

THE RIGHT TO A HEALTHY ENVIRONMENT IN
WEST AFRICA: HOW A PROGRESSIVE RULING
SHOULD BE EXPANDED UPON AND BETTER
IMPLEMENTED

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I. INTRODUCTION

In 2012, the Economic Community of West African States (ECOWAS) Court of Justice held that the failure of the Nigerian government to adequately prevent and remedy environmental harms from oil spills in the Niger Delta violated the “right [of all peoples] to a general satisfactory environment favorable to their development.”¹ This case was the first time the Court addressed the right to a healthy environment, as provided in Article 24 of the African Charter on Human and People’s Rights (African Charter).² It is also one of few instances where the Court has engaged with this right—very few cases on the subject have been adjudicated by the Court in the ten years since the Court was established.

This Annotation argues that the ECOWAS Court of Justice is an underutilized institution for vindicating the right to a healthy environment and addressing severe environmental and human rights

1. Socio-Economic Rights and Accountability Project v. Nigeria, Decision 18/12, Economic Community of West African States Court of Justice [Econ. Cmty. W. Afr. States Ct. Just.], ¶ 119 (Dec. 14, 2012).

2. Lilian Chenwi, *The Right to a Satisfactory, Healthy, and Sustainable Environment in the African Regional Human Rights System* in HUMAN RIGHT TO A HEALTHY ENVIRONMENT 59, 74 (John Knox & Ramin Pejan eds., 2018).

challenges in West Africa. In Part II, it details the ecological challenges in the region. Next, in Part III, it summarizes the progression of the recognition of the right to a healthy environment globally and describes how the right has been applied by a pan-African judicial body regarding oil spills in the Niger Delta. It then delves into the landmark case by the ECOWAS court, *Socio-Economic Rights and Accountability Project v. Nigeria*, in Part VI and explores what has happened since the ruling. Finally, in Part V, this Annotation explains how the court could use the right to address environmental challenges in the region and argues for the value of developing such jurisprudence.

II. ECOLOGICAL AND ENVIRONMENTAL CHALLENGES IN ECOWAS

ECOWAS comprises fifteen states with incredibly diverse environmental landscapes, from the ecological diversity of the Niger Delta wetlands to the deserts of Mali, and from the tropics of Guinean rainforests to the coastal communities of Senegal.³ However, “each of its ecosystems is at serious risk” from climate change, destruction of the environment by extractive industries like mining and oil and gas exploration, and stressors such as overharvesting that result from rapidly growing populations.⁴

When it comes to climate change, the U.N. Environment Program has described the African continent as “the most vulnerable region in the world.”⁵ In West Africa,⁶ the biggest climate-related threats are shifting rainfall patterns that cause agricultural losses, water scarcity and extreme flooding, rising sea levels that result in erosion of the long and densely populated coastline, and increasing heat in the Sahel (the vast semi-arid grasslands south of the Sahara Desert).⁷ These climate-

3. U.S. AID, WEST AFRICA ENVIRONMENTAL THREATS AND OPPORTUNITIES ASSESSMENT 3 (2013), <https://usaidgems.org/Documents/FAA&Regs/FAA118119/WestAfrica2013.pdf> [hereinafter WEST AFRICA ASSESSMENT].

4. *Id.* at x.

5. *Responding to climate change*, UN ENVIRONMENT PROGRAM, <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (last visited Nov. 13, 2022).

6. Throughout this paper, references to West Africa denote the states that comprise the ECOWAS bloc.

7. RELIEF WEB, CLIMATE RISK PROFILE: WEST AFRICA, REGIONAL OVERVIEW (2018), <https://reliefweb.int/report/world/climate-risk-profile-west-africa>.

related threats are already resulting in mass migration and land conflicts in the region.⁸

Many states in West Africa also face severe ecological degradation as a result of extractives industries.⁹ The Niger Delta, which covers around seventy thousand kilometers, is the largest wetland in the world and exhibits extraordinary biological diversity.¹⁰ However, in recent decades the Nigerian government and multinational oil companies, such as Royal Dutch Shell, have carried out or allowed large-scale environmental damage.¹¹ Since extraction began in 1958, once-fertile farmlands and mangrove forests have become polluted, “virtually all” fish and wildlife have vanished, and uncontrolled oil spills “dot[] the landscape with puddles of ooze the size of football fields.”¹² Exposure to oil pollution through contaminated air, water, and food has resulted in extensive physical and mental health effects for communities living in the Delta.¹³ Life expectancy in the region is only forty years, compared to fifty-five years for Nigeria as a whole.¹⁴

