Africa's silent crime: towards recognising ecocide under the Malabo Court Protocol

*Nfor N Nde Nyambi**
https://orcid.org/0009-0008-5450-0680

ABSTRACT: This article examines the absence of ecocide as a justiciable offence within the African regional human rights system and analyses the consequences of this gap for environmental protection and accountability on the continent. Despite the recognition of the right to a satisfactory environment under article 24 of the African Charter on Human and Peoples' Rights and the obligations set out in the African Convention on the Conservation of Nature and Natural Resources, large-scale environmental destruction linked to extractive activities remains largely unpunished. The article investigates why existing normative commitments have failed to translate into effective legal accountability for severe ecological harm. The analysis adopts a doctrinal and comparative methodology, combining an examination of African regional human rights instruments, relevant jurisprudence, and institutional mandates with selected case studies of environmental harm in extractive contexts. It further situates the African framework within broader international debates on the recognition of ecocide as an international crime. The article finds that the absence of ecocide as a defined crime perpetuates legal fragmentation, enables impunity for corporate and state actors, and weakens remedies available to affected communities. It argues that recognising ecocide within the African Union legal order would strengthen environmental accountability and align regional human rights law with emerging global norms. It recommends amending the Malabo Court Protocol to confer jurisdiction on the future African Court of Justice and Human and Peoples' Rights over ecocide, thereby enhancing the enforceability of environmental rights and contributing to sustainable development and intergenerational justice in Africa.

TITRE ET RÉSUMÉ EN FRANÇAIS

Le crime silencieux de l'Afrique: vers la reconnaissance de l'écocide dans le cadre du Protocole de la Cour de Malabo

RÉSUMÉ: Cet article examine l'absence de l'écocide en tant qu'infraction justiciable au sein du système africain régional des droits de l'homme et analyse les conséquences de cette lacune pour la protection de l'environnement et la responsabilisation sur le continent. Malgré la reconnaissance du droit à un environnement satisfaisant à l'article 24 de la Charte africaine des droits de l'homme et des peuples et les obligations prévues par la Convention africaine sur la conservation de la nature et des ressources naturelles, les destructions environnementales de grande ampleur liées aux activités extractives demeurent largement impunies. L'article analyse les raisons pour lesquelles les engagements normatifs existants ne se traduisent pas par une responsabilité juridique effective face aux atteintes écologiques graves. L'analyse repose sur une méthodologie doctrinale et comparative, combinant l'examen des instruments régionaux africains des droits de l'homme, de la jurisprudence pertinente et des mandats institutionnels avec des études de cas sélectionnées portant sur des dommages environnementaux dans des contextes extractifs. Elle situe en outre le cadre africain dans les débats internationaux plus larges relatifs à la reconnaissance de l'écocide en tant que crime international. L'article démontre que l'absence de l'écocide en tant qu'infraction définie entretient la fragmentation juridique, favorise

* LLB, LLM, PhD (University of Dschang), Assistant Professor of Law, Villa College, Maldives; nnfornde@gmail.com / nyambi.nfor@villacollege.edu.mv

NNN Nyambi 'Africa's silent crime: towards recognising ecocide under the Malabo Court Protocol' (2025) 9 *African Human Rights Yearbook* 515-537
http://doi.org/10.29053/2523-1367/2025/v9a23

l'impunité des acteurs étatiques et corporatifs et affaiblit les recours disponibles pour les communautés affectées. Il soutient que la reconnaissance de l'écocide au sein de l'ordre juridique de l'Union africaine renforcerait la responsabilité environnementale et alignerait le droit régional des droits de l'homme sur les normes mondiales émergentes. Il est recommandé de modifier le Protocole de la Cour de Malabo afin de conférer à la future Cour africaine de justice et des droits de l'homme et des peuples une compétence juridictionnelle en matière d'écocide, renforçant ainsi l'effectivité des droits environnementaux et contribuant au développement durable ainsi qu'à la justice intergénérationnelle en Afrique.

TÍTULO E RESUMO EM PORTUGUÊS

O Crime Silencioso em África: Rumo ao Reconhecimento do Ecocídio ao abrigo do Protocolo do Tribunal de Malabo

RESUMO: Este artigo examina a ausência do crime de ecocídio como crime passível de justiça no sistema regional africano de direitos humanos e analisa as consequências desta lacuna para a proteção ambiental e a responsabilização no continente. Apesar do reconhecimento do direito a um ambiente satisfatório ao abrigo do artigo 24.º da Carta Africana dos Direitos Humanos e dos Povos e das obrigações estabelecidas na Convenção Africana sobre a Conservação da Natureza e dos Recursos Naturais, a destruição ambiental em larga escala associada às atividades extrativas permanece largamente impune. O artigo investiga por que é que os compromissos normativos existentes não se traduziram numa responsabilização legal eficaz por danos ecológicos graves. A análise adota uma metodologia qualitativa comparativa, fazendo uma análise doutrina, mas também dos instrumentos regionais africanos de direitos humanos, da jurisprudência relevante e dos mandatos institucionais com estudos de caso selecionados de danos ambientais em contextos extrativos. Situa ainda o enquadramento africano dentro de debates internacionais mais amplos sobre o reconhecimento do ecocídio como crime internacional. O artigo conclui que a ausência do ecocídio como um crime perpetua a fragmentação legal, permite a impunidade para atores empresariais e estatais e enfraquece os recursos disponíveis para as comunidades afetadas. Defende que reconhecer o ecocídio dentro da ordem jurídica da União Africana fortaleceria a responsabilidade ambiental e alinharia o direito regional dos direitos humanos com as normas globais emergentes. Recomenda-se a alteração do Protocolo do Tribunal de Malabo com o objetivo de conferir competência jurisdicional à futura Corte Africana de Justiça e dos Direitos Humanos e dos Povos para conhecer do crime de ecocídio, reforçando, desse modo, a efetividade dos direitos ambientais e contribuindo para o desenvolvimento sustentável e para a justiça intergeracional em África.

KEY WORDS: ecocide; environmental justice; criminal accountability; Malabo Court Protocol; sustainable development

CONTENT:

1 INTRODUCTION

Humans have emerged as the most dominant species on the planet. Sadly, our impact has been profoundly destructive, and if environmental destruction persists at the current rate, half of the world's species are projected to face extinction early in this century.[1]

1 FJ Roswimmer *Ecocide: a short history of the mass extinction of species* (2002) 1.

Humanity is on track to become the most devastating force since the giant asteroid that struck the Earth sixty-five million years ago, causing the rapid extinction of half the planet's species in a single geological event.[2]

A continent's heartbeat echoes in its rivers, forests, and soil, yet Africa's lifeblood is siphoned drop by drop, masked by gilded contracts and the illusion of progress.[3] Like a surgeon wielding a scalpel with reckless hands, extractive industries carve open the land, leaving festering wounds where once there was abundance. Each felled tree is a silenced witness; each poisoned river a confession drowned in legal indifference.[4] While boardrooms toast to profit, villages drink from wells laced with tomorrow's cancers. And all the while, the law remains a mute spectator, a sentinel blind to the quiet annihilation unfolding beneath its watch. Against this backdrop, the need to name and prosecute ecocide is not mere legal reform but a moral awakening: a call to let nature's suffering testify in Africa's courts before silence becomes our final inheritance.

