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Beyond article 22 of the African Charter: The Draft Convention on the Right to Development as a normative reinforcement for the right to development in Africa

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Abstract: *This chapter offers a critical reappraisal of the normative architecture of the right to development in Africa. It places article 22 of the African Charter on Human and Peoples' Rights in dialogue with the evolving UN Draft Convention on the Right to Development. The African Charter was groundbreaking in recognising the right to development as a collective entitlement of peoples. Yet, its broad formulation and thin enforcement machinery render it normatively ambitious but institutionally fragile. Contemporary pressures, global economic asymmetry, corporate impunity, climate vulnerability and domestic governance deficits expose the limits of article 22 standing*

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alone. Judicial refinement within the African human rights system has mattered, but it cannot by itself secure the transformative promise of the right. A legally binding international instrument is necessary to clarify state duties, discipline non-state actors and entrench international cooperation as an obligation rather than courtesy. The chapter analyses the Draft Convention as a critical normative reinforcement, one that thickens accountability, sharpens corporate regulation and strengthens the justiciability of development claims. It also confronts the fault lines that now threaten the instrument: north-south disagreement over aid as obligation, the absence of an individual complaints procedure, and unresolved tension between a proposed supremacy clause and existing trade and investment regimes. The argument proceeds from an African vantage point. A continent that holds close to 30 per cent of the world's mineral reserves still carries a disproportionate share of extreme poverty. That disparity is not simply economic. It is political and juridical, and it exposes a persistent failure to convert the right to development from aspiration into enforceable entitlement.

Résumé : *Ce chapitre propose une réévaluation critique de l'architecture normative du droit au développement en Afrique. Il met en dialogue l'article 22 de la Charte africaine des droits de l'homme et des peuples avec le projet de convention des Nations unies sur le droit au développement, en constante évolution. La Charte africaine a fait figure de pionnière en reconnaissant le droit au développement comme un droit collectif des peuples. Cependant, sa formulation générale et ses mécanismes d'application limités en font un texte ambitieux sur le plan normatif, mais fragile sur le plan institutionnel. Les pressions actuelles, les asymétries économiques mondiales, l'impunité des entreprises, la vulnérabilité climatique et les déficits de gouvernance nationale mettent en évidence les limites de l'article 22 pris isolément. L'affinement judiciaire au sein du système africain des droits de l'homme a joué un rôle important, mais il ne peut à lui seul garantir la promesse de transformation inhérente à ce droit. Un instrument international juridiquement contraignant est nécessaire pour clarifier les obligations des États, encadrer les acteurs non étatiques et ancrer la coopération internationale en tant qu'obligation plutôt que simple courtoisie. Ce chapitre analyse le projet de convention comme un renforcement normatif essentiel, qui renforce la responsabilité, affine la réglementation des entreprises et consolide*

la justiciabilité des revendications en matière de développement. Il aborde également les lignes de fracture qui menacent actuellement cet instrument : le désaccord Nord-Sud sur le caractère obligatoire de l'aide, l'absence de procédure de plainte individuelle et la tension non résolue entre une clause de suprématie proposée et les régimes existants en matière de commerce et d'investissement. L'argumentation s'appuie sur une perspective africaine. Un continent qui détient près de 30 % des réserves minérales mondiales continue de supporter une part disproportionnée de l'extrême pauvreté. Cette disparité n'est pas simplement économique. Elle est politique et juridique, et elle met en évidence un échec persistant à transformer le droit au développement d'une simple aspiration en un droit exécutoire.

Keywords: *right to development; African Charter; Draft Convention; article 22*

1 Introduction

To speak about the African condition is to speak of contradiction. The continent holds nearly 30 per cent of the world's mineral reserves, yet it bears a disproportionate share of the world's extreme poverty. This is neither bad luck, nor fate. It is law or, more precisely, what law has refused to do. The right to development was meant to redraw that terrain. Instead, it hovers above ordinary lives, lofty and distant. For many across the continent, law does not arrive as a form of protection. It arrives late, if at all, and speaks in declarations rather than remedies, gesturing towards justice, while communities remain trapped in a global political economy that still extracts more than it restores. Article 22 of the African Charter on Human and Peoples' Rights (African Charter) is bold. It declares development a right, not a favour or a policy aspiration. In doing so, it unsettled the liberal script that centres the solitary rights bearer and affirmed peoples as collective subjects of dignity, disrupting, as Mutua has argued, the orthodox human rights canon and standing,[1] in Umozurike's reading, as Africa's normative assertion on the global stage.[2] Yet, for all its ambition, the right to development under article

1 M Mutua *Human rights: A political and cultural critique* (2002).
2 UO Umozurike *The African Charter on Human and Peoples' Rights* (1997) 21.

22 has struggled to travel from text to transformation. This chapter takes a sceptical view of romantic readings of the African Charter; the truth is sharper. The right has too often operated as symbolism, invoked in speeches and rarely enforced in courts. Ghai's warning, made in a related context, that rights without institutional pathways risk becoming rhetorical ornaments, applies with some force here,[3] as does Mkandawire's insistence that African development debates cannot ignore global structural constraints.[4] Both insights converge on the same point: Without clarity on who owes what and how that obligation is enforced, the right remains suspended between aspiration and accountability.

The emergence of the United Nations (UN) Draft Convention on the Right to Development (Draft Convention) shifts this terrain, though not without controversy of its own. The analysis does not treat it as duplication; rather, it understands it as supplementation. Where article 22 is principled, the Draft Convention is procedural. It names duty bearers and sharpens obligations of international cooperation. It confronts corporate actors that move capital across borders while communities absorb the costs. Sengupta insisted that development must carry an enforceable obligation, not diplomatic courtesy.[5] The Draft Convention edges towards that demand; though, as shown in part 5, its passage through the Human Rights Council and now the General Assembly has exposed exactly the fault lines Sengupta anticipated. Marks traced this same demand back through the drafting history of the 1986 Declaration, showing that the tension between aspiration and enforceability is built into the right, not an accident of recent negotiation.[6]

The argument advanced here is that no international instrument, however carefully drafted, shifts material conditions if it stops at ratification. Sovereignty cannot serve as a shield against responsibility and a treaty cannot substitute for domestic transformation. The future of

3 Y Ghai 'Redesigning the state for right development' in B-A Andreassen & SP Marks (eds) *Development as a human right: Legal, political and economic dimensions* (2006) 141.

