bodies'.[78] The window left in the definition of 'peoples' is essential for the argument that 'peoples' comprises human and non-human components (natural entities) based on their inextricable relationship.

The African Charter is a living and innovative instrument on human and peoples' rights,[79] and 'peoples' (such as indigenous peoples and people in the local communities) have inextricable relationship with their environment, particularly the natural entities.[80] It is therefore submitted that 'peoples' in article 24 of the African Charter encompasses human and non-human components. Natural entities form part of the non-human component of 'peoples' in article 24. This position is grounded in the fact that the environment is composed of human and non-human components, which include humans and natural entities, and the inextricable relationship between these components have been established in cases.[81] In *SERAC*, oil exploration polluted the rivers and lands which are sources of food and livelihood to the Ogonis.[82] In *Ogiek*, it was stated that conversion of the Mau Forest to a reserved water catchment zone did not consider 'the importance of the Mau Forest for the survival of the Ogieks'.[83] In *Endorois*, it was stated:[84]

> [T]he area surrounding Lake Bogoria is fertile land, providing green pasture and medicinal salt licks, which help raise healthy cattle … Lake Bogoria is central to the Endorois religious and traditional practices … the community's historical prayer sites, places for circumcision rituals, and other cultural ceremonies are around

78 *Ogiek* (n 13) para 196.
79 *Endorois* (n 3) para 149.
80 United Nations Environment Programme 'The right to a healthy environment in practice: A decade before the courts (2015-2025)' (2025) 1, 17, https://wedocs.unep.org/handle/20.500.11822/48696 (accessed 9 October 2025).
81 'Understanding the connection between humans and the environment: An exploration of environmental science' *Carbonclick* 5 February 2025, https://www.carbonclick.com/news-views/understanding-the-connection-between-humans-and-the-environment-an-exploration-of-environmental-science (accessed 13 October 2025).
82 *SERAC* (n 5) para 9.
83 *Ogiek* (n 13) para 8.
84 *Endorois* (n 3) para 6 (my emphasis).

> Lake Bogoria. These sites were used on a weekly or monthly basis for smaller local ceremonies, and on an annual basis for cultural festivities involving Endorois from the whole region ... the Endorois believe that the spirits of all Endorois, no matter where they are buried, live on in the Lake, with annual festivals taking place at the Lake ... the Endorois believe that the Monchongoi forest is considered the birthplace of the Endorois and the settlement of the first Endorois community.

The complainants in *Endorois* further stated:[85]

> [L]and for the Endorois is held in very high esteem, since tribal land, in addition to securing subsistence and livelihood, is seen as sacred, being inextricably linked to the cultural integrity of the community and its traditional way of life. Land, they claim, belongs to the community and not the individual and is essential to the preservation and survival as a traditional people ... the Endorois health, livelihood, religion and culture are all intimately connected with their traditional land, as grazing lands, sacred religious sites and plants used for traditional medicine are all situated around the shores of Lake Bogoria.

From the decisions in *SERAC*, *Ogiek* and *Endorois*, the following deductions can be drawn:

Indigenous peoples and people in local communities depend on the environment generally and natural entities such as forests, rivers and lakes for their survival. For them, these natural entities serve as sources of food, culture and religion. Some of the natural entities are held sacred because of historical and ancestral connections.

Indigenous peoples and people in local communities in Africa have interrelated and interdependent relationship with nature generally, and the natural entities specifically. This affirms the deep connection between them and the environment, and the need for the human and non-human components of the environment for sustenance.

The 'environment' provided in article 24 of the African Charter is a complex system.[86] The environment is made up of abiotic components which are the non-living elements such as land, rivers and forests and biotic components, which are the living elements, such as animals, plants and human beings. Both the biotic and the abiotic components

85 *Endorois* (n 3) para 16 (my emphasis); *Ogiek* (n 13) paras 155, 164, 165, 182 & 183, where the African Court established the inextricable link between the Ogieks and the Mau Forest on which the Ogieks depend for social, economic, cultural and religious survival.

