

*Promoting Environmental Rule of Law in Africa: Prospects and Challenges*

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**Kariuki Muigua\***

### **Abstract**

*This paper examines the concept of environmental rule of law in the African context. The paper defines environmental rule of law. It argues that environmental rule of law is key in the Sustainable Development agenda and the quest towards environmental sustainability. The paper explores the progress made towards enhancing environmental rule of law in Africa. It also discusses the challenges facing environmental rule of law in Africa. In addition, the paper offers proposals towards promoting environmental rule of law in Africa for Sustainable Development.*

### **1.0 Introduction**

Recognizing and safeguarding the rights of nature has become an urgent clarion call for the world in the quest towards sustainability<sup>1</sup>. Nature is at the key of human health and well-being and offers solutions to many of our most pressing global challenges including climate change, diseases and food insecurity<sup>2</sup>. However, despite its key role in human health and well-being, the natural environment is facing mounting problems flowing from human activities including climate change, pollution, biodiversity loss and the extinction of species, deforestation, land degradation, and increased incidents of environmental disasters<sup>3</sup>. Achieving environmental sustainability is therefore an ideal

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<sup>1</sup> Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Available at <https://www.garn.org/rights-of-nature/> (Accessed on 17/09/2024)

<sup>2</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 17/09/2024)

<sup>3</sup> United Nations Development Programme., 'Triple Planetary Crisis' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP-Triple-Planetary-CrisisInfographic.pdf> (Accessed on 17/09/2024)

recognizing and safeguarding the rights of nature while also fostering harmony between humanity and nature<sup>4</sup>.

The idea of sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>5</sup>. The concept of Sustainable Development provides a pathway towards achieving the ideal of sustainability<sup>6</sup>. Sustainable Development refers to development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs<sup>7</sup>. It aims to achieve the ideal of sustainability by promoting environmental protection and conservation, economic development and social progress<sup>8</sup>.

In the environmental context, sustainability entails conserving the environment and natural resources and protecting global ecosystems to support health and wellbeing, now and in the future<sup>9</sup>. It involves practices and strategies that ensure the long-term health of our planet's ecosystems<sup>10</sup>. Among the key strategies that has been advocated towards

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<sup>4</sup> International Science Council, 'Sustainable Human Development means Living in Harmony with Nature' Available at <https://council.science/blog/sustainable-human-development-means-living-inharmony-with-nature/> (Accessed on 17/09/2024)

<sup>5</sup> United States Environmental Protection Agency, 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 17/09/2024)

<sup>6</sup> Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) Integrated Reporting. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 17/09/2024)

<sup>7</sup> World Commission on Environment and Development, 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>8</sup> Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

<sup>9</sup> What Is Environmental Sustainability?., Available at <https://sphera.com/resources/glossary/what-is-environmental-sustainability/> (Accessed on 17/09/2024)

<sup>10</sup> Environmental Sustainability: Definition, Policy, Examples, and More., Available at <https://www.lythouse.com/blog/environmental-sustainability-definition-policy-examples-and-more> (Accessed on 17/09/2024)

achieving environmental sustainability is environmental rule of law<sup>11</sup>. According to the United Nations Environment Programme (UNEP), environmental rule of law is central to Sustainable Development<sup>12</sup>.

This paper examines the concept of environmental rule of law in the African context. The paper defines environmental rule of law. It argues that environmental rule of law is key in the Sustainable Development agenda and the quest towards environmental sustainability. The paper explores the progress made towards enhancing environmental rule of law in Africa. It also discusses the challenges facing environmental rule of law in Africa. In addition, the paper offers proposals towards promoting environmental rule of law in Africa for Sustainable Development.

## **2.0 Conceptualizing Environmental Rule of Law**

Environmental rule of law has been described as a refinement of the traditional notions of rule of law<sup>13</sup>. The idea of rule of law comprises a number of principles of a formal and procedural character, addressing the way in which a society is governed<sup>14</sup>. It has also been described as a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards<sup>15</sup>. The rule of law is essential in all sectors of governance including the environment<sup>16</sup>.