4 T Mkandawire 'Globalisation and Africa's unfinished agenda' (1999) 7 *Macalester International* 12.

5 A Sengupta 'The human right to development' (2004) 32 *Oxford Development Studies* 179-203.

6 SP Marks 'The human right to development: Between rhetoric and reality' (2004) 17 *Harvard Human Rights Journal* 137.

the right to development on this continent lies in constitutionalisation, in writing development into the supreme law of African states as a justiciable entitlement rather than a directive principle gathering dust. If development is a right, it must be litigable and must shape budgets, including disciplining executive discretion. As such, it ought to allow communities to stand before courts and demand structural change. Anything less risks leaving the continent where it has remained for decades: with elegant legal texts but deeply unequal societies.

The chapter proceeds in five further parts. Part 2 maps the normative landscape created by article 22 and the doctrinal uncertainty it left behind. Part 3 turns to the jurisprudence of the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court), tracing how far adjudication has closed the gap between declaration and remedy. Part 4 reads the Draft Convention as a reinforcement, not a rival, of article 22. Part 5 confronts the negotiation itself, its north-south fractures, its unresolved compliance architecture and the scepticism it has attracted from industrialised states. Part 6 asks what this means, concretely, for African states, courts and social movements. The conclusion returns to the constitutionalising argument.

2 The normative landscape of the right to development in Africa

Article 22 of the African Charter did something audacious in 1981: It named development as a right belonging to all peoples, not a policy target and not an economic programme.[7] Long before the UN Declaration on the Right to Development crystallised international consensus, Africa had staked its claim in the human rights arena.[8] That claim was not accidental. It emerged from histories of conquest, extraction and imposed dependency. For newly independent states, development was inseparable from sovereignty. It concerned reclaiming control over land, labour and destiny. The African Charter's collective framing unsettled the liberal fixation on the isolated individual and insisted that peoples, plural, political and historically situated, are bearers of dignity, but here

7 African Charter on Human and Peoples' Rights (African Charter) adopted 27 June 1981, entered into force 21 October 1986.

8 UN General Assembly Declaration on the Right to Development GA Res 41/128, UN Doc A/RES/41/128 (4 December 1986).

is the discomfort: Bold drafting has not guaranteed material change. The language of article 22 is expansive. States shall have the duty, individually or collectively, to ensure the right.[9] On paper, that sounds resolute, while in practice, it has blurred responsibility. Kamga notes that the provision's breadth creates uncertainty around who owes what and how that duty is enforced.[10] States point outward, to global markets, debt regimes and aid politics and inward accountability thins out. Obligation disperses, while enforcement dissolves. Ibhawoh sharpens the critique that the right to development risks becoming a paper right.[11] That description, on the evidence surveyed here, is an accurate one. Communities cannot litigate aspiration and courts struggle with provisions that lack benchmarks. Governments invoke development rhetorically while budgets and policy move in other directions. The gap between promise and practice widens.

This is where the scholarship becomes generative rather than ceremonial. Okafor reads the right as a people's counter-claim against global inequity, a site of resistance and a way of reasserting African agency in international law.[12] That intervention matters because it reminds us that article 22 was never meant to be decorative. It was meant to disrupt, yet disruption without institutional traction falters, which is precisely Kamga's point when he presses for the regional proclamation to be matched by domestic incorporation.[13] Without constitutional anchoring and judicial uptake, the right hovers above everyday governance, and on that ground Anyangwe is correct to insist on measurable standards and concrete state conduct. Rights require metrics and scrutiny and they require consequences.[14] I agree, but want to push further because the difficulty is not only technical but structural. As long as the right remains thinly specified, it is easy for governments to perform commitment while postponing compliance. The African Charter supplies a normative

9 Art 22 African Charter.
10 SAD Kamga 'The right to development in the African human rights system: The *Endorois* case' (2011) 44 *De Jure* 381, 383.
11 B Ibhawoh 'The right to development in Africa: A historical and political analysis' (2007) 7 *African Human Rights Law Journal* 19, 22-24.
12 OC Okafor 'A regional perspective: Article 22 of the African Charter on Human and Peoples' Rights' in OHCHR *Realising the right to development* (2013) 373, 378.
13 SAD Kamga *The right to development in the African human rights system* (2018).
14 C Anyangwe 'Obligations of states parties to the African Charter on Human and Peoples' Rights' (1998) 10 *African Journal of International and Comparative Law* 625.

foundation but does not supply scaffolding. Ngang gestures towards what he calls the right to development governance, integrating human rights into economic planning itself.[15] That move matters because it shifts development from technocratic management to rights-based obligation. Still, the regional framework alone cannot carry this weight and it was never designed to. The Draft Convention matters here, not as duplication but as precision. Where article 22 gestures, the Draft Convention details: It spells out duties to respect, protect and fulfil, and demands legislative and administrative measures. The Draft Convention foregrounds remedies, names non-state actors and obliges governments to regulate transnational corporations, a critical intervention on a continent where extraction routinely outpaces accountability. It also sharpens international cooperation, insisting that development is a shared legal responsibility rather than charity. For African governments navigating unequal trade regimes, capital flight and debt dependency, that explicit articulation of cross-border obligation is strategic rather than cosmetic and it strengthens the argumentative arsenal available to both governments and social movements. Yet, caution is warranted: A treaty does not implement itself, and ratification without incorporation reproduces a familiar cycle of celebration followed by stagnation.

The position, then, is that the Draft Convention would supply and strengthen the normative clarity article 22 lacks. Its value will be realised only if African governments internalise it constitutionally and only if the instrument itself survives the negotiating fractures examined in part 5. It is worth dwelling on why the normative landscape settled into this shape. Article 22 was drafted in an era in which African states were consolidating sovereignty against external interference, so the provision protects state discretion as much as it constrains it. That instinct made sense in 1981. It makes less sense today, when the primary threat to African development is not external interference with sovereign choice, but the absence of any obligation, domestic or international, capable of disciplining how that choice is exercised. A right built to shield the state from outside pressure is poorly designed to hold the state accountable to its own people. This is the deeper problem beneath the enforcement gap Kamga and Ibhawoh identify. Article 22 was never truly built as an accountability instrument.

15 CC Ngang 'Towards a right-to-development governance in Africa' (2018) 17 *Journal of Human Rights* 116-117.

It was built as an assertion of collective standing and conflating the two projects has cost the right to development four decades of drift.