1.1 Contextualising Africa's ecological crisis

Safeguarding human rights, preserving the environment, and promoting peace and security are core pillars of the modern international order.[5] The interconnectedness between human rights and environmental protection is well established. In essence, the quality of the environment directly impacts human well-being.[6] Across the African continent, the very lands that should nourish peace have instead become battlegrounds.[7] Rich in oil, gold, and fertile earth, Africa's blessings have too often turned to burdens.[8] Beneath the promise of prosperity lies a legacy of unrest, where fractured post-independence states born of colonial carving and political fragility struggle to contain the storms stirred by contested identity, exclusion, and injustice.[9] In Nigeria for instance, the ground trembles not just with tectonic shifts but with the weight of unresolved grievances: from the bloodied fields of farmer-herder clashes to the choking gas flares of the Niger Delta, where the cries of the Ogoni and Ijaw peoples echo

2 As above.

3 I Pesa 'Toxic coloniality and the legacies of resource extraction in Africa' (2024) 9(2) *International Review of Environmental History* 33-50.

4 See ZL Mai-Bornu 'Green criminology in the Niger delta of Nigeria: why African women's voices matter' (2024) 13(1) *International Journal for Crime, Justice and Social Democracy* 41-50.

5 BS Titiahong 'The legal protection of the right to a healthy environment in Cameroon' PhD thesis, University of Dschang, 2022 8.

6 As above.

7 C Pumphrey 'General introduction' in C Pumphrey & RS Barcott (eds) *Armed conflict in Africa* (2003) 1.

8 African Natural Resources Center 'Illicit trade in natural resources in Africa: situation overview' *African Development Bank,* October 2016 3.

9 T Stapleton *Africa: war and conflict in the twentieth century* (2018) 87.

through oil-slicked swamps.[10] At the centre of these crises is a hard truth that in Africa, the fight is rarely just about ethnicity or politics; it is often about control over nature's treasure, and the silence of justice in the face of its plunder.[11]

Across the globe, the prosperity and economic trajectories of States are deeply rooted in the exploitation of natural resources. The true value of precious metals and minerals extends beyond their historical significance, aesthetic allure, and market worth. It also lies in the destructive forces they provoke.[12] The pursuit of rapid wealth through unsustainable and frequently illegal mining practices has attracted organised criminal networks and unethical corporate actors.[13] Their operations often serve as conduits for widespread corruption, deepening social inequalities, and inflicting severe environmental damage. In this context, mineral extraction becomes not merely an economic activity, but a catalyst for systemic harm that undermines both human dignity and ecological integrity.[14]

In the past decade, illegal mining[15] operations across Central Africa have generated vast illicit profits, severely undermining national economies, exploiting vulnerable communities, and degrading the environment.[16] Gold production in the region is largely dominated by artisanal miners, small-scale operations, and semi-mechanised enterprises.[17] However, due to weak regulatory oversight, the actual volume of gold extracted remains largely unknown to state authorities. Gold smuggling, both within and beyond the region is widespread, well-coordinated, and involves the majority of gold leaving Central Africa.[18] The entrenchment of criminal networks within the gold sector is sustained by illicit financing mechanisms, including payments in gold or cash, as well as systemic fraud in land acquisition and exploitation.

10 Mai-Bornu (n 4) 41.

11 As above.

12 Y Zabyelina & D van Uhm 'The new eldorado: organized crime, informal mining, and the global scarcity of metals and minerals' in Y Zabyelina & D van Uhm (eds) *Illegal mining: organized crime, corruption, and ecocide in a resource-scarce world* (2020) 6.

13 As above.

14 As above.

15 Although there is no universally accepted definition of illegal mining, the United Nations Office on Drugs and Crime (UNODC) broadly defines it as mining activities undertaken by individuals, legal entities, or groups without complying with the applicable legal or administrative frameworks governing such operations. This includes mining conducted without proper authorisation or in contravention of regulatory requirements, as well as activities carried out in areas where mining is expressly prohibited. The UNODC further notes that illegal mining may also involve the use of banned equipment, techniques, or harmful chemicals, thereby exacerbating environmental harm and facilitating criminal exploitation of natural resources. See UNODC 'Responding to illegal mining and trafficking in metals and minerals: a guide to good legislative practices' 2023 43 https://sherloc.unodc.org/cld/uploads/pdf/Illegal_Mining_and_Trafficking_in_Metals_and_Minerals_E.pdf (accessed 31 July 2025).

16 ENACT 'Environmental crime caused by illegal mining in Central Africa' January 2024 2.

17 INTERPOL 'Illegal gold mining in Central Africa' May 2021 3.

18 As above.

These practices not only facilitate more efficient illegal extraction but also obscure the true scale of production, allowing environmental harm and economic loss to continue unchecked.[19]

Africa's mineral wealth has long been seen as a springboard to modernisation expressed in the suit of policies that have been drafted over time.[20] In South Africa, the mining sector plays a pivotal role in driving economic growth and national development.[21] The country is richly endowed with a wide array of mineral resources that continue to underpin its socio-economic progress. However, when mining operations are conducted without adequate environmental safeguards, they often result in severe ecological degradation, leaving behind long-term, and in some cases, irreversible damage to both natural ecosystems and local communities.[22]

For many developing countries, these resources form the backbone of national income providing vital employment opportunities, generating substantial public revenue, and attracting foreign investment.[23] The paradox is stark while mineral wealth fuels economic ambitions; it can simultaneously erode the very environmental foundations upon which sustainable development depends.[24]

Human-induced climate change stems from both legal and illegal activities, with large-scale deforestation clearly falling within the realm of environmental wrongdoing.[25] It is widely recognised as a major contributor to global warming.[26] In Africa, regions such as the Congo Basin, parts of West Africa, and the savannah-forest mosaics of Central Africa have witnessed significant deforestation driven by logging,

19 As above.

20 Relevant policies include, but are not limited to, the Africa Mining Vision (AMV) and Africa Union Commodity Strategy (AUCS). These policies are intended to guide national governments and multi-lateral organisations optimise the role that minerals and commodities should play in the continent's development. See African Minerals Development Centre (AMDC) 'African Union's mineral resources strategy for the just transition and decarbonising future' December 2024 6.

21 MM Pretty & KO Odeku 'Harmful mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective' (2017) 8(4) *Environmental Economics* 14.

22 As above.

23 T Tambol & others 'Impacts of mining on the environment in West African Sahel: a review' (2023) 3(2) *Environmental Protection Research* 263.

24 As above.

25 S Asongu & NM Odhiambo 'Environmental degradation and inclusive human development in sub-Saharan Africa' (AGDI Working Paper No WP/18/017, African Governance and Development Institute 2018) 3. The authors argue that Africa is expected to bear the brunt of the most severe consequences of climate change and global warming. This heightened vulnerability is attributed to at least three key factors: the continent's ongoing energy crises, the far-reaching impacts of climate change itself, and the persistent mismanagement of energy resources and pollution-related challenges. Together, these interlinked issues amplify the environmental, social, and economic risks facing the region.