Other areas of West Africa have also faced severe environmental pollution and destruction due to the extractives industry. The mining of gold, diamonds, and other minerals are key to the economies of several states including Guinea, Ghana, and Mali.¹⁵ Both small- and large-scale mining operations can severely degrade vegetation and soil and create negative environmental impacts like destruction of forests, leaching of polluting mining effluent, and chemical spills.¹⁶

In addition to this, West Africa’s population is predicted to grow faster than any other region in the world over the next fifteen to twenty

8. Robert Muggah, *In West Africa, Climate Change Equals Conflict*, FOREIGN POL’Y (Feb. 18, 2021), <https://foreignpolicy.com/2021/02/18/west-africa-sahel-climate-change-global-warming-conflict-food-agriculture-fish-livestock/>.

9. West Africa assessment, *supra* note 3, at 5.

10. Uyigüe Etiosa & Agho Matthew, CMTY. RSCH. & DEV. CTR. NIGERIA, COPING WITH CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION IN THE NIGER DELTA OF SOUTHERN NIGERIA 24 (2007).

11. Okechukwu Emmanuel Effoduh, *The ECOWAS Court, Activist Forces, and the Pursuit of Environmental and Socioeconomic Justice in Nigeria 8* (2017) [hereinafter *Activism in ECOWAS Court*] (LLM Thesis, York University) (Osgoode Digital Commons).

12. *Id.*

13. David R. Boyd (Special Rapporteur on Human Rights and the Environment), *The right to a clean, healthy and sustainable environment*, ¶ 31, U.N. Doc. A/H.R.C./49/53 (Jan. 12, 2022).

14. *Id.*

15. Global Business Reports, *West Africa’s Mining Industry*, ENGINEERING & MINING J. (2014), https://www.gbreports.com/wp-content/uploads/2014/08/WestAfrica_Mining2014.pdf.

16. WEST AFRICA ASSESSMENT *supra* note 3, at 5.

years.¹⁷ The need to feed more people lends itself to the overexploitation of marine fisheries, monoculture farming, and conversion of forests for agriculture and livestock. However, these practices harm the environment by reducing biodiversity and increasing infectious and vector-borne diseases such as malaria.¹⁸ In some places, they also displace local communities.¹⁹

III. THE RIGHT TO A HEALTHY ENVIRONMENT

A. *Expanding Recognition Globally*

In July 2022, the U.N. General Assembly adopted a resolution recognizing the right to a clean, healthy and sustainable environment.²⁰ However, many regional agreements and national constitutions, including those of ten of ECOWAS's fifteen states,²¹ already recognized this right in various forms over decades prior to the passing of the Resolution.²² Nationally, plaintiffs have used the right to seek relief from a “wide scope” of environmental harms including pollution, the effects of climate change, and biodiversity loss.²³ However, the right remains non-justiciable in most regional instruments.²⁴ In fact, the African Charter is the first and only regional agreement that allows for the interpretation of the right to a healthy environment by a review body.²⁵

17. *Id.* at ix.

18. *Id.* at 7.

19. *Id.* at 7–9.

20. G.A. Res. 76/300 (July 26, 2022).

21. David R. Boyd, *Catalyst for Change*, in HUMAN RIGHT TO A HEALTHY ENVIRONMENT, *supra* note 2, at 19–23 (detailing that Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Guinea, Mali, Niger, Nigeria, Senegal and Togo all recognize the right to a healthy environment explicitly or implicitly in their national constitutions).

22. *Id.* at 17, 18 (explaining that the governments of at least 155 countries have recognized the right; it enjoys “direct constitutional protection in 100 countries,” and the rest have either read it into the constitutional right to life or have ratified regional treaties like the African Charter that include a version of the right to a healthy environment).

23. *Id.* at 9.