3 Judicial engagement with the right to development in Africa

The right to development is not short on theory. Courts and quasi-judicial bodies have engaged with it at length. The harder question is whether that engagement has shifted power on the ground. The record is uneven. The African Commission has carried much of the interpretive burden. Its jurisprudence has stretched article 22 beyond symbolism, but stretching text is not the same as restructuring political economy.

The decisive rupture came with the *Endorois* case.[16] Without revisiting the merits at length, it suffices to note that this was the first time a violation of article 22 was declared, and that alone shifted the right from theory to adjudication. For Viljoen, the case marks a maturation of the African human rights system, evidence that collective rights could be judicially operationalised rather than rhetorically preserved.[17] What mattered was not simply the outcome but the African Commission's willingness to attach standards to development, deepening, as Dersso argues, the normative reach of peoples' rights in the system.[18] Development was treated as relational, tied to land, culture, participation and resource control, a move that resisted narrow economic readings and grounded the right in lived community realities. Gathii goes further still, situating *Endorois* within Third World Approaches to International Law (TWAIL) and reading it as a subtle rebalancing of global hierarchies rather than a narrowly domestic finding.[19] That reading draws on a wider TWAIL literature; Anghie's account of how the civilising mission survived decolonisation in the new guise of economic development supplies much of its theoretical framework.[20] The decision did not simply fault Kenya; it challenged development models shaped

16 *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).
17 F Viljoen 'Reflections on the legal protection of indigenous peoples' rights in Africa' in S Dersso (ed) *Perspectives on the rights of minorities and indigenous peoples in Africa* (2010) 75, 77.
18 Dersso (n 17).
19 JT Gathii 'The agenda of Third World Approaches to International Law (TWAIL)' in J Dunoff & M Pollack (eds) *International legal theory: Foundations and frontiers* (2019) 153-173.
20 A Anghie *Imperialism, sovereignty and the making of international law* (2005).

by external conservation financing and tourism economies, deploying the right to development against inherited structures and not only against domestic failure, but here is the complication. The strength of the reasoning has outpaced the force of compliance. Implementation has been uneven and political will has fluctuated. A declaratory finding, however historic, does not automatically redistribute land or revenue. Validating that judicial articulation is not structural enforcement.

The earlier decision in *SERAC* adds another layer.[21] *SERAC* did not rest explicitly on article 22, yet it transformed the landscape of rights adjudication on the continent. Durojaye notes that the case consolidated socio-economic rights in the African system by articulating clear state duties, including the regulation of corporate actors.[22] The African Commission rejected the fiction that governments can detach themselves from private extractive violence. That doctrinal move quietly reinforced the architecture necessary for the enforcement of the right to development. Maseka interprets *SERAC* as a jurisprudential bridge linking environmental harm, public health and state complicity into a coherent accountability framework.[23] Development was no longer neutral terrain; it became a legally reviewable conduct. Across both cases, the African Commission has constructed fragments of a rights-based development model: equity, participation, environmental protection and corporate regulation. These are not abstract principles, but judicially recognised standards. Yet, institutional limits remain in place. The African Commission issues recommendations, not binding orders with direct domestic effect. Enforcement depends on political uptake by states and pressure from civil society, and without incorporation into domestic constitutional frameworks, these gains remain exposed.

The tension sharpens right here. The right to development has been judicially acknowledged and enriched, yet it still lacks systemic anchoring in national law. The regional body has done the interpretive heavy lifting. The more challenging task of embedding development

21 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).

22 E Durojaye 'An analysis of the contribution of the African human rights system to the understanding of the right to health' (2021) 21 *African Human Rights Law Journal* 751, 777.

23 N Maseka 'The African human rights system's response to corporate conduct that harms people and the environment' (2025) 46 *Obiter* 218, 231.

as an enforceable entitlement within domestic courts remains uneven, contested and fragile. Moreover, the jurisprudential trajectory does not end there. The African Court in *Ogiek* marked a further escalation.[24] If *Endorois* clarified article 22, *Ogiek* reinforced the binding character of indigenous land rights within the African Charter system. The African Court found Kenya in violation of multiple Charter provisions arising from the *Ogiek* community's eviction from the Mau Forest. The right to development was not the sole axis of reasoning, but it sat at the centre of the dispute, since a conservation policy had been deployed to justify displacement. The African Court rejected that logic because environmental governance, it held, cannot erase indigenous tenure and identity. Claridge and Kobei's analysis of the subsequent reparations judgment shows the African Court going further still, ordering collective land titling through a process of delimitation and demarcation and affirming that indigenous forest dwellers can play a central role in ecosystem management rather than being cast as threats to it.[25] That reasoning matters for the argument defended in this chapter, because conservation, in this jurisprudence, is not opposed to development claims. It must be reconciled with them through a rights-based approach that integrates environmental governance with community entitlement, precisely the kind of integration Olawuyi's work on rights-based environmental governance calls for.[26]

On this point, *Ogiek* signals a tightening of judicial resolve. The African Court did not recommend reform but pronounced a legal breach, narrowing the space for governments to cloak dispossession in developmental or environmental language. This is not a thin doctrine; it is layered and increasingly coherent. Yet, enforcement remains uneven. The African Commission decisions depend on political will. Even binding African Court judgments require domestic incorporation and administrative follow-through, and Kenya's continued difficulty in fully implementing the *Ogiek* reparations order illustrates exactly that gap.

24 *African Commission on Human and Peoples' Rights v Kenya* Application 6/2012, African Court on Human and Peoples' Rights, judgment on merits 26 May 2017 and judgment on reparations 23 June 2022 (*Ogiek*).

25 L Claridge & D Kobei 'Protected areas, indigenous rights and land restitution: The *Ogiek* judgment of the African Court on Human and Peoples' Rights and community land protection in Kenya' (2023) 57 *Oryx* 313.

26 DS Olawuyi *The human rights-based approach to carbon finance* (2016).

The architecture is emerging and the foundation in national legal orders remains fragile. It is tempting to read this jurisprudential arc as steady progress: *Endorois*, then *SERAC*'s consolidation of state duty, then *Ogiek*'s binding force. That interpretation is difficult to sustain; progress in this way is not progress in outcome. Kenya has not fully implemented either the *Endorois* or the *Ogiek* judgments; evictions from the Mau Forest continued after 2017 and again after the 2022 reparations order. If the continent's two most celebrated development-adjacent judgments have not secured land tenure for the communities who won them, the jurisprudential arc has not closed the distance between adjudication and remedy. This is not a criticism of the African Commission or the African Court. It is a criticism of an architecture in which regional bodies can articulate obligation but cannot enforce compliance.