26 M Mubiala 'Mass deforestation as an alarming form of ecocide: adopting transitional justice measures to complement criminalization' (Policy Brief Series No 139, Torkel Opsahl Academic EPublisher 2022) 1.

agriculture, and extractive industries.[27] However, in the absence of robust ecocide laws across much of the continent, those responsible including multinational corporations and local actors, often operate with little fear of legal consequence. This regulatory vacuum fosters a culture of impunity, allowing environmental destruction to proceed unchecked.[28]

As African communities continue to grapple with the escalating impacts of climate change and environmental degradation, the recognition and enforcement of environmental rights become indispensable. These rights serve as powerful legal and moral tools to ensure that civil society across the continent is not sidelined in the decisions that will shape Africa's ecological and developmental future. Environmental rights, now widely acknowledged as fundamental human rights, encompass both the substantive right to a clean, healthy, and sustainable environment, and procedural rights, such as access to environmental information, public participation in decision-making, and access to justice. These procedural dimensions, articulated in Principle 10 of the Rio Declaration[29] and reinforced by the UNEP Bali Guidelines,[30] are especially vital in empowering local populations, including marginalised and impoverished communities, to assert agency over the environmental choices affecting their lives. Within the broader struggle to recognise ecocide as a prosecutable crime, these rights are not only safeguards but also a foundation for collective resistance against impunity and ecological destruction.

Although the African Union's (AU) legal framework remains relatively nascent, the safeguarding of the environment has long held a central place in the continent's social, cultural, and spiritual traditions.[31] For generations, environmental stewardship has been deeply embedded in indigenous values and communal practices, reflecting a profound respect for nature that predates formal legal codification.[32] Environmental protection is not only deeply rooted in Africa's cultural and spiritual heritage, but it also forms a fundamental component of human rights protection on the continent. The African human rights system, though still evolving within the relatively young AU legal order, recognises environmental rights as essential and inseparable from the broader framework of collective, economic, and social rights. This normative integration is increasingly reflected in the jurisprudence of regional courts which stand at the forefront of what

27 As above.

28 As above.

29 Rio Declaration on Environment and Development (adopted 14 June 1992, UN Doc A/CONF.151/26 (Vol I)).

30 United Nations Environment Programme 'Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters (Bali Guidelines)' (adopted 26 February 2010).

31 EP Amechi 'Enhancing environmental protection and socio-economic development in Africa: a fresh look at the right to a general satisfactory environment under the African Charter on Human and Peoples' Rights' (2009) 5 *Law, Environment and Development Journal* 58, 62.

32 As above.

may be described as African judicial environmentalism.[33] The African Commission on Human and Peoples' Rights (African Commission) has affirmed that environmental rights, alongside collective and socio-economic rights, are vital pillars of the continent's human rights architecture.[34] At the treaty level, environmental rights enjoy explicit recognition, creating a normative harmony between ecological integrity and human dignity.[35]

In spite of the above progressive framework, the African continent remains mired in persistent and unchecked environmental degradation. As we have highlighted above, multinational corporations engaged in extractive industries continue to pollute and exploit with impunity, often with the tacit approval or outright neglect of the host States' regulatory institutions. This gap between legal promise and lived reality underscores the urgent need for more robust legal mechanisms. The absence of ecocide as a recognised crime within Africa's legal system leaves this impunity unchallenged. Bridging this gap requires moving from rhetorical commitment to enforceable norms to enable the prosecution of those who devastate Africa's environment in pursuit of profit.

1.2 Defining ecocide

Although the concept of ecocide might appear new to some, it has been part of environmental discussions for more than forty years. The term was introduced in 1970 by American biologist Arthur Galston during the Conference on War and National Responsibility.[36] In the 1950s, Galston had contributed to the development of a chemical component used in Agent Orange, the defoliant widely deployed during the Vietnam War to obliterate vegetation and poison entire communities.[37] Disturbed by the destructive application of his work, he became an antiwar advocate and was the first to describe the large-scale devastation of ecosystems as ecocide. The term combines the Greek *oikos* (meaning 'house' or 'home') and the Latin *caedere* (meaning 'to kill' or 'destroy'), literally signifying 'the killing of our home.'[38]

33 CM Nwankwo 'The role of regional courts in judicial environmentalism in Africa' in IL Worika, ME Olivier & NC Maduekwe (eds) *The environment, legal issues and critical policies: an African perspective* (2019) 39–61.

34 *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR 2001) Communication 155/96, para 68.

35 M Addaney & AO Jegede (eds) *Human rights and the environment under African Union law* (2020) 5.

36 F Wijdekop 'Against ecocide: legal protection for earth' August 2016, http://www.greattransition.org/publication/against-ecocide (accessed 20 July 2025)

37 As above.

38 Independent Expert Panel for the Legal Definition of Ecocide *Commentary and Core Text* (Stop Ecocide Foundation, June 2021) https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf (accessed 30 July 2025).

In 1972, Swedish Prime Minister Olof Palme directly invoked the term ecocide in his opening address at the United Nations Conference on the Human Environment. He condemned the Vietnam War, stating that 'the immense destruction brought about by indiscriminate bombing, by large scale use of bulldozers and herbicides is an outrage sometimes described as ecocide, which requires urgent international attention'.[39] Among the participants, Indira Gandhi and Tang Ke proposed that extreme environmental devastation linked to warfare be incorporated into the catalogue of crimes against humanity.[40] The conference culminated in the adoption of the Stockholm Declaration, marking the first international legal instrument to explicitly affirm the right to a healthy environment. Meanwhile, at the People's Forum, a parallel grassroots event, thousands rallied in the streets, calling for ecocide to be recognised as a crime.[41]

In the 1970s and 1980s, the United Nations[42] actively explored the possibility of expanding the 1948 Genocide Convention[43] to include ecocide, with several countries supporting its inclusion. The 1985 Whitaker Report formally recommended adding ecocide to the draft Code of Offences Against the Peace and Security of Mankind. A 1986 draft of the Code[44] defined ecocide as a serious breach of essential international obligations aimed at protecting the environment, language widely supported by members of the International Law Commission. This definition evolved into draft article 26 in 1991, which proposed criminal liability for individuals causing widespread, long-term, and severe environmental harm. However, in 1995, this provision was unilaterally removed by the Commission's chairman, likely under political pressure from certain states and the nuclear lobby, resulting in ecocide's exclusion from the final Rome Statute of the International Criminal Court (ICC).[45]

In 2016, the Office of the Prosecutor at the ICC released a Policy Paper on Case Selection and Prioritisation, signaling its intention to consider crimes involving 'the destruction of the environment, the illegal exploitation of natural resources, or the illegal dispossession of land'.[46] This inclusion of environmental concerns reignited discussions surrounding the international criminalisation of environmental

39 R Walters 'Ecocide, climate criminals and the politics of bushfires' (2023) 63 *British Journal of Criminology* 285.

40 P Higgins & others 'Protecting the planet: a proposal for a law of ecocide' (2013) 59(3) *Crime, Law and Social Change* 251-66.

41 Wijdekop (n 36).

42 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.

43 Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

44 International Law Commission 'Draft Code of Offences against the Peace and Security of Mankind' [1986] II(2) *Yearbook of the International Law Commission* 10, UN Doc A/CN.4/SER.A/1986/Add.1 (Part 2).