24. The right hasn't always been justiciable in national courts either. See Effoduh, *supra* note 11, at 11, which details how many low- and middle-income countries imposed constitutional limits on the justiciability of environmental and socioeconomic rights due to economic constraints, instead labeling them “policy objectives.” However, activists have begun to change this through strategic litigation. In India and Nigeria, successful challenges to the non-justiciability of the right to a healthy environment have been brought.

25. John Knox (Special Rapporteur on Human Rights and the Environment), *Human rights obligations relating to the right to a clean, healthy and sustainable environment*, 4, U.N. Doc. A/H.R.C./37/59 (Jan. 24, 2018).

Article 24 of the Charter provides that all peoples have the right to “a general satisfactory environment favorable to their development.”²⁶

Interpreting the Charter’s provisions falls within the authority of the African Commission on Human Rights (African Commission), a quasi-judicial body responsible for promoting human rights throughout the African continent. Beyond the Commission, the Charter’s provisions can also be applied by the regional courts in African subregions, including the East African Court of Justice and the ECOWAS Court of Justice. These courts’ rulings are legally binding on their member states.²⁷ These regional instruments play a particularly important role in advancing the right to a healthy environment; although the right has been recognized in the national constitutions of more than 100 countries, it has not tangibly improved environmental protections by legislation in many African states.²⁸ Instead, it was recognition of the right in the African Charter that “led Kenyan and Nigerian courts to make important rulings finding the right to be an essential part of the constitutional right to life, although not explicitly articulated as such in either the Kenyan or Nigerian constitutions.”²⁹

B. *Niger Delta Challenge at the African Commission*

In 2001, the African Commission had its first opportunity to interpret Article 24.³⁰ Two NGOs filed a petition alleging that the military government of Nigeria failed to meet its duties in relation to the right, both by directly participating “in the contamination of air, water and soil and thereby harm[ing] the health of the [indigenous] Ogoni population” in the Niger Delta region, and by failing to protect the

26. Organization of African Unity (OAU), African Charter on Human and Peoples’ Rights art. 24, June 27, 1981, 21 I.L.M. 58 (1982) [hereinafter African Charter].

27. This is in contrast with the Commission’s final decisions, which are called recommendations. Its mandate is quasi-judicial and, as such, its recommendations are not legally binding on the states concerned. However, the recommendations are included in the Commission’s annual activity reports which are submitted to the OAU Assembly of Heads of State and Government (Org. of African Unity [OAU] Charter art. 54). If they are adopted, they become binding on State parties.

28. David Boyd, *Catalyst for Change*, in HUMAN RIGHT TO A HEALTHY ENVIRONMENT, *supra* note 2, at 26 (“The majority of the nations where there is no evidence that constitutional recognition of the right to a healthy environment has influenced environmental laws are in Africa”).

29. *Id.* at 24.

30. Lilian Chenwi, *The Right to a Satisfactory, Healthy, and Sustainable Environment in the African Regional Human Rights System*, in HUMAN RIGHT TO A HEALTHY ENVIRONMENT, *supra* note 2, at 74.

Ogoni population by regulating the oil companies properly.³¹ The African Commission “described the degree of socioeconomic and environmental injustice in the Niger Delta region of Nigeria as ‘humanly unacceptable’ and a ‘nightmare.’”³² The Commission found that the Nigerian government failed to prevent pollution and regulate oil companies in violation of Article 24 and other provisions of the African Charter, and urged the government to undertake a comprehensive clean-up of lands and rivers in the region, compensate victims, and require environmental and social impact assessments for all future oil drilling.³³

The ruling was praised for its ground-breaking precedent in protecting the right to a healthy environment, by “establish[ing] strong precedent for [its] judicial enforcement within the international community.”³⁴ Despite this, in the ten years since the decision, there has been “little or no change in the actual environmental conditions endured by communities in oil-producing regions.”³⁵

IV. THE ECOWAS COURT AND THE RIGHT TO A HEALTHY ENVIRONMENT

The ECOWAS Court of Justice is the principal legal organ of ECOWAS.³⁶ It was established in 1991 by the ECOWAS Revised Treaty, and its jurisdiction and access to the court was substantially expanded in 2005 by the Supplementary Protocol.³⁷ The expansion has made the court an effective venue for human rights claims for three reasons. First, it allows the court to hear cases brought by individuals “on application for relief for violation of their human rights,” which was not previously within the court’s scope.³⁸ NGOs are also permitted to bring cases on behalf of individuals alleging violations of their

31. *Social and Economic Rights Action Centre v. Nigeria*, Communication 155/96, African Commission on Human and Peoples’ Rights [Afr. Comm’n H.P.R.], ¶ 50 (May 27, 2002), https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf.