Thus, the story is neither triumph nor failure, but rather tension. African adjudicatory bodies have begun to treat development as legally reviewable conduct. They have named duties and articulated standards. The unresolved question, and the one pressing on the argument defended here, is whether these principles will be constitutionalised and internalised domestically or remain regionally pronounced but nationally diluted. The lesson is broader than Kenya. Constitutional and quasi-judicial recognition of a right can run well ahead of a state's administrative capacity or political willingness to act on it, and litigation, however well reasoned, cannot substitute for that capacity and willingness where they are absent. Courts can compel attention to a claim; they are far weaker instruments for compelling the budgetary reallocation, bureaucratic coordination and sustained follow-through that turning a judgment into land, water or livelihood requires.

4 Reinforcing article 22 with the Draft Convention

The debate around article 22 is no longer about recognition; that battle was won in 1981. The harder question is force. What does this right do and for whom? The analysis places Okafor, Kamga and Ngang in deliberate conversation, not to flatten their differences but to expose the pressure points the Draft Convention is positioned to address. Okafor reads the right to development as an insurgent.[27] According to him, it is

27 Okafor (n 12) 373.

not simply another socio-economic entitlement, but a people's counter-claim against a global order structured by hierarchy. His framing pushes the right into decolonial terrain because development becomes a question of agency, voice and structural redress. Africa is not a passive recipient of norms; it is a norm maker. That intervention resists the technocratic reduction of development to gross domestic product (GDP) graphs and donor frameworks, but it also exposes a gap. Collective dignity requires institutional translation. A people's right must eventually encounter courts, legislatures and regulatory agencies or it hovers at the level of critique.

There is a tension here that the reinforcement narrative tends to obscure, and the issue should be named rather than smoothed over. Article 22 frames development as a right of peoples, a collective entitlement not reducible to any single person. Industrialised states negotiating the Draft Convention have resisted precisely that collective framing, insisting that only individuals or, in limited cases, indigenous peoples can hold rights under international human rights law and that states may acquire obligations but never entitlements.[28] If that resistance prevails, the Draft Convention will be, on this point, less radical than article 22 already is. Procedural teeth grafted onto a right whose collective ambition it simultaneously narrows. That is not a reason to abandon the reinforcement argument, but a reason to be precise about what is being reinforced. The Draft Convention strengthens the machinery of the right. It does not automatically strengthen and may dilute the people-centred conception that made article 22 distinctive in 1981. Resistance to the Draft Convention may be understood through four principal concerns: doctrinal, sovereignty-based, institutional and extraterritorial. The doctrinal concern relates to the Convention's recognition of peoples and states within the normative structure of the right to development, which differs from the predominantly individual-rights orientation of international human rights law. Sovereignty concerns arise from the possibility that a binding duty of international cooperation could constrain states' policy discretion in areas such as development assistance, trade and investment. Institutional objections

28 German Institute for Human Rights 'Position paper: First draft of an international convention on the right to development' (2020) 4, https://www.institut-fuer-menschenrechte.de (accessed 10 July 2026).

focus on treaty proliferation, additional reporting obligations and the capacity of states to participate effectively in an already extensive human rights system. Finally, the proposed framework raises questions concerning extraterritorial obligations, particularly where states may be required to account for the foreseeable effects of their trade, investment and financial activities on development beyond their territories. These concerns are not without legal or institutional foundation, especially given the continuing debate concerning the scope of extraterritorial human rights obligations. The Draft Convention nevertheless seeks to give greater legal content to international cooperation and, in doing so, expressly contemplates obligations extending beyond purely territorial relationships.[29]

These objections, however, do not necessarily justify retaining a purely voluntary framework for the realisation of the right to development. Rather, they demonstrate the need for a carefully defined and institutionally coherent binding framework that identifies the scope of international cooperation and the circumstances in which extraterritorial responsibility may arise. The Draft Convention is significant in this regard because it seeks to translate the principle of international cooperation into more concrete obligations of states and international organisations. The appropriate response to concerns regarding sovereignty, institutional capacity and extraterritoriality, therefore, is not necessarily to reject binding obligations, but to formulate them with sufficient precision to preserve legitimate state discretion while strengthening accountability for conduct that adversely affects the realisation of development beyond national borders.[30]

Kamga sharpens the analysis considerably. He is less interested in rhetorical promise and more concerned with enforceability and his critique of article 22 is direct: The provision lacks precision about duty bearers. States are named, yes, but in broad, almost diplomatic language. The result is a diffusion of responsibility, in which everyone is responsible individually or collectively and accountability becomes negotiable. Kamga's insistence on specificity is not formalism. It is

29 UN Human Rights Council Draft International Covenant on the Right to Development, with commentaries UN Doc A/HRC/54/50/Add.1 (2023).

30 RG Teshome 'The Draft Convention on the Right to Development: A new dawn to the recognition of the right to development as a human right?' (2022) 22 *Human Rights Law Review* 1, 19.

structural realism, because without clarity on who must legislate, who must regulate corporations and who must provide remedies, article 22 risks symbolic overreach and practical underperformance.

The Draft Convention alters the terrain precisely along these lines. It names obligations with sharper edges, articulating duties to respect, protect and fulfil and requires legislative and administrative measures. The Draft Convention places the regulation of non-state actors, including transnational corporations, squarely in state responsibility, and it codifies international cooperation not as charity but as an obligation. In other words, it answers Kamga's demand for density, even if, as part 5 shows, that same codification is precisely what divides the negotiating states. Teshome's assessment of the draft text reaches a similar conclusion from a different angle: Whatever its shortcomings, the instrument marks a shift from aspirational language towards concrete, implementable norms of a kind the 1986 Declaration never attempted.[31] Ngang's concept of right to development governance shifts focus from courts alone to institutional culture.[32] He challenges governance models that treat development as executive discretion insulated from rights review. For Ngang, the right must shape how budgets are drawn, how policies are designed and how participation is structured. Article 22 gestures towards this transformation but does not engineer it. The Draft Convention provides firmer scaffolding. By requiring concrete measures and embedding monitoring frameworks, it creates normative pressure for governance reform. It strengthens the argument that development planning is itself legally reviewable conduct. Article 22 provides the foundation and the Draft Convention supplies reinforcement beams. It does not replace the African Charter. It thickens it, converting broad affirmation into structured obligation. The argument is straightforward; the African human rights system was normatively ahead of its time in recognising the right to development, but normative leadership without precision invites stagnation. The Draft Convention offers that precision. It strengthens the hand of African states that wish to demand equitable international cooperation and narrows the space for corporate impunity. If article 22 declared that development is a right, the Draft Convention

31 As above.
32 Ngang (n 15) 107.

asks the unavoidable follow-up question: Who bears the obligation to act, in what manner, and with what consequences for failure to do so?

