



TO:

African Commission on Human and Peoples's Rights Working Group on Extractive Industries, Environment and Human Rights Violations in Africa

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**CALL FOR SUBMISSIONS OF SUBSTANTIVE INPUT FOR DEVELOPING THE
CONTENT OF THE DRAFT OUTLINES OF THE GENERAL COMMENTS ON
THE RIGHTS TO ENVIRONMENT**

INTRODUCTION

Natural Justice: Lawyers for Communities and the Environment is a pan-African non-profit organization rooted in the struggles of communities in Africa. Strives to enhance the collective rights of people and protect the sacred relationships that indigenous peoples and local communities have with nature, Natural Justice work is informed by the values, knowledge and self-determination of the communities whom we stand in solidarity with.

NJ welcomes the opportunity to submit provide submissions of substantive inputs for developing the content of the draft outline of the General Comments on Article 24 of the African Charter on Human and Peoples Rights.

Article 24 of the African Charter on Human and Peoples' Rights is one of the earliest and most progressive regional human rights provisions recognizing the right of all peoples to a general satisfactory environment favourable to their development. The General Comment presents an important opportunity to clarify the normative content of Article 24 in light of contemporary environmental challenges, including climate change, biodiversity loss, environmental degradation, armed conflict, disasters, extractives and the just energy transition. The interpretation of Article 24 should be informed by the indivisibility and interdependence of human rights and read together with Articles 2, 4, 14, 21 and 22 of the African Charter.

The Submissions are set out as follows:

NORMATIVE CONTENT AND SCOPE TO THE ENVIRONMENTAL PROTECTION

- **Protection of the right to a satisfactory environmental in armed conflict context**

Global conflicts raise key issues concerning international law application in a context marked by armed conflicts and environmental disasters.¹ The law is called upon to provide more innovative solutions preventing, protecting and redressing these multiple crises. Principle 24 of the Rio Declaration already states that wars have an intrinsically destructive effect on the environment and sustainable development.

The General Comment should expressly affirm that Article 24 continues to apply during armed conflict and post-conflict situations.² The African Charter requires States to prevent, minimize remedy environmental harm arising from military activities, occupation, resource exploitation and environmental destruction associated with conflict. Environmental protection should therefore be understood as both a humanitarian and human rights obligation.³ In many contemporary conflicts across Africa, competition over mineral resources, timber, land, water and hydrocarbons has become both a driver and a consequence of violence. The exploitation of natural resources in conflict settings frequently occurs without environmental impact assessments, benefit-sharing arrangements, public participation, or consultation with affected communities.

The General Comment should therefore clarify that environmental governance obligations remain applicable in fragile, conflict, and post-conflict contexts.⁴ For example, the prolonged conflict in eastern Democratic Republic of Congo demonstrates how the exploitation of strategic minerals can contribute simultaneously to environmental degradation, displacement, insecurity and human rights violations. Furthermore, the conflict in Cabo Delgado, Mozambique, illustrates how large-scale energy projects and associated security responses may create cumulative impacts on communities' environmental, livelihood, and cultural rights.

¹ Klein, N. & others, "Of Warming and Warzones: The Legal Status of Military Emissions in the ICJ's Climate Opinion", Verfassungsblog, 21 June 2026 (discusses how armed conflict/military emissions appeared in the 2024 hearings and the Opinion's implications).

² The International Court of Justice has affirmed that environmental considerations remain relevant during armed conflict and that environmental damage may give rise to legal responsibility and reparations. See International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, I.C.J. Reports 1996, p. 226, para. 30 (environmental considerations in assessing necessity/proportionality).

³ International Court of Justice, *Obligations of States in respect of Climate Change*, Advisory Opinion, 23 July 2025 (confirms States' obligations to prevent environmental harm and that breaches engage responsibility and remedies, including reparation). See <https://icj-web.lemman.un-icc.cloud/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. See Para. 372–386 and Para. 387–393

⁴ The General Comment should draw inspiration from the ILC Draft Principles on Protection of the Environment in Relation to Armed Conflicts, particularly principles relating to prevention, remediation and post-conflict environmental restoration.

- **Right to environment as tool for disaster risks management**

Natural Justice welcomes the attention given to climate change and its impacts in both the report and in the outline. However, it notes that the natural disasters to which some African states are exposed tend not to be considered. These risks include cyclones, droughts, floods, earthquakes, erosion, volcanic eruptions. A comparison of regional human rights systems reveals that environmental disasters are addressed solely from the perspective of the right to information and the right to life⁵. The African Charter on Human and Peoples' Rights contains a provision distinct from the others which protects the right to a favorable environment. This could be a key instrument for urging States to take appropriate measures to plan for the mitigation necessary to prevent disasters caused by natural hazards.⁶

Healthy ecosystems constitute an important component of disaster risk reduction. Wetlands, forests, mangroves and river catchments play critical roles in reducing flood risks, limiting erosion, regulating water supplies and increasing climate resilience. The destruction of these ecosystems should therefore be understood as directly undermining the enjoyment of Article 24 rights.