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<sup>11</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Available at <https://www.unep.org/topics/environmental-law-and-governance/promoting-environmental-rule-law/promoting-environmental> (Accessed on 17/09/2024)

<sup>12</sup> Ibid

<sup>13</sup> International Union for Conservation of Nature., 'Environmental Rule of Law' Available at <https://iucn.org/our-union/commissions/world-commission-environmental-law/our-work/history/foundational-documents-4> (Accessed on 17/09/2024)

<sup>14</sup> Waldron. J., 'The Rule of Law.' Available at <https://plato.stanford.edu/Entries/rule-of-law/> (Accessed on 17/09/2024)

<sup>15</sup> United Nations., 'What is the Rule of Law.' Available at <https://www.un.org/ruleoflaw/what-istherule-of-law/> (Accessed on 17/09/2024)

<sup>16</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Op Cit

Environmental rule of law is a concept that integrates environmental needs with the essential elements of the rule of law therefore providing the basis for improving environmental governance<sup>17</sup>. It has been described as the legal framework of procedural and substantive rights and obligations that incorporates the principles of ecologically Sustainable Development in the rule of law<sup>18</sup>. Environmental rule of law is attained when environmental laws and policies are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet<sup>19</sup>. It provides a framework for addressing the gap between environmental laws in text and in practice<sup>20</sup>.

The idea of environmental rule of law is central to sound environmental governance and achieving environmental sustainability<sup>21</sup>. According to UNEP, environmental rule of law highlights environmental sustainability by connecting it with fundamental rights and obligations<sup>22</sup>. Environmental rule of law reflects universal moral values and ethical norms of behaviour, and provides a foundation for fostering environmental rights and obligations<sup>23</sup>. It has been noted that environmental rule of law and presence of robust institutions are essential to respond to increasing environmental pressures including climate change, pollution, and biodiversity loss that threaten the ecological integrity of the Earth, in a way that respects fundamental rights and principles of justice and fairness<sup>24</sup>. Without environmental rule of law and the enforcement of environmental legal

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<sup>17</sup> Ibid

<sup>18</sup> International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Available at [https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/sessions/uploads/english\\_world\\_declaration\\_on\\_the\\_environmental\\_rule\\_of\\_law\\_final.pdf](https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/sessions/uploads/english_world_declaration_on_the_environmental_rule_of_law_final.pdf) (Accessed on 17/09/2024)

<sup>19</sup> Environment Law Institute., 'Environmental Rule of Law' Available at <https://www.eli.org/environmental-rule-law> (Accessed on 17/09/2024)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Op Cit

<sup>23</sup> Ibid

<sup>24</sup> International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Op Cit

rights and obligations, environmental governance, conservation, and protection may be arbitrary, subjective, and unpredictable<sup>25</sup>.

Environmental rule of law is therefore a concept that seeks to improve environmental governance and promote environmental sustainability and the overall Sustainable Development agenda. It combines environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance<sup>26</sup>. Environmental rule of law is premised on key governance elements including the development, enactment, and implementation of clear, strict, enforceable, and effective environmental laws, regulations, and policies that are efficiently administered through fair and inclusive processes<sup>27</sup>; protection of human rights, including the right to a safe, clean, healthy, and sustainable environment<sup>28</sup>; ensuring access to information, public participation, and access to justice in environmental matters<sup>29</sup>; and accountability, transparency, ethics, and integrity in environmental governance<sup>30</sup>.

It has been noted that the benefits of environmental rule of law extend far beyond the environmental sector<sup>31</sup>. Environmental rule of law also strengthens the rule of law more broadly, supports sustainable economic and social development, protects public health, fosters peace and security by preventing and defusing environmental conflicts, and protects human and constitutional rights including the right to a clean, healthy, and sustainable environment<sup>32</sup>. Promoting environmental rule of law is key towards achieving the Sustainable Development Goals (SDGs)<sup>33</sup>. Environmental rule of law is at

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<sup>25</sup> Ibid

<sup>26</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Available at <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report> (Accessed on 17/09/2024)

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Environment Law Institute., 'Environmental Rule of Law' Op Cit

<sup>32</sup> Ibid

<sup>33</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

the core of SDG 16, which is geared towards advancing rule of law at the national and international levels in order to promote peaceful and inclusive societies for Sustainable Development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels<sup>34</sup>. The rule of law in environmental matters has been described as essential for equity in terms of the advancement of the SDGs, the provision of fair access by assuring a rights-based approach towards environmental governance, and the promotion and protection of environmental and other socio-economic rights<sup>35</sup>. It is therefore imperative to promote environmental rule of law for sustainability.