Sengupta, as the first UN Independent Expert on the Right to Development, argued that the right must be structured around accountability matrices, identifying duty bearers, specifying measurable obligations and embedding monitoring systems.[33] The Draft Convention reflects much of that intellectual labour, moving from declaratory affirmation towards structured compliance. Salomon has emphasised the importance of extraterritorial obligation in realising socio-economic rights, complicating narrow state-centric readings of development.[34] If global economic arrangements shape national outcomes, international cooperation must be juridically framed. The Draft Convention's detailed articulation of international duty speaks directly to this concern; it strengthens the African argument that structural constraint is a legally relevant condition, not merely political misfortune. Reading Okafor, Kamga and Ngang together is not an exercise in reconciling disagreement for its own sake. It shows that the African right to development scholarship has already done the conceptual work the Draft Convention now needs to formalise. Okafor supplies the political vocabulary of resistance. Kamga supplies the doctrinal demand for precision. Ngang supplies the governance frame connecting the two to budgets and institutions. A treaty drafted without attention to that accumulated scholarship would risk imposing a compliance architecture that looks technically sound in Geneva but sits awkwardly against the continent's own theorisation of what the right was for. The Draft Convention, for the most part, does not make that mistake: its emphasis on duty bearers and remedies tracks Kamga closely, and its insistence on cooperation as an obligation tracks Sengupta and, indirectly, Okafor's insurgent framing.

Viljoen has stressed, more broadly, that regional human rights norms must interact dynamically with global instruments to avoid isolation.[35] Article 22 cannot remain normatively proud but practically siloed. The Draft Convention, if it survives its own negotiation, creates a bridge aligning the regional framework with global codification. Whether it

33 Sengupta (n 5) 179.
34 ME Salomon *Global responsibility for human rights: World poverty and the development of international law* (2007) ch 1.
35 F Viljoen *International human rights law in Africa* (2012).

will survive that negotiation is the question to which the analysis now turns.

5 The Draft Convention in the crucible of negotiation

It would be dishonest to present the Draft Convention as a settled achievement awaiting only ratification. It is not: The instrument has moved through decades of contestation, from the 1986 Declaration on the Right to Development, through a High-Level Task Force, to the Intergovernmental Working Group that has met annually in Geneva.[36] The Working Group's twenty-sixth session, held from 12 to 15 May 2025 and its twenty-seventh, held from 18 to 21 May 2026, illustrate an instrument still in motion, not one resting on a settled text.[37] At the conclusion of its deliberations, the Working Group agreed to forward the draft to the UN General Assembly for further discussion, a procedural shift with substantive consequences. It moves the instrument out of the Human Rights Council's Geneva orbit and into the more overtly political terrain of the General Assembly's Third Committee.[38] Not every scholar sympathetic to the right agrees that a comprehensive treaty is the right vehicle for it. De Feyter has argued for a leaner framework convention, one that would fix core principles and leave detailed implementation to later protocols, precisely to avoid the kind of paralysis now visible in the Working Group.[39]

The clearest fault line remains north-south. The Non-Aligned Movement, supported by China, initiated the drafting process in 2018, continuing a commitment traceable to the 1986 Declaration itself.[40] The European Union (EU) and the United Kingdom have opposed the adoption of a binding convention, arguing instead that states

36 Centre Europe – Tiers Monde (CETIM) 'The Convention on the Right to Development on the right track' (2023), https://www.cetim.ch/24th-session-of-the-wg-on-the-right-to-development/ (accessed 10 July 2026), tracing the process from the 1986 Declaration through the High-Level Task Force to the Intergovernmental Working Group.

37 OHCHR 'Working group on the right to development', https://www.ohchr.org/en/hrc-subsidiaries/iwg-on-development (accessed 10 July 2026).

38 CETIM (n 36).

39 K de Feyter *Towards a framework convention on the right to development* (2013).

40 As above.

should concentrate on the Sustainable Development Goals (SDGs).[41] That preference for a voluntary framework is analytically thin, this chapter argues, because the SDGs are targets, not entitlements. They bind no one, and current monitoring confirms that the 2030 deadline will not be met.[42] To substitute a voluntary framework for a binding one, on a right that African and non-aligned states have pursued since the New International Economic Order debates of the 1970s, is not a neutral technical preference. It functions, in this chapter's assessment, as a defence of the *status quo* framed in the language of pragmatism, though proponents of that position would likely describe it instead as a considered judgment about institutional sequencing, treaty proliferation and the practical burden of compliance, a characterisation engaged with more fully below. A second fault line concerns article 13's duty of international cooperation. Developing and non-aligned states read this provision as generating a claim to assistance from wealthier states.[43] Industrialised states resist that reading, insisting that only individuals or in limited cases, indigenous peoples, can be rights holders under human rights law and that states can acquire obligations but never entitlements from a human rights instrument.[44] This is not a drafting quibble. It is the oldest argument in the right to development's history, the argument that produced the 1986 Declaration's studied ambiguity and is now resurfacing in treaty form. The analysis favours the non-aligned position, while recognising that the disagreement cannot be resolved by assertion alone. It is a live political fracture that will determine whether article 13 has teeth or becomes another aspirational clause.

A third fault line is compliance architecture. The Draft Convention, notably, does not establish a traditional individual complaints procedure.[45]

41 EU statement, Intergovernmental Working Group on the Right to Development, 27th session (18-21 May 2026), https://www.eeas.europa.eu/delegations/un-geneva/intergovernmental-working-group-right-development-eu-statement_en (accessed 22 July 2026); CETIM (n 36), recording the continued preference of the European Union and Japan for the Sustainable Development Goals over a binding instrument.

42 United Nations 'The Sustainable Development Goals Report 2025' (United Nations 2025), on the widening gap between the 2030 targets and current trajectories.