45 Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

46 Office of the Prosecutor of the International Criminal Court 'Policy paper on case selection and prioritization' (15 September 2016) para 41.

harm.[47] Following suit, in November 2020, the Stop Ecocide Foundation convened a panel to develop a formal definition of ecocide.[48] As the charitable branch of Stop Ecocide International, an organisation co-founded by Polly Higgins dedicated to establishing ecocide as an international crime, the Foundation spearheaded this initiative. The panel met five times during the first half of 2021 and produced a proposed legal definition of the crime[49] entailing 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts'.[50]

Africa stands at the crossroads of environmental devastation and legal inertia. As extractive industries gouge the earth and leave behind poisoned rivers, scorched forests, and displaced communities, the legal framework meant to protect the continent's ecological soul remains disturbingly silent. The Malabo Court Protocol, adopted in 2014,[51] as a bold attempt to expand the jurisdiction of the yet-to-be-established African Court of Justice and Human and Peoples' Rights to cover international crimes,[52] offers a remarkable step towards regional accountability. It introduces corporate criminal liability and recognises crimes such as corruption, money laundering, and trafficking. However, it fails to name one of the continent's most urgent threats: ecocide. The systematic destruction of ecosystems continues unabated, yet it is not recognised as a crime within the protocol's ambit. This omission reveals a dangerous lacuna at the heart of Africa's emergent legal order.

This article contends that such silence must be broken. It argues that Africa must bridge the normative and institutional gap by

47 R Pereira 'After the ICC office of the Prosecutor's 2016 policy paper on case selection and prioritisation: towards an international crime of ecocide?' (2020) 31 *Criminal Law Forum* 179.

48 AM Hanna 'Killing our home: the case for creating an international crime of ecocide' (2023) 6 *Social Justice and Equity Journal* 6.

49 As above.

50 Stop Ecocide Foundation 'Statement to the 20th Assembly of States Parties to the Rome Statute of the International Criminal Court' (December 2021). Also see Independent Expert Panel for the Legal Definition of Ecocide (n 38). In line with the Foundation's proposed amendments to the Rome Statute to include ecocide in the Rome Statute, paragraph 2 of art 8*ter* provides that for the purposes of paragraph 1(which repeats word verbatim the definition of ecocide provided), a. 'Wanton' means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated; b. 'Severe' means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources; c. 'Widespread' means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings; d. 'Long-term' means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time; e. 'Environment' means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

51 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Court Protocol) (adopted 27 June 2014, not yet in force).

52 As above, art 28A.

recognising ecocide as a continental crime, one that speaks not only to environmental destruction but to intergenerational justice, sovereignty, and the survival of the continent's most vulnerable populations. Codifying ecocide within the African legal framework is not merely a symbolic act; it is a necessary legal intervention to hold state and corporate actors accountable for the irreversible harm inflicted upon Africa's ecological commons. Only through such recognition can the AU move beyond rhetorical environmentalism and towards genuine environmental justice.

This argument is developed through a doctrinal critique of African regional legal instruments, judicial practices, and institutional capacity. The analysis is anchored in emblematic African case studies from the oil-drenched lands of the Niger Delta to the rapidly disappearing Congo Basin, and draws comparative insights from global movements advocating for ecocide's inclusion into the Rome Statute as the 'fifth international crime'. This article tackles this quagmire from the normative and procedural weaknesses of the current African human rights system and also offers a bold proposal: to amend the Malabo Court Protocol, introduce a clear definition of ecocide, and empower African courts with a mandate to prosecute ecological crimes that transcend borders and generations.

2 ECHOES IN THE SILENCE: CRITIQUING AFRICA'S ENVIRONMENTAL JUSTICE SYSTEM

Despite the African continent's bold rhetorical commitments to environmental protection and human dignity, the existing human rights system remains ill-equipped to confront the unfolding crisis of ecocide. Beneath its normative surface lie troubling gaps: a lack of substantive recognition and procedural muscle to address large-scale environmental harm. While the African Charter and related instruments gesture toward ecological integrity, their provisions are often vague, their enforcement mechanisms weak, and their capacity to hold powerful polluters accountable deeply constrained. Ssebunya and others posit that in Africa, discussions on environmental justice in a typical African communitarian society has not been adequately conceptualised.[53] This section dissects these institutional and normative pitfalls, arguing that Africa's legal architecture, though rich in promise, is haunted by silence, a silence that enables the slow violence of ecocide to unfold unchallenged. It is within these substantive shadows and procedural shackles that environmental justice continues to be delayed, denied, and buried beneath the continent's wounded landscapes.

53 MS Ssebunya & others 'Environmental justice: towards an African perspective' (2019) 29 *African Environmental Ethics* 175.

2.1 Substantive shadows: the unwritten name of ecocide

Globally, the push to recognise ecocide as the 'fifth international crime' has crystallised around a rigorous legal definition put forward by the Panel of Independent Experts commissioned by Stop Ecocide International. As espoused above, the definition sets a clear legal threshold by combining unlawfulness and intent or recklessness, focusing on acts that cause significant ecological harm with serious consequences for both the environment and human populations. It encompasses a range of destructive conduct, from industrial pollution and deforestation to the destruction of marine and terrestrial habitats, and importantly includes harm that threatens the survival of communities and future generations. This emerging standard offers a concrete and enforceable framework for prosecuting large-scale environmental destruction as a crime under international law, placing ecological protection on equal footing with the gravest crimes against humanity.

This authoritative definition provides a vital benchmark for Africa's environmental jurisprudence, yet the continent remains conspicuously absent from these advances.[54] The Constitutive Act of the AU affirms the AU's commitment to promoting peace, security, sustainable development, and the protection of human and peoples' rights.[55] Central to this mandate is the imperative to foster environmental sustainability and uphold the dignity of African communities in the face of contemporary global threats including the accelerating climate and ecological crisis. Yet, while the AU's foundational vision enshrines ideals of collective progress and ecological responsibility, its legal instruments remain conspicuously silent on one of the gravest threats to the continent's survival. This silence is not merely a legal gap; it is a normative void that leaves the continent's most vulnerable ecosystems and the communities that depend on them exposed to slow violence without remedy.

The African Charter on Human and Peoples' Rights (African Charter),[56] regarded as the cornerstone of Africa's regional human rights framework, reflects a holistic approach to rights, embracing civil, political, economic, social, and collective dimensions.[57] It gestures towards environmental protection and the interdependence of human wellbeing and natural balance. However, it does so without naming or defining the destruction of the environment as a distinct legal wrong. As a result, while African legal norms appear environmentally

54 B Mahadew 'Can the African human rights system be an effective environmental justice system in Africa?' in DO Agelebe (ed) *Environmental justice in Africa: cultural and economic Impacts on the legal systems* (2025) 337.

55 Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) OAU Doc CAB/LEG/23.15, Preamble, arts 3 & 4.

56 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

57 As above, art 22.

conscious, they remain haunted by what they fail to say, the unwritten crime that stalks the continent's forests, rivers, and soils without ever being named.

2.1.1 The illusion of protection: article 24 and its limits on legal environmentalism

Article 24 of the African Charter recognises the right of all peoples to 'a general satisfactory environment favourable to their development'. On its face, this provision appears progressive, even visionary as it was among the earliest regional human rights instruments to explicitly mention environmental rights.[58] Du Plessis argues that although article 24 is regarded as an environmental right, its scope stretches in typical anthropocentric style far beyond eco-centric type environmental concerns.[59] People have the right to a 'general satisfactory environment', a phrase which, when read with the caveat that the environment should be favourable to peoples' development, implies at a minimum that an equilibrium should exist between peoples' natural environment and other factors necessary for development, including economic, social and cultural factors.[60]

However, upon closer examination, article 24 suffers from profound structural and interpretive weaknesses that render it more symbolic than substantive, especially when viewed through the lens of ecological destruction and the unrecognised crime of ecocide.