86 V Singh 'The environment and its components' in V Singh *Textbook of environment and ecology* (2024) 1.

of the environment depend on one another to survive.[87] Human beings are part of the environment, and article 24 provides that all peoples have the right to a general satisfactory environment favourable to their development. Thus, the inextricable relationship between human and non-human components of the environment is affirmed. Protection of only the human component of the environment while excluding its non-human component, which in this case includes natural entities, is partial protection of the environment. Based on the expansive scope of 'peoples' and the fact that the non-human component of the environment also needs 'a general satisfactory environment' for its development, it is submitted that 'peoples' in article 24 of the African Charter houses both human (indigenous people and people in local communities) and non-human components (natural entities). From the facts in *SERAC* and *Endorois*, peoples, particularly indigenous peoples, people in the local communities and the natural entities on which they depend for survival and livelihood, have an inextricable relationship. Protection of the human component of 'peoples' in article 24 of the African Charter means that the non-human component cannot be left unprotected.[88] Both human and non-human components of 'peoples' therefore need 'a general satisfactory environment' for their development, which includes their sustenance. It is important to note that the non-human components of the environment argued to be part of 'peoples' are those that have an inextricable relationship with indigenous peoples and people in local communities. Such non-human components of the environment that are part of 'peoples' are the Ogoni river, Lake Bogoria, the Monchongoi forest and other similar natural entities which have inseparable connection with indigenous peoples and people in local communities.

In addition to the purposive interpretation of 'peoples' in article 24, it is submitted that biocultural rights which formed the basis for the Colombian Constitutional Court's decision that the Atrato River is a subject of right in the *Atrato River* case,[89] are implied in article

87 Inter-American Court of Human Rights *Advisory Opinion AO-32/25 (May, 2025)* requested by the Republic of Chile and the Republic of Columbia on climate emergency and human rights paras 279-280.

88 This aligns with the teleological interpretation of art 24 of the African Charter, particularly the element of effectiveness.

89 *Centre for Social Justice Studies & Others v Presidency of the Republic & Others* (Judgment T-622/16) (*Atrato River*) English translation available at https://www.

24 of the African Charter.[90] Biocultural rights are grounded in the inextricable relationship between the cultural diversity of indigenous peoples and people in local community and biodiversity.[91] Biocultural rights comprise the rights of indigenous peoples and people in local communities to use their knowledge, culture, religion and their ways of life to conserve their territory and natural resources, which in turn ensure the protection of biodiversity.[92] The concept of biocultural rights developed from four distinct movements of post-development, the commons, indigenous peoples' rights and third generation or collective rights. These have in common the protection of the environment and its components, and the recognition of the rights of the peoples to conserve the environment and its components.[93] Peoples' rights to preserve and conserve environmental components, including their territories and natural resources, are grounded not in ownership but in stewardship, which emphasises their coexistence with nature. Biocultural rights are a fusion of cultural diversity of the peoples with biodiversity, both of which are essential to the protection of the environment. Because biocultural rights encompass the rights of indigenous peoples and people in local community as stewards of their environment which are intertwined with the recognition of the intrinsic worth of nature for purposes of its protection and conservation, biocultural rights are regarded as subset of third generation rights or group rights.[94]

According to the Colombian Constitutional Court in *Atrato River*,[95] biocultural rights

> refers to the rights that ethnic communities have to administer and exercise autonomous guardianship over their territories – according to their own laws

climatecasechart.com/documents/atrato-river-decision-t-622-16-of-november-10-2016-judgment_8646 (accessed 29 September 2025).

90 Sustainability Directory 'What are biocultural rights and why are they important?' https://climate.sustainability-directory.com/question/what-are-biocultural-rights-and-why-are-they-important/ (accessed 29 September 2025).