As example, the report of the World Weather Organization's fact-finding mission report on Cyclone Idai-Kenneth cyclones which hit Mozambique, Malawi and Zimbabwe in 2019, found that, early warning systems (based on right to information) can only be effective if complemented by effective disaster management practices, which including effective floodplain management practices, land use and urban planning, buildings codes to withstand risks, multi-purpose infrastructures to serve as shelters, and structures measures for protection and management.

The General Comments can clarify and outline the specific obligations of States and set out guidelines for the management of natural risks, taking into account how these are exacerbated by climate change.

PROCEDURAL ENVIRONMENTAL RIGHTS

- **Free Prior and Informed Consent beyond indigenous communities**

Despite the doctrinal assumption – supported by the jurisprudence of both the African Commission and the African Court on Human and Peoples' Rights – that free, prior and informed consent is a human right standard applicable to indigenous peoples, Natural Justice argues for its extension to local communities and other minority groups in Africa. This is grounded by the fact that, amongst the 54 African states, only the Central African Republic has ratified the International Labour Organization Convention which protects indigenous communities and recognizes free, prior and informed consent. This failure of the vast majority

⁵ ECHR, *Oneryildiz vs Turkey*, 30th November 2004; and ECHR, *Budayeva and other vs Russia*, 30th March 2008.

⁶ African Union Programme of Action for the Sendai Framework

of African States to recognize indigenous peoples is due to misconceptions and questions surrounding the idea that recognition might give rise to tribalism, ethnic conflicts, or it would create special rights⁷ or the pejorative or colonial-era segregationally connotations still associated with the terms ‘indigenous populations/ communities’⁸.

While FPIC has been most extensively developed in relation to indigenous peoples, the underlying principles are equally relevant to local communities. Restricting FPIC solely to formally recognized indigenous peoples’ risks excluding many African communities from meaningful protection under the Charter and other relevant international instruments; specifically, the protection of their cultural, spiritual heritage connection to the natural environment and other associated rights. It is now accepted that there is a direct link between the environment and community livelihoods, land and tenure systems, customary governance and cultural heritage, and these relationships may be impacted and affected by environmental decision-making. Because of these linkages, FPIC should therefore be understood as an expression of broader principles of participation, self-determination, environmental democracy and collective decision-making.

Articles 21, 22 and 24 of the African Charter collectively establish a framework requiring meaningful participation by communities in decisions concerning natural resource governance, development projects and environmental management. FPIC should therefore be regarded as a procedural safeguard necessary for the effective protection of substantive rights of indigenous peoples and local communities. Environmental rights issues of concerns to indigenous peoples and local communities in Africa are diverse, complex and varies from country to country and from one community to another. In many similar cases and countries local communities are pushed out of their traditional areas to give way to development project, natural and mineral resources extraction, establishment of protected areas or large-scale plantations resulting in disruption of their livelihood, limiting access to natural resources, as well as significant changes on the environment without adequate and meaningful participation. The cases of the Endorois⁹, Ogiek¹⁰ and Batwa¹¹ provides a relevant example of ensuring that community land and resource rights require participation in decisions affecting traditional territories.

⁷ As stated by the African Commission on Human and Peoples Rights Working Group on Indigenous Populations/Communities on its 2006 Report <https://achpr.au.int/en/special-mechanisms-reports/report-african-commissions-working-group-experts-indigenous>

⁸ That the case in Mozambique, Angola, Guinee-Bissau, Sao Tome e Principe, the ancient Portuguese colonies.

⁹ African Commission on Human and Peoples’ Rights, Communication 276/2003: Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Decision on the Merits, 2009/2010 (recognizes indigenous land rights; finds violations of property, culture, religion, development; orders restitution, compensation and participation measures).

¹⁰ African Court on Human and Peoples’ Rights, African Commission on Human and Peoples’ Rights v. Republic of Kenya (Ogiek), Judgment, 26 May 2017 (affirms Ogiek communal ancestral land rights; finds eviction without prior consultation/consent violates property and development rights; orders consultation/FPIC-aligned safeguards, restitution/compensation).