To begin, the language of article 24 is vague and non-committal. The phrase 'general satisfactory environment' lacks legal precision, offering no clear standard or threshold for what constitutes environmental harm, nor any benchmark for determining when a violation occurs. This want of definitional clarity creates interpretive ambiguity, leaving the provision open to minimalist readings that fail to capture the severity of large-scale ecological damage. The term 'favourable to their development' introduces another layer of conceptual ambiguity; does development refer to economic advancement, cultural survival, health, or intergenerational justice? Without elaboration, this provision lends itself to rhetorical invocation rather than practical enforcement.

Furthermore, article 24 is drafted as a *peoples' right*, not an individual right. While this collectivist framing is consistent with the Charter's broader emphasis on communal rights, it raises significant enforcement challenges.[61] In practice, peoples' rights often lack direct

58 CC Ikeanibe 'The right to development and climate justice: the Nigerian approach' LLM thesis, Dalhousie University 2022 77.

59 AA du Plessis 'The balance of sustainability interests from the perspective of the African Charter on Human and Peoples' Rights' in M Faure & W du Plessis (eds) *The balancing of interests in environmental law in Africa* (2011) 38.

60 As above.

61 See H Okoth-Ogendo 'Human and peoples' rights: what point is Africa trying to make?' in R Cohen & others (eds) *Human rights and governance in Africa* (1993).

justifiability, and mechanisms for determining who constitutes 'a people' remain contested in many African jurisdictions.[62] This legal abstraction allows states to avoid accountability for environmental harm by hiding behind the vagueness of collective entitlement, even when entire communities suffer the consequences of extractive violence.

In addition, the provision is silent on duties particularly state obligations to prevent, redress, and punish environmental destruction. Without explicit procedural guarantees, such as access to environmental information, public participation, or judicial redress, article 24 reads as a noble aspiration rather than an actionable right. Worse still, the Charter offers no accompanying provision that defines or criminalises acts of severe environmental harm. This leaves African legal systems incapable of responding to ecocide, even when the facts are overwhelming and the damage irreparable. The interpretive jurisprudence of the African Commission has sought to breathe life into article 24, particularly in the landmark *SERAC v Nigeria* decision.[63] Yet even this bold judgment did not elevate environmental destruction to the level of a punishable wrong let alone recognise it as a crime against humanity or nature. What emerges, then, is a legal regime that acknowledges environmental harm but stops short of confronting its agents or constructing a deterrent framework. The provision acts like a ceremonial curtain, draped across the Charter's surface behind which ecological injustice plays out with impunity.

In the context of ecocide, article 24 is thus emblematic of the African human rights system's broader failure: a promise unfulfilled, a norm without teeth. It symbolises the Charter's unwillingness to name the crime that haunts African soil, the deliberate, large-scale destruction of ecosystems for profit and power. Without urgent reform, including the codification of ecocide as a standalone crime, article 24 will remain a ghost in the legal text; present but incapable of protecting what it proclaims to defend.

62 As above.

63 *SERAC* case (n 34) (summary of decision), marked a pivotal moment in Africa's environmental human rights jurisprudence. The Commission held the Federal Republic of Nigeria responsible for grave violations of articles 2 (non-discrimination), 4 (right to life), 14 (right to property), 16 (right to health), 18(1) (protection of the family), 21 (peoples' right to freely dispose of their wealth and natural resources), and 24 (right to a satisfactory environment) under the African Charter. The Commission called for a wide array of redress, including an end to military attacks on the Ogoni people, prosecutions of implicated state and corporate actors, adequate compensation and resettlement for victims, and a comprehensive environmental clean-up. Importantly, the decision also demanded greater community access to information and regulatory processes, reinforcing the participatory dimension of environmental justice. Despite its strength, this decision remains largely unimplemented, highlighting the chronic enforcement gap in the African human rights system and the entrenched impunity of both state actors and transnational corporations operating in resource-rich regions. It exemplifies how environmental degradation in Africa is deeply entangled with human rights violations, corporate greed, and weak institutional safeguards.

2.1.2 The African Revised Nature Convention: strong in aspiration, weak in enforceability

The African Convention on the Conservation of Nature and Natural Resources, first adopted in Algiers in 1968 and revised in Maputo in 2003 (African Revised Nature Convention),[64] is Africa's most comprehensive legal instrument on environmental governance. It offers an ambitious and integrated framework for the sustainable management of natural resources, the protection of biodiversity, and the regulation of harmful activities across land, water, and air. On paper, the African Revised Nature Convention is an environmental manifesto for the continent, progressive in scope, ecocentric in spirit, and commendable in its rhetorical commitment to sustainability, intergenerational equity, and participatory governance.[65] Yet, despite its lofty aspirations, the African Revised Nature Convention remains a juridical toothless tiger, long on principles but short on enforceable mandates.

The African Revised Nature Convention's legal status is marred by inertia. To date, a majority of AU member states have failed to ratify or domesticate it. This poor ratification record undermines the Convention's authority as a continent-wide standard.[66] Unlike the African Charter, which has enjoyed near universal ratification within the continent and forms the basis for judicial interpretations at the African Court on Human and Peoples' Rights (African Court) and African Commission on Human and Peoples' Rights (African Commission), the African Revised Nature Convention floats in limbo. Its ambitious provisions remain unenforceable suggestions rather than binding obligations to majority of African non states parties.

Amechi rightly observes that the African Revised Nature Convention provides institutional structures aimed at facilitating implementation by state parties and includes mechanisms intended to promote compliance and enforcement.[67] While this is a commendable feature, this article contends that, despite such provisions, the Convention lacks a truly robust and coercive institutional enforcement framework capable of addressing large-scale environmental harm,

64 African Convention on the Conservation of Nature and Natural Resources (adopted 15 September 1968, Algiers, entered into force 21 October 1969). On 11 July 2003, revised in Maputo, entered into force 23 July 2016. African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) AU Doc EX/CL/82 (V).

65 As above, arts I, II, III & IV.

66 As of writing, 45 of 55 AU Member States have signed the Revised African Nature Convention, but only 17 have ratified and deposited instruments, reflecting a gap between normative commitment and legal implementation, https://au.int/sites/default/files/treaties/41550-sl-REVISED_AFRICAN_CONVENTION_ON_THE_CONSERVATION_OF_NATURE_AND_NATURAL_RESOURCES.pdf (accessed 25 July 2025).

67 EP Amechi 'Linking environmental protection and poverty reduction in Africa: an analysis of the regional legal responses to environmental protection' (2010) 6(2) *Law, Environment and Development Journal* 114-28.

particularly those acts that may rise to the level of ecocide.[68] There is no judicial or quasi-judicial body established under the Convention to interpret its provisions, review state compliance, or provide remedies for violations. In contrast to instruments like the African Charter, which have the African Commission and Court as enforcement avenues, the Convention relies entirely on political goodwill, state reporting, and intergovernmental cooperation, tools which have historically proven ineffective in compelling environmental compliance in Africa. In this respect, the Convention is more of a policy guideline than a rights-anchored legal instrument.