91 P Wesche 'Nature in practice: A case study on the impacts of the Columbian *Atrato River* decision' (2021) 33 *Journal of Environmental Law* 531.

92 KS Bavikatte & T Bennett 'Community stewardship: The foundation of biocultural rights' (2015) 6 *Journal of Human Rights and the Environment* 7.

93 Bavikatte & Bennett (n 92) 20.

94 Bavikatte & Bennett (n 92) 24 & 27.

95 *Atrato River* (n 89); E Macpherson and others 'Constitutional law, ecosystems and indigenous peoples in Colombia: Biocultural rights and legal subjects' (2020) 9 *Transnational Environmental Law* 521, 530.

> and customs – and the natural resources that make up their habitat, where their culture, their traditions and their way of life are developed based on the special relationship they have with the environment and biodiversity. *These rights result from the recognition of the deep and intrinsic connection that exists between nature, its resources, and the culture of the ethnic and indigenous communities that inhabit them, which are interdependent with each other and cannot be understood in isolation*.[96]

Natural entities, which are essential components of biodiversity, form part of the territory and natural resources conserved by indigenous peoples and people in local communities using their indigenous or traditional knowledge and close bond with the natural entities. From *Endorois*, it is evident that the Endorois rely on the forest, lakes and land for the survival of their culture and religion which in turn add value to the conservation of the natural entities. Although the African Commission in *Endorois* did not expressly mention 'biocultural rights', some parts of the decision are a recognition of biocultural rights. For example, in recognising the interdependence of the cultural diversity and biodiversity in *Endorois*, the African Commission stated

> that Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands – Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi Forest are central to the Endorois' way of life and without access to their ancestral land, the Endorois are unable to

96 *Atrato River* (n 89) paras 1.11, 5.14, 5.21, 9.23 (my emphasis); Bavikatte & Bennett (n 92) 8 to the effect that biocultural rights evidenced a 'holistic relationship between nature and culture', they 'affirm the bond between indigenous, tribal and other communities with their land, together with the flora, faunal and other resources in and on the land'; SK Bavikatte 'Stewarding the earth: Rethinking property and the emergence of biocultural rights' PhD thesis, University of Cape Town, 2011 15-26; TV Giménez 'The rights of nature: The legal revolution of the 21st century' (2023) 8 *MedCrave Online Journal of Ecology & Environmental Sciences* 97, 100 commenting on *Atrato River*, noted that '[t]he legal concept of Biocultural Rights is a new special category that unifies the rights of ethnic communities to natural resources and culture, understanding them as integrated and interrelated … the Court affirms in its judgment that the so-called biocultural rights result from the recognition of the deep and intrinsic connection that exists between nature and the culture of the ethnic and indigenous communities that inhabit it. The central element of this approach is the existence of an intrinsic link between nature and culture, between the ecosystem and the human species. And it emphasizes the importance of the biological and cultural diversity of the nation for the next generations and the survival of the planet. The biocentric vision, which includes Biocultural Rights, allows to the Court to recognize finally, in the Resolution of the case, the Atrato River as a subject of rights (Ecocentric vision).'

> fully exercise their cultural and religious rights and feel disconnected from their land and ancestors.[97]

Also, in holding that the state violated the rights of the Endorois to religion, property, culture and disposal of natural wealth, the African Commission established the inextricable link between the Endorois' culture, religion and ways of life, on the one hand, and the land, forest and natural resources or entities, on the other, which are important to their survival.[98] The African Commission established the rights of the Endorois as stewards of their territory and natural entities which are important to their preservation and conservation. It is therefore submitted that although the African Commission did not expressly mention 'biocultural rights' in its decision, by the Commission's findings of a deep connection between the Endorois and the natural entities, such as the Lake Bogoria and the Monchongoi forest, and upholding the stewardship rights of the Endorois to conserve these natural entities, the African Commission indeed recognised biocultural rights as rights that exist in the African Charter.[99] In other words, the African Commission acknowledged that biocultural rights are an implied subset of peoples' rights under the African Charter.