32. Effoduh, *supra* note 11, at 18.

33. *Social and Economic Rights Action Centre v. Nigeria*, Communication 155/96, at 9.

34. Danwood Mzikenge Chirwa, *Toward Revitalizing Economic, Social, and Cultural Rights in Africa*, 10 HUM. RTS. BRIEF 17, 25 (2002).

35. David Boyd, *Catalyst for Change*, in HUMAN RIGHT TO A HEALTHY ENVIRONMENT, *supra* note 2, at 24.

36. *Court establishment*, ECON. CMTY. OF W. AFR. STATES CT. OF JUST., <http://www.courtecawas.org/about-us-2/> (last visited Dec. 12, 2022).

37. *Id.*

38. Econ. Cmty. Of W. Afr. States Supplementary Protocol 01/05 art. 10(d).

human rights.³⁹ Second, unlike most other international tribunals,⁴⁰ the Supplementary Protocol instigates that local remedies do not need to be exhausted and cases can be filed concurrently with those in national courts.⁴¹ The local remedies requirement is a significant barrier in many human rights tribunals including the African Commission, where many cases fail due to lack of exhaustion.⁴² Finally, the court has interpreted “human rights” in individual applications to include all international instruments to which ECOWAS member states are party, including the African Charter, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴³ This means the court can “cherry-pick from different human rights instruments and statutes” and “has a wide level of flexibility in the application of human rights law and in the adjudication of the cases before it.”⁴⁴

A. Landmark SERAP Case

In 2009, eight years after the African Commission’s communication, another Nigerian NGO, the Socio-Economic Rights and Accountability Project (SERAP), filed a case at the ECOWAS Court of Justice against the Nigerian government and seven oil companies, including Shell Petroleum Development Company.⁴⁵ The application detailed specific environmental damage caused by oil spills that lasted for

39. *See, e.g., Inc. Trustees of Fiscal and Civic Right Enlightenment Foundation v. Nigeria*, Decision 18/16, Econ. Cmty. W. Afr. States Ct. Just., 15 (June 7, 2016) (noting that public interest litigation allows NGOs to bring actions on behalf of “victimized groups who ordinarily are without sufficient means of access to legal services or justice”).

40. *See generally, e.g., Chittharanjan F. Amerasinghe, LOCAL REMEDIES IN INTERNATIONAL LAW: SECOND EDITION* 142-190 (2004) (explaining the scope and application of the local remedies requirement in courts around the world).

41. *Koraou v. Republic of Niger*, Decision 06/08, Econ. Cmty. W. Afr. States Ct. Just., ¶ 40, 53 (June 7, 2016). However, these individual human rights applications cannot be made while the same matter has been instituted before another international court for adjudication. Econ. Cmty. Of W. Afr. States Supplementary Protocol 01/05 art. 10(d). “International courts” has been interpreted to include procedures of “international investigation or settlement” that are not strictly courts, like the African Commission on Human and Peoples’ Rights.

42. *Guidance: Exhausting domestic remedies under the African Charter on Human and Peoples’ Rights*, MINORITY RTS. GROUP INTL., at 2, https://minorityrights.org/wp-content/uploads/2016/04/Domestic-remedies-guidance_final.pdf, (last visited Dec. 12, 2022).

43. *Socio-Economic Rights and Accountability Project*, Decision 18/12, ¶ 28.