43 German Institute for Human Rights (n 28) 3-4.

44 German Institute for Human Rights (n 28) 4.

45 German Institute for Human Rights (n 28) 2, noting that the draft does not provide for a traditional individual complaints procedure, although art 25 allows the Conference of States Parties to adopt Optional Protocols.

States and communities alleging a violation cannot, under the current text, bring an individual case to a treaty body in the manner available, for example, under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 25 leaves the door open for a future Optional Protocol, but an open door is not a remedy.[46] For a chapter that has spent its preceding parts insisting that development must be litigable, this gap is uncomfortable. It replicates, at the international level, the very weakness I have criticised at the domestic level: standards without a forum in which to press them. A fourth fault line concerns the proposed supremacy clause, provisions addressing how the Draft Convention would interact with conflicting obligations under trade and investment agreements.[47] This is not a novel problem; an almost identical dispute has stalled negotiations on the proposed UN treaty on business and human rights for a decade, as capital-exporting states resist any suggestion that human rights obligations should override existing investment protections. The parallel is instructive; two of the most consequential attempts to discipline the relationship between capital and rights, one on business conduct generally, one on development specifically, have both stalled on the same question: Does human rights law bend to trade and investment law or the reverse? Until that question is settled, article 22's promise that development can discipline extraction remains rhetorical at the international level too.

A fifth, smaller but telling fault line concerns drafting choices that expose how contested even the instrument's vocabulary remains. Article 16's provision on gender equity in leadership, including within private companies, has drawn resistance from states uncomfortable with binding gender obligations in the corporate sphere.[48] The use of the term 'vulnerable states' in article 25 has been criticised as legally imprecise, a policy term imported into a binding instrument without settled legal content.[49] These may look like technical footnotes to the larger battle, but they are symptomatic. A treaty is only as strong as the precision of its language and imprecision here recreates, in miniature, the very ambiguity that has hollowed out article 22 for four decades. None of this should be

46 German Institute for Human Rights (n 28) 2.
47 German Institute for Human Rights (n 28) 5, drawing the parallel with the stalled negotiations on the proposed UN treaty on business and human rights.
48 German Institute for Human Rights (n 28) 6.
49 German Institute for Human Rights (n 28) 6-7.

read as counsel for abandonment. The Expert Mechanism on the Right to Development, at its twelfth session in October 2025, heard African, non-aligned and Latin American states press precisely the arguments this chapter has made, that debt relief, climate finance, equitable technology access and reform of international financial institutions cannot be pursued through soft commitments alone.[50] Ghana, speaking for the African Group, and Uganda, speaking for the Non-Aligned Movement, both engaged in that debate, alongside South Africa, Kenya, Egypt and Algeria.[51] The EU's continued preference for the SDGs stood in visible contrast to that engagement.

The shift of the negotiation from Geneva to New York also changes who is in the room. The Human Rights Council operates by consensus-seeking dialogue among specialised human rights missions; the General Assembly's Third Committee is larger and more transactional, where concessions are more readily traded across unrelated agenda items. That is not necessarily fatal; the 1986 Declaration was itself pushed through the General Assembly after the Commission on Human Rights failed to agree on a text over nine meetings across four years. However, the same trade-offs that eventually produced consensus on a non-binding Declaration may produce a binding Convention only at the cost of further diluting article 13 or the supremacy clause into compromise language.

The assessment here is that the fault lines are real rather than cosmetic, but they confirm, rather than undermine, the argument of this chapter. A convention that provokes this much resistance from capital-exporting states is a convention that threatens something real. Article 22 has never provoked comparable resistance because it has never been enforced with comparable seriousness. The measure of the Draft Convention's value may be found precisely in who opposes it and why. That said, the inference should not be pressed too far: Industrialised state resistance to the Draft Convention is not attributable to a single motive. Some of it reflects the substantive objection, addressed above, to collective rights holders; some of it reflects narrower, more defensible concerns

50 OHCHR 'Expert Mechanism on the Right to Development opens its twelfth session' (Meeting Summary, October 2025), https://www.ohchr.org/en/meeting-summaries/2025/10/expert-mechanism-right-development-opens-its-twelfth-session (accessed 10 July 2026).

51 As above.

about treaty proliferation, the compliance burden a new instrument place on already stretched reporting systems, and the proper scope of extraterritorial obligation. Treating all opposition as evidence of the Draft Convention's threat to entrenched interests would flatten a more mixed picture, and this chapter does not have the evidence to adjudicate between these different sources of resistance state by state.

6 Significance of the Draft Convention for the African context

Africa does not suffer from a deficit of recognition. The right to development is entrenched in article 22. The deeper problem is enforceability: whether the right can be wielded against structural inequality, extractive capital and the global economic orthodoxies that discipline African policy space. The Draft Convention is significant precisely because, fault lines notwithstanding, it strengthens the right's operational framework. Africa's precarious conditions are not accidental; they are structured through commodity dependence, debt exposure, climate vulnerability and asymmetrical trade regimes. Gathii has shown how international economic law stabilises global hierarchy while presenting itself as neutral.[52] Grovogui similarly interrogates the myth of sovereign equality in international governance.[53] Bunn's more technical treatment of the right within international economic law reaches a related conclusion from the vantage of trade and investment law: Formal legal equality between states routinely coexists with structural economic subordination.[54] If development is constrained by global architecture, a domestically confined right to development is insufficient.

The Draft Convention confronts this directly. Article 13 codifies international cooperation, economic, financial and technical, as a legal obligation rather than discretionary charity, requiring states to act individually and collectively to create an enabling international environment for development.[55] Whatever its contested reception

52 JT Gathii *African regional trade agreements as legal regimes* (2011).
53 SN Grovogui *Sovereigns, quasi sovereigns, and Africans: Race and self-determination in international law* (1996).
54 ID Bunn *The right to development and international economic law: Legal and moral dimensions* (2012).
55 UN Human Rights Council Draft Convention on the Right to Development, annexed to the Report of the Working Group on the Right to Development, Chair-Rapporteur Z Akram, UN Doc A/HRC/54/50 (2023) art 13 (Draft

among industrialised states, this provision gives normative density to long-standing African demands on debt restructuring, climate finance and trade reform. It converts solidarity into duty, at least on paper, and paper is where every right to development debate must start. Structural critique, however, cannot eclipse domestic accountability. Africa's own governance deficits, regulatory capture, elite patronage and weak oversight fracture developmental justice as much as external asymmetry does. Viljoen warns that regional human rights commitments risk symbolic stagnation without domestic incorporation.[56] Article 8 of the Draft Convention responds with some precision, requiring states parties to adopt legislative, administrative and judicial measures, ensure policy coherence, allocate maximum available resources and guarantee effective remedies.[57] This is compliance language, not diplomatic flourish, although, as part 5 showed, the absence of an individual complaints mechanism means that compliance language currently has nowhere concrete to be tested. This should be read as a legal and normative claim about where the obligation to create an enabling environment sits, not as an empirical finding about the precise share of any state's development shortfall attributable to external as opposed to domestic causes; apportioning that share is a separate, harder empirical exercise this chapter does not undertake.