### **3.0 Environmental Rule of Law in Africa: Prospects and Challenges**

There has been progress towards promoting environmental rule of law in Africa. Some African countries have codified environmental rights including the right to a clean, healthy, and sustainable environment in their national constitutions. For example, the *Constitution of the Republic of South Africa*<sup>36</sup> provides that everyone has the right to an environment that is not harmful to their health and well-being<sup>37</sup>. It further provides that every person has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution or ecological degradation, promote conservation, and secure ecologically Sustainable Development and use of natural resources while promoting justifiable economic and social development<sup>38</sup>. The *Constitution the Republic of Uganda*<sup>39</sup> also stipulates that every Ugandan has the right to a clean and healthy environment and urges the state to uphold this right. In addition, the *Constitution of the Republic of Kenya*<sup>40</sup> recognizes the right to a clean and healthy environment as a fundamental human right.

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<sup>34</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 17/09/2024)

<sup>35</sup> United Nations Environment Programme., 'Promoting Environmental Rule of Law' Op Cit

<sup>36</sup> Constitution of the Republic of South Africa., No. 108 of 1996

<sup>37</sup> Ibid, s 24 (a)

<sup>38</sup> Ibid, s 24 (b)

<sup>39</sup> Constitution of the Republic of Uganda., 1995.,

<sup>40</sup> Constitution of Kenya, 2010., Article 42., Government Printer, Nairobi



The Constitution of Kenya further stipulates several obligations by the state in respect of the environment including the obligation to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits, the need to encourage public participation in the management, protection and conservation of the environment, the obligation to protect genetic resources and biological diversity and the obligation to eliminate processes and activities that are likely to endanger the environment<sup>41</sup>.

It has been argued that environmental rule of law is closely connected to constitutional and human rights<sup>42</sup>. As a result, many constitutional and human rights depend on the environment – without a healthy environment and the clean air, water, and sustenance it provides, people would not have the most basic necessities for life therefore threatening human health and well-being<sup>43</sup>. Constitutional and human rights law therefore offers a framework for reinforcing and strengthening environmental rule of law since many environmental harms can be addressed through the protection of constitutional and human rights<sup>44</sup>. Framing environmental matters in a constitutional or human rights context can consequently bring heightened legal and moral authority to environmental violations as well as open additional avenues for addressing those violations<sup>45</sup>. Therefore, the codification of the right to a clean, healthy, and sustainable environment in national constitutions is a key measure towards promoting environmental rule of law in Africa.

There has also been progress towards promoting environmental rule of law in Africa through the establishment of national environmental framework laws in Africa<sup>46</sup>. For example, the *Environmental Protection Agency Act*<sup>47</sup> of the Republic of Ghana, establishes

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<sup>41</sup> Ibid, article 69

<sup>42</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>47</sup> Republic of Ghana., Environmental Protection Agency Act, 1994 (Act 490)

the Environmental Protection Agency whose functions include formulation of policies on all aspects of the environment and making recommendations for the protection of the environment. In addition, the *Environmental Management and Co-ordination Act*<sup>48</sup> of the Republic of Kenya establishes the legal and institutional framework for the management of the environment in Kenya. The Act upholds the right of every Kenyan to a clean and healthy environment and sets out various measures towards upholding this right<sup>49</sup>. In addition, the Act establishes the National Environment Management Authority which has the mandate to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment<sup>50</sup>. Further, the *Environmental Management Act*<sup>51</sup> of the United Republic of Tanzania provides the legal and institutional framework for sustainable management of the environment. The Act provides that every person living in Tanzania has a right to a clean, safe and healthy environment<sup>52</sup>. It also establishes an institutional framework for the management of the environment in the United Republic of Tanzania comprising of various bodies including the National Environment Management Council<sup>53</sup>.

Civic engagement is also fundamental in promoting environmental rule of law<sup>54</sup>. It has been noted that strengthening environmental rule of law requires a whole-of-society approach<sup>55</sup>. UNEP points out that while substantial emphasis is naturally placed on strengthening governmental institutions at the national, regional, and local levels towards promoting environmental rule of law, the civil society also plays an essential

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<sup>48</sup> Republic of Kenya., *Environmental Management and Co-ordination Act*, No. 8 of 1999, Government Printer, Nairobi

<sup>49</sup> Ibid

<sup>50</sup> Ibid, s 7 & 9

<sup>51</sup> United Republic of Tanzania., *the Environmental Management Act*, 2004

<sup>52</sup> Ibid, s 4 (1)

