



Natural Justice

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**TO: THE AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS (ACHPR)**

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**RE: NATURAL JUSTICE AND THE ENVIRONMENTAL LAWYERS COLLECTIVE
FOR AFRICA COMMENTS ON ZERO DRAFT STUDY ON THE IMPACT OF
CLIMATE CHANGE ON HUMAN AND PEOPLE'S RIGHTS AFRICA**

1. INTRODUCTION

1.1 The African Commission on Human and People's Rights (ACHPR/Commission) adopted a resolution which sought to tackle the growing impacts of climate change in Africa particularly on the human rights of Africa's inhabitants. The resolution does so by calling for a study of this impact to be undertaken by WGEI and WG-ECOSOC under the stewardship of the Commission's Working Group on Extractive Industries. This resolution was also made in full cognisance of the troubling fact that the on-going and pervasive exploitation of Africa's natural resources is directly linked to incidents of damage to biodiversity, water scarcity, frequent natural disasters, outbreaks of

disease and easing sea levels. This study, consequently, examines the extent of this 'erosion,' and sets out recommendations on how to mitigate on-going infringement of the human rights of Africa's most vulnerable inhabitants and to safeguard their environment. The following is a commentary in response to the invitation by WGEI and WG-ECOSOC for consultative input, from all interested stakeholders of this discourse, upon completion of the study. The Environmental Lawyers Collective for Africa, which is housed under Natural Justice has penned this commentary and welcomes this consultative process. The commentary sets out an introduction, followed by the general contextual background of the report, the key findings of the report and our recommendations and conclusion.

1.2 Natural Justice is a non-profit organisation which was founded in 2007 with the primary objective of ensuring better protection for the rights and responsibilities of indigenous peoples and local communities at the local, national and international level. The organisation largely works with African communities across the continent impacted by the scourge of climate change and facing threats of degradation and damage to their lived environments.

1.3 Natural Justice's commitment to the protection of Africa's biodiversity and its prioritization of the protection of the health, safety, livelihoods, cultural and environmental heritage practices of our African communities make the organisation aptly suitable to add to the discussion on the impact of climate and human and people's rights in Africa.

1.4 The Environmental Lawyers Collective for Africa (E.L.C.A) is as the name suggests, a collective of public interest, environmental and climate justice lawyers based across different corners of the continent. E.L.C.A is currently housed under Natural Justice but also relies on the support and collaboration of various non-governmental and academic organisations both within the continent and internationally to realise the collective's objectives. The collective fosters solidarity amongst these lawyers and advocates of environmental protection, by championing justice through resource allocation, sensitization and awareness. This is done to address environmental and climate injustice,

which is currently disproportionately experienced by Africa's local and indigenous communities.

1.5 E.L.C.A is passionate about the protection of indigenous and local communities, Africa's biodiversity and its environment. Its mission is to harness the influence of the law to create healthy and safe living environments for African communities. By so doing E.L.C.A desires to bring a halt on the exploitation of the continent's natural resources at the expense of indigenous communities and the landscape of Africa's environment. Through collaborative advocacy, E.L.C.A calls for a balance between communities, the natural environment, livelihood, spirituality and Africa's natural resources.

This commentary is submitted on behalf of both Natural Justice as well as the Environmental Lawyers Collective for Africa.

2. BACKGROUND AND CONTEXT OF THE STUDY: THE LINK BETWEEN THE CLIMATE CHANGE AND THE INFRINGEMENT OF HUMAN RIGHTS

2.1 The continent currently contributes far less to global green -house gas emissions in comparison to its neighbours in the global north. Africa's vulnerability is not only due to its low-lying landscape but also its severe levels of poverty and reduced adaptive capability.

2.2 The lack of political will to propel a just transition to renewable resources and shift away from global commercial dependence on earnings from mining, oil and gas has meant failure to halt the production of Greenhouse gas emissions. The United Nations (UN) Environment Programme's 2020 Emissions Gap Report highlighted that current global emissions continue to disregard the objectives of the Paris Agreement of restricting global warming to levels lower than 2°C. Instead, quite alarmingly, emissions are on a fast track to produce an increase of 3°C in our temperatures in the next 100 years.

2.3 The unfavourable impacts of climate change as the ACHPR study suggests, will undeniably affect people's ability to function and in turn their fundamental human rights, "including their rights to life, self-determination, development, decent living, access to housing, and the right to a safe environment".