There is a further domestic risk worth naming, because it cuts against the grain of a chapter that has otherwise argued for a stronger right to development: The same collective, developmentalist language employed in both article 22 and the Draft Convention can, and has, been appropriated by African governments to subordinate civil and political rights to an asserted developmental imperative. The demand that citizens defer dissent, elections or judicial oversight because development takes priority is not hypothetical; it is a recurring feature of authoritarian governance, dressed in the vocabulary of collective progress. A right to development that strengthens the state's hand without strengthening participatory and remedial guarantees risks handing that rhetoric more

Convention). Note that the Chair-Rapporteur formally renamed the final text the 'Draft International Covenant on the Right to Development' in this report; this chapter retains the 'Convention' terminology used in earlier negotiating drafts and in most of the secondary literature.

56 Viljoen (n 35).

57 Draft Convention (n 55) art 8.

legal cover, not less. This is why article 4's participation guarantee and the domestic litigability insisted on throughout this chapter cannot be optional extras. They are what stands between a right to development and a right of the state to develop as it pleases. It is worth being precise that this is a documented pattern of governance practice rather than a claim about the motives of any particular state or negotiating bloc currently at the table in New York; the risk identified here is structural, arising from the vocabulary itself, and does not depend on attributing bad faith to specific governments.

Participation and equality are equally foregrounded. Article 4 embeds non-discrimination and meaningful participation as operational principles, echoing African jurisprudence, from *Endorois* onwards, which insists that development without voice is dispossession.[58] In this respect, the Convention aligns with Ghai's constitutionalist insistence that rights must be embedded in participatory governance structures to avoid technocratic capture.[59] Corporate accountability perhaps is the sharpest intervention and the one most directly relevant to African extractive economies. From extractive enclaves in Southern Africa to oil economies in West Africa, multinational enterprises profoundly shape distributive outcomes. Deva's and Bilchitz's collection argued that voluntary corporate social responsibility frameworks are structurally inadequate to this task.[60] Simons and Macklin demonstrate how investment regimes often insulate corporations from accountability altogether.[61] Even Ruggie, the principal architect of the UN Guiding Principles on Business and Human Rights, has since conceded that a voluntary, state-permissive framework leaves the most serious cases of corporate harm without a reliable remedy, a concession that lends weight to the more directive approach article 10 attempts.[62] Article 10 of the Draft Convention requires states to regulate business enterprises, prevent development-related human rights harm and ensure access to remedy, integrating corporate discipline into the right's architecture rather than leaving it to parallel soft-law regimes.[63]

58 Draft Convention (n 55) art 4; *Endorois* (n 16).
59 Ghai (n 3) 141.
60 S Deva & D Bilchitz (eds) *Human rights obligations of business: Beyond the corporate responsibility to respect?* (2013).
61 P Simons & A Macklin *The governance gap: Extractive industries, human rights, and the home state advantage* (2014).
62 JG Ruggie *Just business: Multinational corporations and human rights* (2013).
63 Draft Convention (n 55) art 10.

That said, the unresolved supremacy clause dispute discussed in part 5 means that this integration, for now, is aspirational; an investment tribunal applying a bilateral investment treaty is under no obligation to defer to article 10 until that hierarchy is settled.

It would be too convenient, however, to present weak corporate regulation as something done to Africa rather than something African states themselves sometimes choose. Governments compete for foreign direct investment and that competition creates a domestic incentive to keep regulatory terms attractive to capital, even where doing so undercuts the right article 10 is meant to protect. This is a race-to-the-bottom dynamic, not only an imposed one, and no convention can fully suppress it, because the incentive sits inside African budgets and investment promotion agencies as much as in foreign boardrooms. A serious account of corporate impunity must hold both truths together; investment law disciplines African policy space from outside, and African governments frequently ratify that discipline willingly, in exchange for capital they judge more urgent than the protections article 10 would require. The Draft Convention cannot resolve that trade-off. At most, it can make it legally visible, so a government's choice to under-regulate becomes reviewable rather than an invisible default. The Draft Convention also carries epistemic weight. Mutua critiques the global human rights corpus for reproducing hierarchy while claiming universality.[64] The right to development was Africa's normative counter-intervention, refusing to sever civil and political freedom from material justice. Rodney's thesis that underdevelopment is historically produced still reverberates; if inequality is structured, legal response must be structural.[65] By affirming, in article 3, that the right is universal, indivisible and inalienable, the Convention resists relegating development to secondary status in the human rights hierarchy.[66] None of this is to suggest that formal justiciability is the only, or even always the primary, route to development outcomes on the continent. African communities have used informal and customary institutions, chieftaincy structures, land boards, community trusts and traditional dispute resolution fora, to allocate resources and hold local

64 Mutua (n 1).
65 W Rodney *How Europe underdeveloped Africa* (1972) ch 1, on underdevelopment as the expression of a relationship of exploitation rather than a value-neutral absence of development.
66 Draft Convention (n 55) art 3.

power accountable, often reaching outcomes that litigation could not deliver as quickly or as legitimately in the eyes of the communities concerned.[67] This chapter's emphasis on courts and constitutions should be read as an argument for one indispensable layer of accountability, not as a claim that formal law is the only legitimate route to development justice, or that informal institutions are a placeholder until formal remedies arrive.