The African Revised Nature Convention is conspicuously silent on accountability for *serious* or *systemic* environmental harm. It fails to define environmental crimes, and there is no reference to ecocide or any other form of international environmental criminal liability. This normative omission is particularly damning in a region plagued by large-scale environmental atrocities from the Niger Delta's oil-choked creeks to the deforested lungs of the Congo Basin. These acts often involve transnational corporations, complicit state officials, and lasting ecological devastation, yet the Convention offers no legal scaffolding to trigger criminal investigations, prosecutions, or reparative action. The Convention suffers from a disconnection between environmental protection and human rights enforcement. While it acknowledges the intrinsic value of nature and sustainability, it does not explicitly link environmental destruction to the violation of human rights, nor does it align itself firmly with the African Charter's jurisprudence. This disjuncture reinforces the siloed nature of environmental governance on the continent where environmental law operates in isolation, rather than as a pillar of human dignity and justice.

In sum, the Convention reflects the paradox of African environmental governance: it aspires to ecological justice but lacks the legal, institutional, and political muscle to achieve it. It is emblematic of a broader pattern in the continent's legal landscape where powerful declarations are made in the preamble, but accountability disappears in the operative clauses. Without legal reform that bridges this aspiration-enforcement gap including the elevation of ecocide as a punishable crime, the Convention will continue to speak eloquently about nature while standing mute in the face of its destruction.

68 African Convention (n 64) outlines various institutional and procedural mechanisms, including the role of national authorities (art XXI), provisions on cooperation (art XXII), compliance (art XXIII), liability (art XXIV), the Conference of the Parties (art XXVI), and reporting obligations (art XXIX), these frameworks remain largely aspirational and weakly institutionalised. They lack the enforcement teeth necessary to deter or address large-scale environmental harm. Crucially, the Convention falls short of articulating or criminalising acts that constitute ecocide, thereby leaving Africa's most grievous environmental offences outside the reach of meaningful legal sanction.

2.1.3 The legal void: absence of ecocide in domestic African law

In a landmark advisory opinion, the International Court of Justice has clarified that states have binding legal obligations under international law not only to protect the climate system and the environment, but also to prevent harm, cooperate across borders, and provide reparations where damage occurs.[69] While the continental silence on ecocide is well-documented, this normative gap is compounded and entrenched by the lack of explicit recognition of ecocide in the domestic legal frameworks of many African states, especially those most vulnerable to environmental devastation. Countries rich in natural resources and prone to ecological crimes, such as Nigeria,[70] the Democratic Republic of Congo (DRC),[71] Angola, and South Africa,[72] have failed to criminalise ecocide within their national legislations. This omission not only perpetuates environmental harm but also marginalises indigenous and local communities whose rights and livelihoods are destroyed in the process. While many African states maintain standalone environmental protection laws and include penal provisions targeting environmental harm, these legal frameworks often fall short of meeting the gravity, scale, and intent thresholds required to qualify as ecocide. As a result, the most egregious and systemic acts of environmental destruction continue to evade categorisation as international crimes, thereby undermining deterrence and accountability.

As afore mentioned, these states possess environmental laws that tend to regulate specific activities such as mining, forestry, and pollution control largely through administrative permits and regulatory standards rather than through criminal sanctions for the wholesale destruction of ecosystems. Where environmental protection statutes exist, they often focus on preventing or mitigating damage, lacking provisions that criminalise intentional, reckless, or systematic ecological destruction. Consequently, severe acts of environmental

69 International Court of Justice 'Obligations of states in respect of climate change' Advisory Opinion, General List No 187, 23 July 2025.

70 P Johndick 'Witnessing ecocide: Niger delta' 10 June 2024, https://www.stopecocide.earth/sei-guest-blog/witnessing-ecocide-niger-delta (accessed 28 July 2025).

71 'Democratic Republic of the Congo, declaration supporting recognition of ecocide as an international crime' 31 October 2024, https://ecojurisprudence.org/initiatives/democratic-republic-of-congo-declaration-for-an-international-crime-of-ecocide/ (accessed 28 July 2025). Also see Power Shift Africa 'At AMCEN 20, the DRC calls for ecocide to be recognised as a crime' 16 July 2025, https://www.powershiftafrica.org/blog/at-africa-environment-talks-in-nairobi-the-drc-calls-for-ecocide-to-be-recognised-as-a-crime/ (accessed 25 July 2025); Stop Ecocide International 'Democratic Republic of the Congo, history of the DRC's commitment to the recognition of ecocide as an international crime' https://www.stopecocide.earth/drc (accessed 25 July 2025).

72 Stop Ecocide International 'Towards a regional protocol on environmental crime in Southern Africa: the role of ecocide law' 30 January 2025, https://www.stopecocide.earth/events/towards-a-regional-protocol-on-environmental-crime-in-southern-africa-the-role-of-ecocide-law (accessed 25 July 2025).

harm such as illegal mining, oil spills, and deforestation are addressed as regulatory infractions or civil wrongs, if at all, rather than as crimes of ecocide demanding prosecution and punitive action.

Moreover, the absence of domestic ecocide laws perpetuates a vicious cycle, reinforcing the continental gap in environmental justice. Without clear national laws defining and punishing ecocide, the African regional legal framework faces an uphill battle in establishing accountability. The domestic legal vacuum undermines efforts to create harmonised continental standards or to empower regional courts with jurisdiction over ecological crimes. It also reflects deeper political and economic realities, where short-term resource extraction goals and governance weaknesses discourage robust environmental criminalisation.

2.2 Procedural shackles: courts mute to earth's cry

White identifies three distinct levels of victimisation related to environmental harm: environmental justice, which concerns human victims; ecological justice, focusing on harmed environments; and species justice, addressing the suffering of animals and plants.[73] Our emphasis on humans, specific ecosystems, or non-human species reflects, to some extent, our recognition that 'matter matters', that is, the interconnectedness and deep entanglement of human and nonhuman, organic and inorganic matter within the complex web of life.[74]

Yet within the African human rights framework, this philosophical richness remains largely untranslatable into enforceable protections. Although progressive in its articulation of the right to a general satisfactory environment, the African Charter lacks robust interpretive and enforcement mechanisms. The African Court envisioned as the continent's guardian of justice, has been gradually weakened by state withdrawals, jurisdictional constraints, and its limited accessibility to individuals and NGOs. The result is a judiciary often sidelined from environmental adjudication, unable to give voice to the mangroves destroyed in the Niger Delta or the forests lost to logging cartels in the Congo Basin.[75]

This institutional silence is further complicated by a political economy that shields perpetrators of environmental harm. Extractive industries, often backed by powerful corporate actors and complicit state agencies operate with near-total impunity, while communities ravaged by pollution or land grabbing struggle to find redress. The Malabo Court Protocol, Africa's boldest attempt to expand criminal

73 R White 'Green victimology and non-human victims' (2018) 24(2) *International Review of Victimology* 244.

74 KA Schilz 'Decolonizing political ecology: ontology, technology and 'critical' enchantment' (2017) 24 *Journal of Political Ecology* 130.