Since biocultural rights are implied in peoples' rights and regarded as a subset of peoples' rights, biocultural rights are therefore implied in peoples' rights to a general satisfactory environment in article 24 of the

97 *Endorois* (n 3) paras 156 & 235.

98 *Endorois* (n 3) paras 166, 167, 173, 184, 215, 228, 235, 246, 249, 250, 251, 267 & 268; *Ogiek* (n 13) paras 130, 188 & 189 also established the inextricable link between the Ogieks and the Mau Forest and acknowledged the rights of the Ogieks as stewards of the Mau Forest for its preservation and conservation which in essence is recognition of biocultural rights.

99 Bavikatte (n 96) 167-173; other international conventions that recognised biocultural rights are the Nature Convention arts 12(3) & 17(3); African Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources art 16; UN Convention on Biological Diversity arts 8(j) & 10(c) and (d); Rio Declaration art 22; Kunming-Montreal Global Biodiversity Framework para 7(a); UN Declaration on the Rights of Indigenous Peoples arts 25 & 29(1); ILO Convention on Indigenous and Tribal Peoples 169 arts 13 & 15; World Health Organisation (n 45) acknowledged the fact that 'indigenous peoples ... are crucial stakeholders and rights holders in the conservation and sustainable management of biodiversity'. This fact affirms the rights of indigenous peoples to maintain their areas using their indigenous knowledge and culture which is the cultural diversity component of biocultural rights, of which the cultural diversity is needed to protect the bio diversity component of biocultural rights.

African Charter. Moreover, the realisation of article 24 of the African Charter is dependent on the sustained relationship of the indigenous people, people in local communities and the natural entities which are essential sources of biocultural diversity. A general satisfactory environment requires the protection of both cultural diversity and biodiversity which natural entities are components. Because biocultural rights are implicit in article 24 of the African Charter, protection of cultural diversity component of biocultural rights means the biodiversity component (which natural entities are part) cannot be left unprotected under article 24 of the African Charter.

Having established that the rights of natural entities to preservation, conservation and restoration are implied in article 24 of the African Charter; that biocultural rights are implied in article 24 of the African Charter; and that natural entities are components of the 'peoples' in article 24, natural entities are therefore rights holders under the African Charter by virtue of article 24 of the African Charter. Thus, claims to redress violation of the rights of 'peoples' to a general satisfactory environment (natural entities being components of 'peoples') can be submitted to the African Commission and the African Court.[100] Indigenous peoples, people in local communities, civil society organisation (CSOs) or any other guardian appointed for natural entities can file claims on behalf of the natural entities to protect their rights to preservation, conservation, restoration and remedy under article 24 of the African Charter. Consequently, because the African Commission and the African Court have jurisdiction to interpret and protect express and implied rights in the African Charter,[101] and that the *actio popularis* (public interest litigation by which claims can be filed on behalf of another) is recognised,[102] claims can be submitted on behalf of natural entities by indigenous peoples,

100 As seen in the examples of *SERAC, Endorois and Ogiek* where claims of violation of peoples' rights were entertained by the African Commission and the African Court. However, the possibility that claims can be brought on behalf of the natural entities was not tested in these cases.

101 African Charter arts 45(2), 55 & 56; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) art 3.

102 African Court Protocol art 5(3); *SERAC* (n 5*)* para 49; E Buys & B Lewis 'Environmental protection through European and African human rights frameworks' (2022) 26 *The International Journal of Human Rights* 949, 963; MP Pedersen 'Standing and the African Commission on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 407, 410.

people in local communities and CSOs at the African Commission and the African Court.