<sup>53</sup> Ibid, s 16 (1)

<sup>54</sup> United Nations Environment Programme., 'Civic Engagement - Environmental Rule of Law: First Global Report' Available at <https://stg-wedocs.unep.org/handle/20.500.11822/27380> (Accessed on 18/09/2024)

<sup>55</sup> Ibid

role<sup>56</sup>. Effective engagement of civil society in environmental matters results in more informed decision making by government, more responsible environmental actions by companies, more assistance in environmental management by the public, and more effective environmental law<sup>57</sup>. The fundamental role of civic engagement in environmental decision making is enshrined under the *Rio Declaration on Environment and Development*<sup>58</sup>. The Declaration stipulates that:

*'Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided (emphasis added).'*

Principle 10 of the Rio Declaration on Environment and Development therefore identifies access to information, public participation, and access to justice as key pillars of civic engagement in environmental matters<sup>59</sup>. There has been progress towards upholding these pillars and promoting environmental rule of law in Africa. African countries including Ghana, Democratic Republic of the Congo, Zambia, and Malawi have enshrined the constitutional right of access to information. Public participation is also set out in national constitutions in African countries including Kenya, Burundi, Uganda, and Zimbabwe<sup>60</sup>.

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<sup>56</sup> Ibid

<sup>57</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>58</sup> United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1)

<sup>59</sup> Ibid

<sup>60</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

Progress is also being made towards enhancing access to justice as a tool for promoting environmental rule of law in Africa<sup>61</sup>. Access to justice in environmental matters is a fundamental pillar of environmental rule of law<sup>62</sup>. The right of access to justice obliges states to guarantee every individual the right to turn to a court – or, in certain circumstances, to Alternative Dispute Resolution (ADR) processes in order to obtain remedies when it is determined that the individual’s rights have been violated<sup>63</sup>. In addition, access to justice means that the public has ready and meaningful access to courts, tribunals, commissions, and other bodies that are charged with protecting their rights and peacefully resolving disputes<sup>64</sup>. Access to justice in environmental matters is an effective means of securing environmental protection and conservation and promoting environmental rule of law<sup>65</sup>.

There has been progress towards enhancing access to justice in environmental matters in Africa. For example, in Kenya, the Constitution provides that if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter<sup>66</sup>. Courts in such cases may make orders to prevent, stop or discontinue any act or omission that is harmful to the environment, to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment, and to provide compensation for any victim of a violation of the right to a clean and healthy environment<sup>67</sup>. Courts and tribunals in Kenya therefore have an

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<sup>61</sup> Ibid

<sup>62</sup> Access to Justice in Environmental Matters., Available at <https://just-access.de/access-to-justice-in-environmental-matters/> (Accessed on 18/09/2024)

<sup>63</sup> Ibid

<sup>64</sup> United Nations Environment Programme., ‘Environmental Rule of Law: First Global Report’ Op Cit

<sup>65</sup> Access to Justice in Environmental Matters., Op Cit

<sup>66</sup> Constitution of Kenya, 2010., article 70 (1)

<sup>67</sup> Ibid, article 70 (2) (c)

important role to play in promoting environmental rule of law by enhancing access to justice in environmental matters.

At a continental level, the African Court of Justice and Human Rights and the African Commission on Human and Peoples' Rights are judicial bodies established pursuant to the *African Charter on Human and Peoples' Rights*<sup>68</sup> which play a key role in promoting environmental rule of law in Africa. It has been observed that the African Commission on Human and Peoples' Rights has continued to elaborate on the understanding of environment-related rights enshrined in the African Charter on Human and Peoples' Rights, including the right to a general satisfactory environment favourable to development, the right to life, and the right to cultural development and equal enjoyment of the common heritage of mankind<sup>69</sup>. For example, in the Endorois Case, the African Commission on Human and Peoples' Rights upheld the right of indigenous communities to utilize natural resources including ancestral land<sup>70</sup>. This decision is integral in enhancing environmental rule of law in Africa by recognizing the rights of indigenous people to property, to culture, to the free disposition of natural resources, and to development<sup>71</sup>.

The East African Court of Justice (EACJ) is another judicial body that is key in promoting environmental rule of law within the East African Community (EAC) through fostering access to justice in environmental matters<sup>72</sup>.