75 F Adeola 'Environmental injustice and human rights abuse: The states, MNCs, and repression of minority groups in the world system' (2001) *Human Ecology Review* 39.

jurisdiction to international crimes, conspicuously omits ecocide. Within this continental gridlock, two intertwined challenges emerge: the entrenchment of elite impunity within a compromised legal system, and the jurisdictional and procedural voids that render the Earth's cries legally inaudible.

2.2.1 Thrones of impunity: the political economy of environmental justice

In Africa, environmental degradation is not merely a by-product of underdevelopment; it is actively perpetuated by political elites, transnational corporations, and state structures complicit in extractive violence.[76] The phrase 'thrones of impunity' captures this web of economic and political power, where wealth is built on ecological ruins and justice is smothered beneath diplomatic immunity, corporate lobbying, and selective law enforcement.[77]

Take the Niger Delta in Nigeria, a region emblematic of environmental collapse engineered under state watch.[78] For over six decades, multinational oil companies, notably Shell and Eni, Chevron, and Total, have extracted crude oil while discharging toxic waste into rivers, flaring gas day and night, and rupturing pipelines that spill millions of barrels of oil into fragile ecosystems.[79] The Bodo oil spills of 2008 and 2009, where 11 million gallons polluted the creeks and mangroves, devastated the livelihoods of over 15,000 Ogoni fishermen.[80] While Shell eventually agreed to an out-of-court settlement, no criminal accountability followed, and the structural conditions for further damage remain unchanged.[81] The Nigerian government, deeply entangled in oil revenues, has consistently failed to regulate these companies or enforce environmental standards, making it both culpable and complicit.[82]

In the DRC, the mining of cobalt, copper, and coltan, critical to the global green energy transition, has brought anything but sustainability.[83] Mining giants such as Glencore, China Molybdenum

76 WS Freslon & P Cooney 'Transnational mining capital and accumulation by dispossession' in P Cooney & WS Freslon (eds) *Environmental impacts of transnational corporations in the Global South* (2019) 12.

77 K Reed *Crude existence: environment and the politics of oil in northern Angola* (2009) 44-5.

78 EE Ekhator 'Regulating the activities of multinational corporations in Nigeria: a case for the African Union?' (2018) 20 *International Community Law Review* 30.

79 A Mukpo 'Spotlighting oil majors' 'ecocide' of Niger delta: Q&A with Michael J. Watts' 2 June 2023, https://news.mongabay.com/2023/06/spotlighting-oil-majors-ecocide-of-niger-delta-qa-with-michael-j-watts/ (accessed 25 July 2025).

80 AD Morgan 'Long-term effects of oil spills in Bodo, Nigeria' 28 July 2017, https://www.aljazeera.com/gallery/2017/7/28/long-term-effects-of-oil-spills-in-bodo-nigeria (accessed 10 December 2025).

81 As above.

82 As above.

83 D Makal 'Impunity and pollution abound in DRC mining along the road to the energy transition' 14 May 2024, https://news.mongabay.com/2024/05/impunity-and-pollution-abound-in-drc-mining-along-the-road-to-energy-transition/ (accessed 25 July 2025).

and Huayou Cobalt operate in near-lawless zones where toxic waste is dumped into rivers, forests are razed, and workers (often children) labour in inhumane conditions.[84] Villages around Lake Katwe and the Shinkolobwe mine suffer from birth defects, cancer, and water contamination, yet attempts to hold these companies accountable, either domestically or through regional mechanisms, have been futile. The Congolese state, mired in corruption and reliant on mining royalties, has no incentive to disrupt this chain of exploitation.[85]

In South Africa, the coal industry, led by entities like Eskom and Sasol, has choked communities in Mpumalanga, where air pollution levels have surpassed safe thresholds established by the World Health Organization.[86] The Highveld Priority Area, intended for special environmental protection, has become one of the most toxic airspaces on the planet. Despite a court ruling in 2022 mandating the government to act, enforcement has been piecemeal, and corporate polluters continue operations without serious regulatory consequences.[87]

In Tanzania, the forced evictions of the Maasai people from the Ngorongoro Conservation Area under the guise of conservation and tourism development often linked to elite-backed safari companies and foreign investors demonstrate another angle of environmental injustice: dispossession in the name of 'sustainable development'.[88] The state's alliance with the private sector turns indigenous peoples into environmental refugees, without legal remedy or access to regional justice.

Similarly, in Zambia, the Kabwe lead mine, once operated by British colonial interests and later nationalised, has turned Kabwe into one of the most polluted towns in the world. Lead poisoning affects over 90 per cent of children in the area, impairing cognitive development and overall health.[89] Although a class action lawsuit has been filed in South Africa against Anglo American, the case has faced significant legal resistance. No one has been criminally prosecuted, and neither

84 As above.

85 As above.

86 Centre for Environmental Rights 'Deadly air case update: pollution-trapped highveld communities 'need more than sympathy' 6 March 2021, https://cer.org.za/news/deadly-air-case-update-pollution-trapped-highveld-communities-need-more-than-sympathy (accessed 25 July 2025).

87 *GroundWork Trust and Others v Minister of Environmental Affairs and Others* [2022] ZAGPPHC 571.

88 See E Riboldi 'The conflict between conservation, tourism and indigenous land rights: the case of the Maasai in Kenya and Tanzania' Master's thesis, Università degli Studi di Padova, 2024. Also see MO Dapash & M Poole *Decolonizing Maasai history: a path to indigenous African futures* (Zed Bloomsbury Publishing 2025).

89 HRW 'Poisonous profit: lead waste mining and children's right to a healthy environment in Kabwe, Zambia' 5 March 2025, https://www.hrw.org/report/2025/03/05/poisonous-profit/lead-waste-mining-and-childrens-right-healthy-environment-kabwe (accessed 25 July 2025).

Zambia's judiciary nor its environmental agencies have mounted a credible response to what amounts to generational ecocide.[90]

Across the continent, elite impunity is fortified by weak investigative institutions, underfunded environmental regulators, and selective judicial interventions. The problem is not merely the absence of laws but the absence of political will to enforce them. For instance, many African states are party to treaties such as the African Charter, the African Revised Nature Convention, and the Bamako Convention on Hazardous Waste, yet compliance is often symbolic. Reports are filed, but communities continue to drink poisoned water and breathe poisoned air.

Thus, the political economy of environmental justice in Africa is rigged in favour of power, profit, and passivity. The absence of ecocide in the Malabo Court Protocol is not an oversight; it is a symptom of institutionalised impunity, where those seated on thrones, whether in parliament, boardrooms, or palaces, have no incentive to legislate against the very structures that sustain their rule. If environmental justice is to be achieved in Africa, the thrones of impunity must be unseated. This demands not only legal reform but a political reckoning, where corporate ecocrimes are prosecuted as crimes against humanity, and where communities are empowered to reclaim the ecological destiny stolen from them.

2.2.2 Jurisdictional labyrinths and the vanishing voice of the earth

The dream of environmental justice in Africa finds itself entrapped within a dense legal maze, a jurisdictional labyrinth where the cries of the earth are either lost in procedural silence or drowned in political compromise**.** While Africa has made notable strides in building normative frameworks and continental institutions, their effectiveness in addressing environmental atrocities, especially those bordering on ecocide, remains deeply flawed. This section interrogates the jurisdictional reach and institutional coherence of the African Court and the prospective African Court of Justice and Human and Peoples' Rights, engineered by the Malabo Court Protocol, whose promises of criminal accountability are marred by contradictions, exclusions, and troubling immunities.