2.4 This evidence by the context highlighted below:

2.4.1 Increasing temperatures on the continent are expected to result in polarised changes, where some areas like Northern and Southern Africa were once wetter, they will increasingly dry up and equally regions like East Africa may end up prone to rain. The effect of this situation will be that those who live in regions most affected by climate change on the continent, will experience greater exposure to disease due to lack of nutrition, moreover, sourcing clean water will become increasingly challenging.

2.4.2 Additionally devastating occurrences of forced migration and displacement have also been projected, in instances where people desperately seek out safer and healthier living environments, or shrinking locations characterised by ring fenced water sources and other resources. All these consequences are argued to be likely to have a direct and devastating impact on the standard of living of African people's generally as well as indigenous and local communities and other vulnerable groups within African societies (women, children, disabled, the elderly etc).

2.4.3 The resounding conclusion, therefore, in existing literature and as evidenced through growing climate -change litigation on the continent, is that for Africa, the effects of climate change will be more undesirable than not. Climate change has consequently brought to the surface of public and wide scale regional debate, pertinent concerns regarding the nexus between the infringement of human rights and the climate emergency.

2.5 As result the legal context is very clear for Africa and the context is detailed below:

- 2.5.1 States are legally bound to tackle the climate crisis under the United Nations Framework Convention on Climate Change and its protocols. Recognizing that climate change is a global challenge, the international community has engaged in negotiations within the framework of the United Nations (UN). Key instruments have emerged from these negotiations, notably the UN Framework Convention on Climate Change (1992), the Kyoto Protocol to the UN Framework Convention on Climate Change (1998), and the Paris Agreement (2015). The preamble of the Paris Agreement emphasized the importance of protecting various rights impacted by climate change. It specifically acknowledged the necessity of safeguarding the rights of individuals, with a focus on 'minorities and vulnerable groups,' through the framework of climate justice. In fact, numerous United Nations as well as regional resolutions, policy documents and reports have established the theoretical connection between human rights and climate change.
- 2.5.2 These documents create hope that by utilising a human rights-based strategy to foster the protection of human rights, states and corporate actors adding to the climate crisis may be held accountable. The intersection between climate change and human rights can be viewed through the prism of climate litigation. This is because human rights approaches offer a legal basis and structure for culpability, allowing for the institution of claims for damages linked to climate change; they focus and solidify national responsibilities towards the protection of the environment and initiate subjective rights to international climate law.
- 2.5.3 The approach also affords regional and national courts on the continent the opportunity to entrench and solidify principles, obligations and responsibilities. According to a 2017 report by the UN environmental programme, the initiation of climate change litigation is set to increase rapidly in Africa as well as other global south countries. This advancement is likely due to the adoption of environmental and climate centred statutes, and the diversion of capital to programmes centred around mitigation and adaptation.
- 2.5.4 At present a number of African, non-governmental organisations in tandem with affected communities have looked to domestic, regional and international

courts to promote more effective implementation of and compliance with existing Human Rights protections and environmental protection frameworks. This type of litigation has added to new and creative methods of cross jurisdictional litigation. It has also resulted in a slowly developing collection of legal precedent amalgamating into a progressively consistent field of environmental law.

3. COMMENTARY ON KEY FEATURES OF THE REPORT

3.1 Identification of Vulnerable Groups Most Likely To be Impacted by Climate Change

The study comprehensively outlines the consequences of climate change on vulnerable groups, paying particular attention to women, children, indigenous peoples, displaced persons, persons living with disabilities, older persons, and youth in Africa. For purposes of the commentary not all groups will be discussed however special mention is made regarding the analysis of impacts of climate change on indigenous peoples and women.

3.1.1 Indigenous Peoples (page 10,12,24,28):

3.1.1.1 The inclusion and special mention of indigenous peoples in the study is extremely admirable. Whilst the study is cognisant of the contestations regarding a uniform understanding of the term indigenous person, the effort to highlight the importance of uplifting the voices of such persons, during any decision-making processes concerning their lived environments should be praised.

3.1.1.2 This is because climate change impacts in Africa are likely to destroy heritage and cultural sites, traditional territories, sources of livelihood, traditional medicines and biodiversity. This will

entirely disrupt the traditional African and indigenous way of life, drastically reducing standard of living and life expectancy.