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<sup>68</sup> African Union., 'African Charter on Human and Peoples' Rights' Available at [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf) (Accessed on 18/09/2024)

<sup>69</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental\\_rule\\_of\\_law\\_progress.pdf?sequence=3](https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3) (Accessed on 18/09/2024)

<sup>70</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya., 276/2003

<sup>71</sup> Ibid

<sup>72</sup> East African Court of Justice., Environmental Matters., Available at <https://www.eacj.org/?case-classifications=environmental-matter> (Accessed on 18/09/2024)

It is therefore evident that progress has been made towards promoting environmental rule of law in Africa. However, while there has been an increase in the legal recognition of environmental rights across the continent, implementation and enforcement has not been robust<sup>73</sup>. It has been noted that challenges in promoting environmental rule of law in Africa stem from weak institutions and capacity, lack of political incentives, and insufficient public awareness including limited access to information related to environmental rights and limited access to the appropriate decision-making forums, especially at the local level<sup>74</sup>. Further, challenges facing court processes in Africa including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow can limit access to justice in environmental matters therefore hindering the growth of environmental rule of law<sup>75</sup>. It is imperative to address these challenges in order to effectively promote environmental rule of law in Africa.

#### **4.0 Conclusion**

It is imperative to promote environmental rule of law in Africa. Environmental rule of law is vital in addressing the gap between environmental laws in text and in practice towards strengthening environmental governance<sup>76</sup>. In order promote environmental rule of law in Africa, it is imperative to strengthen the implementation of environmental laws and policies at national and regional levels<sup>77</sup>. Strengthening the implementation of environmental laws and policies in Africa requires political interest and support, ensuring the dedicated human and financial resources necessary to address implementation challenges<sup>78</sup>. This can be achieved through capacity building including

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<sup>73</sup> The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Available at [https://accessinitiative.org/wp-content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf) (Accessed on 18/09/2024)

<sup>74</sup> Ibid

<sup>75</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

<sup>76</sup> Environment Law Institute., 'Environmental Rule of Law' Op Cit

<sup>77</sup> The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Op Cit

<sup>78</sup> Ibid

training of key officials responsible for enforcement of environmental rights laws and policies<sup>79</sup>. It also requires improving specific policy frameworks on the environment, fostering sound environmental governance, and adopting community strategies towards environmental conservation<sup>80</sup>.

There is also need to embrace and strengthen civic engagement in environmental governance in Africa<sup>81</sup>. It has been noted that effective engagement of civil society results in more informed decision making by government, more responsible environmental actions by companies, more assistance in environmental management by the public, and more effective environmental law<sup>82</sup>. African countries should therefore embrace civic engagement in environmental governance through promoting access to environmental information and fostering public participation in environmental governance<sup>83</sup>.

It is vital to realize and expand the available channels of access to justice in environmental matters<sup>84</sup>. Barriers hindering access to justice including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow should be addressed in order promote environmental rule of law in Africa<sup>85</sup>. Courts and tribunals at national, regional, and continental levels including the African Court of Justice and Human Rights and the African Commission on Human and Peoples' Rights should continue upholding environmental rights and shaping environmental jurisprudence in the continent in order

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<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Muigua. K., 'Strengthening Environmental Rule of Law for Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Strengthening-Environmental-Rule-of-Law-for-Sustainability-.pdf> (Accessed on 18/09/2024)

<sup>85</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," Op Cit

to promote environmental rule of law in Africa<sup>86</sup>. There is also need to utilize ADR processes including mediation and arbitration in order to enhance access to environmental justice in Africa<sup>87</sup>. ADR processes can speed the resolution of environmental disputes and conflicts while also enhancing collaboration and cooperation among parties<sup>88</sup>. The transnational applicability of ADR processes such as mediation and arbitration can also be utilized to resolve cross border environmental disputes and conflicts in Africa thus enhancing access to justice and promoting environmental rule of law at regional and continental levels<sup>89</sup>.

Promoting environmental rule of law in Africa is therefore necessary and achievable towards realizing the Sustainable Development agenda and actualizing the vision of Africa Union's Agenda 2063.