Furthermore, that natural entities are rights holders is not novel, as shown in the jurisprudence of regional and domestic systems outside Africa such as the Inter-American Court of Human Rights Advisory Opinion in 2025 on climate emergency and human rights,[103] and the Columbian Constitutional Court decision in *Atrato River*. Therefore, pursuant to articles 60 and 61 of the African Charter,[104] it is important for the African Commission and the African Court to note the development in other jurisdictions in the recognition of natural entities as rights holders.[105] Moreso, as evident in the cases of *SERAC*, *Endorois* and *Ogiek*, where there was little or no protection for the natural entities despite actual and potential harm done to them, it is important that the African Commission and the African Court give purposive interpretation to article 24 of the African Charter by recognising distinct claims made to protect natural entities.

5 Conclusion and recommendation

Natural entities are important sources of biodiversity and their rights to preservation, conservation and restoration are essential to the realisation of a general satisfactory environment in Africa. Protection of the rights of the natural entities is key to the realisation of Principle 2 of the Guiding Principles on Critical Energy Transition Minerals which provides for the safeguard of the integrity of the planet, its environment and biodiversity.

Although the rights of natural entities to preservation, conservation and restoration are not expressly stated in the African Charter, it is argued in this chapter that they are implied in article 24 of the African Charter. Also, based on the inextricable relationship between indigenous peoples, people in local communities and natural entities, it is submitted

103 Inter-American Court of Human Rights Advisory Opinion AO-32/25 of May 29 2025 requested by the Republic of Chile and the Republic of Columbia paras 279-286.

104 African Court Protocol art 7; *Ogiek* (n 13) para 108 where the African Court acknowledged that it can by virtue of arts 60 and 61 of the African Charter draw inspiration from other human rights instruments. Human rights instruments that inspiration can be drawn from include those at the domestic level.

105 S Borràs-Pentinat 'Rights of nature' in M Wewerinke-Singh and others (eds) *The Cambridge handbook on climate litigation* (2025) 275.

that natural entities are subset of 'peoples' in article 24 of the African Charter and, as such, are rights holders or subjects of rights. Based on the argument that biocultural rights are implied in the African Charter, generally, and article 24, specifically, it is also submitted that because biocultural rights are implied in article 24 of the African Charter, that natural entities which are components of biodiversity are rights holders or subjects of rights under the African Charter. Recognition of natural entities as rights holders or subjects of rights is important for a comprehensive realisation of the right to a general satisfactory environment in article 24 of the African Charter pursuant to which environmental justice is key.

Since the African Commission and the African Court have jurisdiction to interpret provisions of the African Charter and based on the recognition of *actio popularis* under the African Charter, it is found that the African Commission and the African Court can hear cases filed on behalf of natural entities that focus on the protection of their rights as implied in article 24 of the African Charter. This gives an opportunity for a holistic redress of environmental harm in Africa which recognise both anthropocentric and eco-centric approaches.

It is therefore important for claims that involve actual or potential harm to the environment, and specifically to the natural entities, to be properly framed to reflect redress for the distinct rights of natural entities. This will give the African Commission and the African Court the opportunity to use a purposive approach to interpret the African Charter, particularly article 24 on the right to a general satisfactory environment, in protecting the natural entities from actual or potential harm.

It is recommended that civil society organisations litigating environmental rights in Africa should be aware of the possibility of protecting natural entities using the African Commission and the African Court. They should properly frame their claims to seek distinct redress for natural entities in cases of violations of the environment where actual or potential harm is caused to natural entities as in the cases of *SERAC*, *LIDHO v Côte d'Ivoire* and *Endorois*.

Also, there is need for a General Comment on article 24 of the African Charter. The General Comment should expound on the right to a general satisfactory environment, and expressly provide for specific

rights of natural entities, and that they are rights holders under article 24 of the African Charter.

Therefore, article 24 of the African Charter offers more than an anthropocentric approach to the protection of the environment. Article 24 offers an 'anthropo-ecocentric' dimension recognising natural entities as rights holders, which is important to address the challenge of biodiversity loss and to achieve a holistic protection of the environment in Africa.

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