The African Court, established under the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol),[91] was intended to provide a binding judicial forum to enforce the rights enshrined in the Charter. Yet, it is institutionally and jurisdictionally limited in both scope and

90 As above.

91 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) OAU Doc CAB/LEG/EXP/7.3/2 (rev 2).

access.[92] Only twelve of the AU's 55 member states have ever made an article 34(6) declaration allowing individuals and NGOs to submit cases directly to the Court.[93] Of these states, five – Rwanda, Tanzania, Benin, Côte d'Ivoire and Tunisia – have subsequently withdrawn their declarations after adverse rulings, thereby undermining the very fabric of regional judicial accountability.[94] Even where access is granted, environmental claims could face doctrinal hurdles, as the Court lacks an explicit environmental jurisdiction and must shoehorn such issues under the right to life, health, or development, an interpretive stretch that dilutes legal precision and remedial effectiveness.[95]

The Malabo Court Protocol, which is yet to enter into force due to a lack of ratifications, proposes to integrate into the to-be-established African Court of Justice and Human Rights a third chamber with international criminal jurisdiction to establish the African Court of Justice and Human and Peoples' Rights. Amongst others, it criminalises in articles 28L and 28L *bis* the crime of 'trafficking in hazardous wastes' and 'illicit exploitation of natural resources', respectively. While this appears commendable, ecocide is not explicitly included as a crime. The Malabo Court Protocol lacks a comprehensive definition of environmental destruction that captures widespread, long-term, or severe damage to ecosystems. This conceptual vagueness leaves space for minimalist interpretations and jurisprudential inconsistency.

Nevertheless, the Malabo Court Protocol exhibits progressive innovations that in some respects exceed even the ICC's Rome Statute. These include the insertion of no statute of limitations, ensuring accountability over time,[96] recognition of command responsibility, ensuring that high-level political and military leaders are not shielded by the chain of command;[97] the explicit recognition of corporate criminal responsibility, a breakthrough in a continent where corporate complicity in environmental atrocities is rampant but rarely accounted for;[98] and the *non bis in idem* rule.[99] However, these gains are undermined by the controversial article 46A bis, which grants blanket immunity to sitting heads of state and other senior government officials during their tenure. This immunity clause is antithetical to the foundational logic of international criminal law, which seeks to pierce

92 DJ Juma 'Access to the African Court on Human and Peoples' Rights: a case of the poacher turned gamekeeper' (2007) 4 *Essex Human Rights Review* 1.

93 African Court 'Declarations' https://www.african-court.org/wpafc/declarations/ (accessed 17 December 2025); see also SH Adjolohoun 'A crisis of design and judicial practice? curbing state disengagement from the African Court on Human and Peoples' Rights' (2020) 20 *African Human Rights Law Journal* 1-14.

94 African Court 'Declarations' https://www.african-court.org/wpafc/declarations/ (accessed 17 December 2025).

95 R Eno 'The jurisdiction of the African Court on Human and Peoples' Rights' (2002) 2 *African Human Rights Law Journal* 223-33.

96 Malabo Court Protocol, art 28A(3).

97 Malabo Court Protocol, art 46B(4).

98 Malabo Court Protocol, art 46C.

99 Malabo Court Protocol, art 46I.

the veil of sovereign impunity.[100] By entrenching impunity at the apex of power, the Malabo Court Protocol sabotages its own normative aspirations. In the environmental context, this is particularly troubling, as many of the most egregious environmental crimes in Africa are perpetrated or sanctioned by state authorities and their transnational partners. Immunities effectively immunise destruction.

The jurisdictional design of African judicial bodies also lacks an environmental legal corpus. Unlike the Inter-American,[101] or European systems,[102] where environmental jurisprudence is gradually being mainstreamed, the African Court has no consistent legal doctrine, procedural guidelines, or enforcement tools tailored to environmental harm. There is no regional framework for collective environmental litigation, no standing for nature or future generations, and limited integration of scientific and indigenous ecological knowledge into adjudicatory processes. This epistemic gap reflects a broader ecological marginalisation within Africa's human rights architecture.

In short, Africa's emerging criminal jurisdiction represents a symbolic triumph and a practical entrapment**.** While it gestures toward environmental accountability, the institutional architecture is so fraught with legal ambiguities, political immunities, and jurisdictional fragmentation that it may serve more as a smokescreen than a shield. Without radical reform, especially the removal of article 46A bis, codification of ecocide as a standalone crime, and universal access to regional courts, Africa risks becoming a theatre of ecological impunity without the power to judge. In a nutshell, the vanishing voice of the Earth is not merely poetic, it is political. And unless this voice is carved into the chambers of Africa's courts, it will continue to be buried beneath the weight of bureaucratic silence and elite complicity.

3 CONCLUSION

Africa's lands bleed in silence, and with each vanishing forest, poisoned river, and scorched savannah, not only does nature cry out, but so too

100 J Foakes *The position of heads of states and senior officials in international law* (2014) 1. See also R Cryer 'Towards an integrated regime for the prosecution of international crimes' PhD thesis, University of Nottingham, September 2000 103.

101 Inter-American Court of Human Rights 'Advisory Opinion OC-23/17' Series A No 23, 15 November 2017 (affirming the right to a healthy environment as autonomous under art 26 American Convention on Human Rights, recognising rights of future generations, and States' extraterritorial environmental obligations).

102 European Court of Human Rights has developed jurisprudence linking environmental harm with art 2 (right to life) and art 8 (right to private and family life) of the European Convention on Human Rights. See *Lopez Ostra v Spain* (1994) Series A no 303-C, (1995) 20 EHRR 277; *Öneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004). See also the *Aarhus Convention* (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (guaranteeing public participation, access to environmental information, and access to justice in environmental matters).

do Africa's people. Environmental degradation in Africa is not an abstract phenomenon; it is a lived injustice, disproportionately affecting the most vulnerable communities. Whether through displacement caused by extractive industries, poisoned waters due to toxic dumping, or degraded livelihoods tied to deforestation, these ecological violations are also violations of dignity, health, and life. Yet the African human rights system continues to speak in whispers, with its response to environmental crimes notably absent.

Articles 22 and 24 of the African Charter, which enshrine the rights to development and a satisfactory environment, and the African Revised Nature Convention offer immense potential. However, without recognising and criminalising ecocide, these remain lofty declarations, devoid of enforceability. The African Court does not have the jurisdiction to prosecute those who desecrate the Earth. Even the Malabo Court Protocol, despite its bold foray into international criminal law, is disturbingly mute on ecocide. A clear and urgent path forward must be taken. The AU must rise to this moment and amend the Malabo Court Protocol to enshrine ecocide as a core crime and empower the future African Court of Justice and Human and Peoples' Rights with explicit environmental jurisdiction.

Domestic harmonisation is vital. African states must not only ratify these frameworks but must align their national legislations to punish environmental crimes with clarity and resolve. Corporate impunity, elite immunity, and procedural shackles must be dismantled. Until Africa's courts rise to hear Earth's testimony, sustainable development will remain a broken vow buried beneath cobalt, contracts, and a conscience yet to awaken. Let the law breathe. Let the land speak. Let justice be done, for the Earth, for Africa, and for all who depend on her.