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<sup>86</sup> United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Op Cit

<sup>87</sup> Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf> (Accessed on 18/09/2024)

<sup>88</sup> Ibid

<sup>89</sup> Muigua. K., 'Managing Transboundary Natural Resource Disputes through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2024/06/Managing-Transboundary-Natural-Resource-Disputes-through-Alternative-Dispute-Resolution.pdf> (Accessed on 18/09/2024)



## References

Access to Justice in Environmental Matters., Available at <https://just-access.de/access-to-justice-in-environmental-matters/>

African Union., 'African Charter on Human and Peoples' Rights' Available at [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)

Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya., 276/2003

Constitution of Kenya, 2010., Government Printer, Nairobi

Constitution of the Republic of South Africa., No. 108 of 1996

Constitution of the Republic of Uganda., 1995.,

East African Court of Justice., Environmental Matters., Available at <https://www.eacj.org/?case-classifications=environmental-matter>

Environment Law Institute., 'Environmental Rule of Law' Available at <https://www.eli.org/environmental-rule-law>

Environmental Sustainability: Definition, Policy, Examples, and More., Available at <https://www.lythouse.com/blog/environmental-sustainability-definition-policy-examples-and-more>

Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' *International Sustainable Development Law.*, Vol 1

Giovannoni. E., & Fabietti. G., 'What Is Sustainability? A Review of the Concept and Its Applications.' In: Busco, C., Frigo, M., Riccaboni, A., Quattrone, P. (eds) *Integrated Reporting*. Springer, Cham. Available at [https://doi.org/10.1007/978-3-319-02168-3\\_2](https://doi.org/10.1007/978-3-319-02168-3_2) (Accessed on 17/09/2024)

Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Available at <https://www.garn.org/rights-of-nature/> (Accessed on 17/09/2024)

International Science Council., 'Sustainable Human Development means Living in Harmony with Nature' Available at <https://council.science/blog/sustainable-human-development-means-living-inharmony-with-nature/>

International Union for Conservation of Nature., 'Environmental Rule of Law' Available at <https://iucn.org/our-union/commissions/world-commission-environmental-law/our-work/history/foundational-documents-4> (Accessed on 17/09/2024)

International Union for Conservation of Nature., 'IUCN World Declaration on the Environmental Rule of Law' Available at [https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/sessions/uploads/english\\_world\\_declaration\\_on\\_the\\_environmental\\_rule\\_of\\_law\\_final.pdf](https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/sessions/uploads/english_world_declaration_on_the_environmental_rule_of_law_final.pdf)

Muigua. K., 'Attaining Environmental Justice through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Attaining-Environmental-Justice-through-Alternative-Dispute-Resolution.pdf>

Muigua. K., 'Managing Transboundary Natural Resource Disputes through Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2024/06/Managing-Transboundary-Natural-Resource-Disputes-through-Alternative-Dispute-Resolution.pdf>

Muigua. K., 'Strengthening Environmental Rule of Law for Sustainability' Available at <https://kmco.co.ke/wp-content/uploads/2023/09/Strengthening-Environmental-Rule-of-Law-for-Sustainability-.pdf>

Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

Republic of Ghana., Environmental Protection Agency Act, 1994 (Act 490)

Republic of Kenya., Environmental Management and Co-ordination Act., No. 8 of 1999, Government Printer, Nairobi

The Access Initiative., 'The Road to Realizing Environmental Rights In Africa: Moving From Principles to Practice' Available at [https://accessinitiative.org/wp-content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf)

United Nations Development Programme., 'Triple Planetary Crisis' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP-Triple-Planetary-CrisisInfographic.pdf>

United Nations Environment Programme., 'Civic Engagement - Environmental Rule of Law: First Global Report' Available at <https://stg-wedocs.unep.org/handle/20.500.11822/27380>

United Nations Environment Programme., 'Environmental Rule of Law: First Global Report' Available at <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>

United Nations Environment Programme., 'Environmental Rule of Law: Tracking Progress and Charting Future Directions.' Available at

[https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental\\_rule\\_of\\_law\\_progress.pdf?sequence=3](https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3)

United Nations Environment Programme., 'Promoting Environmental Rule of Law' Available at <https://www.unep.org/topics/environmental-law-and-governance/promoting-environmental-rule-law/promoting-environmental>

United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1)

United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

United Nations., 'What is the Rule of Law.' Available at <https://www.un.org/ruleoflaw/what-istherule-of-law/>

United Republic of Tanzania., the Environmental Management Act., 2004

United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability>

United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability>

Waldron. J., 'The Rule of Law.' Available at <https://plato.stanford.edu/Entries/rule-of-law/> (Accessed on 17/09/2024)

What Is Environmental Sustainability?., Available at <https://sphaera.com/resources/glossary/what-isenvironmental-sustainability/>

World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)