- 3.1.1.3 This level of unfairness is concerning considering that such communities practice an incredibly low carbon lifestyle, contributing very little if at all to the climate crisis, but most vulnerably exposed to its consequences.
- 3.1.1.4 When analysing the numerous legal and institutional barriers, currently in existence which impact their ability to manage and adapt to climate change, more needs to be done to allow for the adaptive capacity of indigenous peoples to be supported.
- 3.1.1.5 This can be achieved by combining these adaptive strategies with other techniques like, “disaster preparation, land-use planning, environmental conservation and national plans for sustainable development”.
- 3.1.1.6 The section on recommendations fails to mention the inclusion of indigenous people as beneficiaries of such strategies and only mentions them in the context of being included in public participation processes. Whilst this is important more must be done to ensure the protection rights of this vulnerable group.

3.2 Identification of rights most likely to be impacted by climate change.

- 3.2.1 The study distinguishes between **socio-economic rights**, such as the right to food, to water, to property, the right to health, the right to housing, the right to education and **civil and political rights**, for instance the right to life and to freedom of association and assembly.
- 3.2.2 It also outlines group rights that are affected by the climate emergency, stressing that, “all human rights are indivisible and interdependent in the sense that all human rights, including civil, cultural, economic, political

and social rights have equal status. Denial of one right invariably hinder[ing] the enjoyment of other rights, and the fulfilment of one right often depending, wholly or in part, upon the fulfilment of others.”

3.2.3 This interdependence is the strength of human rights approaches to climate litigation and should be used as a springboard to connect instances of environmental injustice, with appropriate and linked human rights transgressions as espoused in domestic legislation and international frameworks.

3.2.4 As a result, a synergistic approach that integrates both domestic and regional frameworks is essential for cultivating a comprehensive and effective system to safeguard human rights in Africa (South African Constitution; African Charter on Human and Peoples' Rights). This approach may serve to tackle the issue of climate concerns and litigation being on the margins of litigation e.g. in Ghana rather than the focal point of a suit.

3.3 Regional and Domestic Regulatory Frameworks and Interventions (page 5,6,58)

3.3.1 The study makes mention of a myriad of regional legal frameworks, declarations, initiatives and programmes currently being utilised in Africa to address concerns such as adaptation finance, sustainable development, and climate challenges generally. In Africa, the utilization of domestic and regional frameworks is paramount for the protection of human rights. Domestic legal systems provide the foundation for safeguarding the rights of individuals within a specific country.

3.3.2 An appropriate illustration of this is South Africa's democratic Constitution (1996) which explicitly enshrines a comprehensive Bill of Rights, serving as a crucial domestic instrument for protecting human rights.

3.3.3 Additionally, regional frameworks, such as the African Charter on Human and Peoples' Rights, play a pivotal role in reinforcing and advancing human rights standards across the continent. Ratified by

numerous African countries, this charter provides a collective commitment to upholding human rights at a regional level, fostering a shared responsibility for their protection and promotion.

3.3.4 As a result, a synergistic approach that integrates both domestic and regional frameworks is essential for cultivating a comprehensive and effective system to safeguard human rights in Africa.

3.3.5 Whilst it must be applauded that there are several regional frameworks in Africa which prioritise the protection of human rights, a larger discussion on the challenges of implementation and enforcement of the frameworks must be had. To date, there is must governmental debate concerning the jurisdiction of the African Court on Human and Peoples Rights, which is a court mandated to give effect to instruments like the Banjul Protocol. The inconsistency in the implementation of the protocol in some of the member states also creates concerns regarding legal certainty.

3.4 A stronger stance needed to be taken against Commercial and Business actors contributing to climate-change (pg. 48, 49,58,)

3.4.1 While the study recognises the tremendous contribution that commercial actors have in the perpetuation of the climate crisis, the inconsistent observance of human and labour rights and sometimes the intimidation of environmental defenders, it suggests that the UN Guiding Principles on Business and Human Rights be utilised to ensure the compliance of such entities with their duties to, 'avoid activities that aggravate the climate system'.