¹¹ African Commission on Human and Peoples’ Rights, Communication 588/15: Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of the Congo, Decision on the Merits, 2024/2025 (finds DRC violated multiple Charter rights by evicting Batwa to create/expand park without

IMPACTS AND ACKNOWLEDGEMENT OF JUST ENERGY TRANSITION PATHWAYS

The pathway for just energy transitions is fundamental for climate and environment and should include its own section in the outline. On the one side, is the impact of fossil fuels on the environment and climate change, on the other side, is the impacts of renewable energy and transition mineral mining to the environment. However, the transition/leapfrogging to renewable energy is a necessity to minimize damage to environment and the climate. This is in line with best available science (S 2d), in terms of the International Energy Agency findings in the “Net Zero by 2050” that there should be no new oil and gas fields approved for development after 2021¹² to keep below the 1.5°C, or face devastating environmental impacts due to global warming which includes floods, heatwaves, droughts and sea surface temperature record high in 202, with Africa being hit the hardest.¹³ (S 4b iii and 5b).

Concern should be raised with the “African Common Position on Energy Access and Transition” which speaks incorrectly to the crucial roles of coal, oil, fossil gas and nuclear. A comment document was issued by numerous civil society, pointing out the inadequacy in the position – which should be highlighted considering environmental protection.¹⁴

A just energy transition should be understood as a human rights obligation arising from Articles 21, 22 and 24 of the African Charter. The transition away from fossil fuels must be sufficiently rapid to prevent worsening environmental degradation and climate change, while simultaneously ensuring that the burdens and benefits of transition are distributed equitably. Continued expansion of fossil fuel production and infrastructure should be assessed against States’ obligations to prevent environmental harm, protect public health and safeguard the rights of present and future generations. States have obligations to ensure that present patterns of extraction, production and consumption do not compromise the environmental rights of future generations.¹⁵

With the expansion of renewable energy; and its supply chains which include green minerals, there needs to be safeguards put in place – including: the protection of environment (Section 1c and 4b), upholding of other rights like housing which includes energy in relation to

consent; rejects fortress conservation; orders restitution, participation, benefit-sharing and other remedies).

¹² International Energy Agency “Net Zero by 2050 – a Roadmap for the Global Energy Sector”. Available at https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf.

¹³ World Meteorological Organization “Extreme weather and climate change impacts hit Africa hard” (12 May 2025). Available at <https://wmo.int/news/media-centre/extreme-weather-and-climate-change-impacts-hit-africa-hard>.

¹⁴ Africa Coal Network and others ‘Comment on AU Technical Committee’s Proposal for an “Africa Common Position on Energy Access and Transition” for COP27’. Available at <https://static1.squarespace.com/static/5dd3cc5b7fd99372fbb04561/t/62ea50c90a3b621d4aa6b118/1659523274650/Comment+on+AU+Technical+Committee%E2%80%99s+Proposal+for+an+African+Common+Position+on+Energy+Access+and+Transition+for+COP27.pdf>.

¹⁵ See paras 372-93 of ICJ Opinion of obligations in respect of Climate Change

Sustainable Goal 7 (S cviii), the right to natural resources (S 4dii), and the right to participate in public affairs and consultation (S cv).

The transition to renewable energy should not replicate historical patterns of dispossession, exclusion and environmental injustice. The repeat of historical and structural injustices (S 1b – should also include present inequalities) in a report labelled “Centring Justice in the Just Energy Transition” from regions of Kenya, Namibia, Senegal and South Africa.¹⁶ The extraction of transition minerals and the development of renewable energy infrastructure must be subject to the same human rights and environmental safeguards applicable to other forms of resource extraction. Restricting the right to environment should not be included (S 2e) and should be reframed as safeguards for the environment – with noting of the expected expansion of green minerals¹⁷ and renewable energy projects.

The right to existence and self-determination (S 4di) should include communities and Indigenous Peoples being able to choose what energy sources are used and be able to have accessible socially owned renewable energy in pursuit of having a clean environment. Ways of expanding renewable energy can be seen in case studies speaking to renewable-energy feed-in tariffs, support of energy democracy of Indigenous Peoples, and local procurement rules promoting local economic development and jobs.¹⁸

Sincerely,

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¹⁶ Natural Justice “Centring Justice in the Just Energy Transition”. Available at <https://naturaljustice.org/wp-content/uploads/2023/12/Centring-Justice-in-the-Just-Energy-Transition-3.pdf>.

¹⁷ African Union Green Minerals Strategy

¹⁸ For more details see Natural Justice “The Path to Clean Energy” (2024). Available at https://naturaljustice.org/wp-content/uploads/2024/11/NJ_The-Path-to-clean-energy_v4_Handover.pdf.