Governance protection reinforces this shift. Article 15 requires impact assessments and institutional coherence; article 18 provides monitoring mechanisms.[68] Development is thus repositioned as reviewable and contestable, no longer the exclusive preserve of executive planning ministries. In a region where mega projects frequently bypass scrutiny, this proceduralisation is not cosmetic. It is redistributive in potential, provided the monitoring bodies it creates are given the teeth the complaints procedure currently lacks. Scepticism remains necessary, and I do not want to end this part on false optimism. Alston warns against normative inflation, treaties that expand ambition without enforcement muscle.[69] Moyn reminds us that human rights regimes can coexist comfortably with deepening economic inequality.[70] Obadare's account of how elite networks can blunt reformist projects from within is a caution worth carrying into any assessment of the Draft Convention's reception in Africa.[71] A convention cannot dissolve global capitalism, nor can it cure domestic patronage politics by itself. This chapter's own account of Africa's structural constraints draws heavily on political-economy critiques of this kind. The literature is theoretically rich, but its causal claims about the relative importance of external structural constraints and domestic governance failure in explaining outcomes remain contested. Testing these claims at the country level would require empirical analysis that falls outside the scope of a single chapter.

67 See, generally, M de Souza Louw & N Luwaya 'The legacy and future of customary law in South Africa's Constitutional Court jurisprudence' (2025) 15 *Constitutional Court Review* 539.

68 Draft Convention (n 55) arts 15 & 18.

69 P Alston 'Ships passing in the night: The current state of the human rights and development debate seen through the lens of the Millennium Development Goals' (2005) 27 *Human Rights Quarterly* 755-829.

70 S Moyn *Not enough: Human rights in an unequal world* (2018).

71 E Obadare *Pentecostal republic: Religion and the struggle for state power in Nigeria* (2018).

What, then, should African states do while the Draft Convention remains unresolved in New York? Resist two temptations. The first is waiting passively for adoption before doing anything domestically, treating constitutionalisation as downstream of ratification. That gets the priority backwards; article 22 has been available for domestic incorporation since 1986, and most African constitutions have not used it. The second is treating the negotiation's fault lines as a reason to abandon the project, retreating into the cynicism that treaties never change anything. The intensity of industrialised-state resistance to article 13 and the supremacy clause is itself evidence that something real is at stake. African states have more to gain from staying in the room, sharpening the text and building the domestic architecture to use it, than from either extreme.

For African states negotiating climate finance, confronting illicit financial flows or recalibrating investment treaties, this still matters. For constitutional courts weighing the enforceability of socio-economic rights, it matters. For social movements contesting land dispossession or extractive harm, it matters. The Draft Convention does not romanticise development; it juridifies it, converting article 22 into a structured matrix of duty, national and international, public and corporate, however incomplete that matrix currently remains.

7 Conclusion

This chapter has submitted that the trajectory of the right to development in Africa, from article 22 of the African Charter to the evolving UN Draft Convention, tells a story of ambition constrained by institutional thinness. Article 22 is visionary; it constitutionalised development as a collective right of peoples at a time when much of the global human rights architecture remained suspicious of redistributive claims. Yet, its breadth, coupled with limited enforcement architecture, has often rendered it normatively potent but operationally fragile, a right rich in promise and poor in machinery.

This chapter has argued that the Draft Convention does not duplicate article 22; it disciplines it. Where the African Charter proclaims, the Convention specifies. Where article 22 gestures towards obligation, the Draft Convention enumerates it through defined state duties, corporate regulation, participatory guarantees and, at least on paper, binding international cooperation. In doing so, it responds directly to long-

standing scholarly concern about ambiguity, weak accountability and the external structural constraints that narrow African developmental sovereignty. However, part 5 has also insisted that this reinforcement is not yet secured. North-south disagreement over the character of international cooperation, the absence of an individual complaints procedure, and an unresolved supremacy clause that echoes the stalled business and human rights treaty, all mean that the Convention could yet repeat article 22's own failure: a text rich in principle, thin in remedy.

The analytic lens developed here, drawing on critical international legal scholarship, African constitutional thought, political economy critique and the contemporary negotiating record, underscores a central point. Africa's development crisis is neither purely domestic nor purely external. It is co-constituted; governance deficits, elite capture and weak regulatory enforcement operate alongside asymmetrical trade regimes, debt dependency and climate injustice. Any serious framework for the right to development must function at both levels simultaneously. The Draft Convention attempts precisely that dual move, tightening domestic obligation while juridifying international cooperation, even as capital-exporting states resist exactly that combination.

Its significance for Africa lies less in symbolism than in strategy. It strengthens the legal grammar available to African states in global negotiations. It reinforces constitutionalisation efforts at home. It embeds corporate accountability within the architecture of the right itself, incompletely, but more than article 22 ever attempted alone. It aims to transform development from policy aspiration into a reviewable obligation. However, a treaty cannot substitute for politics and it cannot substitute for a forum in which ordinary people can press their claims. Ratification without domestication and adoption without a workable complaints mechanism will reproduce the very pattern the right to development was meant to disrupt: rhetorical commitment masking structural continuity. The Draft Convention's transformative potential depends on three things holding together: incorporation into national legal systems; judicial willingness to interpret it robustly; and sustained civic mobilisation capable of translating text into practice. Article 22 has waited more than four decades for that convergence. Whether the Draft Convention will wait as long is, at this stage of its negotiation, still an open and contested question. It is also worth being explicit about a limit this chapter has not fully confronted until now. Constitutionalisation is

a necessary condition for taking the right seriously, not a sufficient one. South Africa's own constitutional socio-economic rights jurisprudence, arguably the most developed of its kind on the continent, illustrates the point: A generation of litigation before the Constitutional Court has produced important doctrinal gains without dislodging the underlying inequality the right to development is meant to address. Judicialisation can name an obligation; it cannot, by itself, build the administrative capacity, budgetary priority or political will that turns a judgment into a delivered outcome. The argument advanced here, therefore, is narrower than it might first appear. Constitutional entrenchment is indispensable because it creates a forum and a vocabulary for claim making, not because litigation alone closes the gap between recognition and redistribution.

The argument ends not with resolution, but with a demand. African states should keep pressing for the Convention's adoption and should keep exposing the thinness of the SDGs as a substitute for a binding obligation, but they should not make their own domestic reform contingent on that outcome. Constitutionalise article 22 now, litigate it now, build the administrative and budgetary machinery to give it content now. If the Draft Convention is eventually adopted, that domestic groundwork will let African states use it immediately rather than beginning, once again, the long journey from text to transformation. If it is not adopted or is adopted in a form hollowed out by New York's transactional politics, that groundwork will still have been worth doing. Either way, the argument advanced in this chapter holds: No international instrument, however carefully drafted, can do the work that domestic constitutionalisation alone can do.

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