3.4.2 It is important to note that these principles are not binding law and they rely heavily on a specific state's obligation to protect the environment by promulgating binding domestic laws to thwart abusive behaviours of corporate actors and equally binding judicial decisions. In countries with a reliable implementation of the rule of law this is possible however, where this principle is uncertain, the Guiding Principles are reduced to mere suggestions e.g. in countries such as Zimbabwe, Mozambique. [OBJ]

3.5 The study suggests that there be, “an integration of climate change concerns in all activities dealing with businesses and the extractive sector”. 234 para d page 58

3.5.1 This statement is ambiguous and generalising in nature. It is unclear exactly what this integration would look like practically speaking and lacks clarity on whether it relates to mitigation strategies, adaptation measures, or both. Ambiguity can lead to inconsistent interpretation and implementation, hindering effective efforts to address climate change. Clear guidelines are essential to ensure that businesses understand the nature and scope of climate-related considerations they need to incorporate into their activities.

3.5.2 Additionally, one may argue that the activities related to the business and extractive sector are inherently contributory to the current climate crisis (through G-H-G emissions). Therefore, one may further argue that such activities would be in direct conflict with climate change concerns. Balancing these activities with climate goals requires a nuanced approach to avoid potential conflicts. Clarity is needed on how businesses engaged in extractive activities can align with climate change mitigation and adaptation without compromising environmental sustainability. Resolving this tension demands precise frameworks that guide businesses in navigating the intersection of climate change concerns and extractive practices.

4. RECOMMENDATIONS

4.1 African Peer Review Mechanism and State Reporting Mechanisms

4.1.1 The study makes mention of the need for the African Commission to be more proactive in promoting a safe climate and protecting human and peoples' rights from climate impacts. It suggests that this can be done by integrating climate change into its work through reporting, monitoring, statements, seminars, advisory opinions on climate change issues. More

detail must be given about potential monitoring mechanisms through regional advisory structures.

4.1.2 The study suggests use of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) which has been actively engaged in monitoring state compliance with their obligations under human rights instruments, particularly as they relate to the rights and welfare of children.

4.1.3 The strategy would be to amend reporting guidelines to include an assessment of how African states are aligning their climate change initiatives with the rights and well-being of children, ensuring that policies not only address environmental concerns but also safeguard the rights of the youngest and most vulnerable members of society.

4.1.4 Our suggestion is that the ACERWC can rely on special rapporteurs, who should be charged with making routine assessments on environmental conditions of children and the potential impact of climate change on children's well-being. By monitoring state compliance with climate change laws, the ACERWC would contribute to fostering a climate-resilient and child-friendly environment across the African continent.

4.2 Oil & Gas Exploration in Africa's Oceans

4.2.1 Africa is becoming a hotspot for oil and gas exploration with over 200 commercial entities, either exploring or involved in the development of fossil fuel infrastructure on the continent as of the end of 2022. Over 16 billion barrels of oil are anticipated to be extracted by 2030, with a whopping 45 African countries set to be involved in the production of this oil. There is therefore an urgent need for policy makers to give attention to these exploration and production projects, as they contribute significantly not only to the climate crisis but also to the erosion of the human rights of Africa's inhabitants. For instance, the burning of fossil

gas, produces staggering amounts of carbon dioxide which is released into the atmosphere. Explorations of oil or gas, as witnessed in the Niger delta, often destroy the livelihoods of communities, with the huge threat of oil spills, during oil production or when seismic surveys are undertaken during exploration. Marine life is not spared, with some species forced to the brink of extinction in the aftermath of these of projects.

4.2.2 The study in its current form does not include enough information on this growing concern, and neither does it proffer any suggestions on how to mitigate the advancement of control of Africa's coastal regions by companies intent on expanding fossil fuel production. Whether in the context of EACOP, when discussing the Wild Coast in South Africa, or the Greater Tortue Ahmeyim (GTA) reserves in Senegal and Mauritania, environmentalists and academics alike have raised alarm regarding the impact of these explorations and planned projects on our continent.

4.3 Rights of nature (the importance of protecting nature for the benefit of people and protection of biodiversity)

4.3.1 The recognition of the rights of natural entities (rivers, forests, mountains) is a legal approach that stems not only from the historic cultural importance of these entities in many indigenous communities around world, but also the dire state of our current climate crisis and the experience of increasing bio-diversity loss. Local and indigenous communities emphasise that the elevated status which nature holds in their customs and practices is aligned with their traditions of living in tandem with nature and its forces. It is this interdependence between nature and all of humanity which keeps protects the rights and dignity of all people and all biodiversity.

4.3.2 Environmental lawyers, academics, civil society, indigenous communities alike have begun externally proclaiming, in tangible forms, the rights of natural entities.

4.3.3 An example of this is the country of Ecuador, whose constitution recognises nature as bearing a legal status higher than that of property. African countries, have not shied away from this conversation, with many education programs on this development being initiated in countries like Uganda, Zimbabwe, South Africa, Ethiopia, Nigeria and Kenya. However, concrete policies and laws must be drafted to highlight and reflect nature's status.

4.3.4 This study, however, did not indicate any measure, policies or plans in place, from a continent perspective that were geared to help advance this understanding of nature as an important entity in the protection of human rights.

4.4 Public Participation

4.4.1 Affected communities find themselves having to fight (whether legally or through protest action) in order to have their concerns and livelihoods recognised.

4.4.2 The intentional exclusion of these communities, by proponents of fossil fuel expansion, renders them particularly vulnerable, and the study must emphasise the need to amplify the concerns and consideration of these communities, prior to the initiation of any projects in their community.

4.4.3 Public participation ensures that a diverse range of voices, including those from vulnerable groups e.g. women, are heard in decision-making processes related to climate change mitigation.

4.4.4 This inclusivity helps address social inequalities and ensures that policies and actions are fair and just, safeguarding the human rights of all individuals, especially vulnerable populations.

4.5 Sanctions for non-Compliance

4.5.1 Sanctions may be necessary to deter non-compliance with international and regional agreements, ensuring that nations adhere to climate-protection treaties and fulfil their contractual obligations willingly. A Regional commitment to environmental protection, dedication, integrity, and fulfilling statutory responsibilities for national preservation should be upheld by all African countries and more must be done to ensure accountability and compliance.¹⁹ The study however makes no mention of stricter enforcement mechanisms outside of monitoring state alignment with signed protocols. This is still a reactionary as opposed to a preventative approach.

4.6 Disproportionate Contribution to Climate Change Impacts

4.6.1 The study makes little mention of the role of the Global North's disproportionate contribution towards the climate crisis and in turn infringement of human rights in Africa. It is recommended that there be a call for an Africa centred strategy to encourage both developed and developing nations to actively participate in climate-friendly treaties. This prompts considerations of 'justice' or 'fairness' in the context of the disparities between developed and developing nations. Consequently, Measures should be implemented to prevent countries from unilaterally modifying or reneging on their international obligations by refusing to endorse and ratify agreements that promote climate action, curbing actions driven by self-interest.

4.6.2 Criticism of the Kyoto Protocol, for instance centres on its perceived bias toward imposing restrictions solely on developed nations, exemplified by the case of the United States. Furthermore, a notable critique is the absence of a statutory enforcement mechanism to compel adherence to the Protocol and penalize non-compliant countries. The German Council on Global Change (GCGC) has also raised valid concerns regarding the structure of the land-use charge and identified shortcomings in forestry activities under the Protocol, emphasizing the need for improvements in these aspects.

5. CONCLUSION

- 5.1 There is a growing scientific and even political awareness of the substantial threat that climate change poses to Africa—its ecosystems, biodiversity, and most importantly human rights. Climate change stands as a pressing crisis of our era, both for humanity and the environment. Dealing with the intricacies of this phenomenon proves to be a formidable challenge for African nations, their governments, and the African Union (AU).
- 5.2 The ramifications extend beyond mere environmental shifts; there is a growing acknowledgment that climate change can spark an onslaught of infringements to the human dignity and life of African peoples. Hence, an imperative arises to comprehend this issue thoroughly in the African context.
- 5.3 The unequivocal nature of the scientific evidence leaves little room for doubt: climate change is undeniably unfolding, evident in rising sea levels, droughts, and looming famines. The urgency to act becomes apparent, as the consequences of inaction promise to be catastrophic.
- 5.4 States, as duty-bearers, are not only obligated to prevent and rectify these climate impacts but also to proactively mitigate climate change. Furthermore, they must ensure that all individuals, as rights-holders, possess the requisite capacity to adapt to the challenges presented by the climate crisis.
- 5.5 Embedded in the discourse of climate justice is the notion that climate action must align with existing human rights agreements, obligations, standards, and principles. A principle of equity underscores this, emphasizing that those who have contributed the least to climate change unjustly bear a disproportionate burden of its consequences. These marginalized communities must not only participate meaningfully in climate action but also emerge as primary beneficiaries, equipped with access to effective remedies.

5.6 As the world grapples with the unfolding climate crisis, the imperative for collective and equitable action becomes increasingly evident to secure a sustainable and just future for all.