44. Effoduh, *supra* note 11, at 27.

45. *Socio-Economic Rights and Accountability Project*, Decision 18/12, ¶3.

days and were never properly cleaned up.⁴⁶ As a result, the land and water that traditionally supported communities in the area of the spills through agriculture and fishing were polluted, and local residents complained of air-borne symptoms, including respiratory problems.⁴⁷

The ECOWAS Court found that the Nigerian government had violated the right to a healthy environment as guaranteed in Article 24.⁴⁸ It held that Article 24 “requires every State to take every measure to maintain the quality of the environment such that the state of the environment may satisfy the human beings who live there, and enhance their sustainable development.”⁴⁹ The court offered a definition of the environment as “an indivisible whole, comprising the biotic and abiotic natural resources, notably air, water, land, fauna and flora and the interaction between [them],” and stated that “the quality of human life depends on the quality of the environment.”⁵⁰ Moreover, it stressed that merely adopting legislation to regulate the extractive industry, creating agencies to ensure implementation, and even allocating resources is not enough to meet a state’s obligation “if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered.”⁵¹

While the court dismissed the claims against the companies involved because only member states and ECOWAS institutions can be sued before the court for human rights violations,⁵² it denied the Nigerian government’s “attempt to shift the responsibility on[to] the holders of a license of oil exploitation,” finding that the evidence showed “the core of the problem in tackling the environmental degradation in the Region of Niger Delta resides in lack of enforcement of the legislation.”⁵³ Thus, it was the lack of enforcement—the omission to act—that amounted to the state’s failure to adopt measures, as required

46. *Id.* ¶ 13-18.

47. *Id.* ¶ 18.

48. *Id.* ¶ 112.

49. *Id.* ¶ 101.

50. *Id.* ¶ 100.

51. *Id.* ¶ 105.

52. See *UEFA-Postel v. Côte d’Ivoire*, Decision 21/17, Econ. Cmty. W. Afr. States Ct. Just., ¶17 (July 9, 2020) (reasoning that the obligations at issue arise from international law and, in particular, conventions signed by states and binding only on them).

53. *Socio-Economic Rights and Accountability Project*, Decision 18/12, ¶108.

under Article 1 of the African Charter, to ensure the enjoyment of the right to a general satisfactory environment laid down in Article 24.⁵⁴

B. *Setbacks Since SERAP*

The SERAP ruling was celebrated as a groundbreaking application of the right to a healthy environment and an example of how regional courts can aid activist agendas in regions with few resources.⁵⁵ However, the court has not substantially expanded upon the right since that case; Article 24 has only been mentioned in five of the 193 decisions issued since 2015,⁵⁶ and three of these five cases did not directly address Article 24.⁵⁷

The remaining two cases concerned environmental and other damage caused by corporations. *Osaghae v. Nigeria* also dealt with adverse effects of oil spills in the Niger Delta, including environmental damage, but focused on allegations of corruption and killings by the

54. *Id.* ¶108 (“Despite all the laws it has adopted and all the agencies it has created, the Federal Republic of Nigeria was not able to point out in its pleadings a single action that has been taken in recent years to seriously and diligently hold accountable any of the perpetrators of the many acts of environmental degradation which occurred in the Niger Delta Region”).

55. Effoduh, *supra* note 11. Two other interesting aspects of the ruling that have important implications for future environmental cases are:

1. The court denied Nigeria’s challenge that a three-year statute of limitations had passed since some of the spills had taken place. It held that since the effects of the spills were ongoing given that they had not been effectively cleaned up, the violation was “persistent and continuous” and the suit was not time-barred.

2. The court did not allow monetary damages, deeming them inappropriate for claims affecting a community. Instead, it found that “a collective benefit adequate to repair, as completely as possible, the collective harm that a violation of a collective right causes” is necessary. “This further develops the environmental rule of law in Africa on the issue of the nature of compensation to be awarded to a group, when their environmental rights are breached”. However, given that implementation and enforcement of judgments is a serious problem, this ultimately may negatively affect the likelihood that victims will receive some form of remediation.

56. *See generally* Decisions, COURT ECOWAS, <http://www.courtecowas.org/decisions-3/> (last visited Dec. 12, 2022) (listing all of the court’s decisions since 2015).

57. *Mfa v. Republic of Nigeria*, Decision 06/19, Econ. Cmty. W. Afr. States Ct. Just. (Feb. 26, 2019) and *Oguche v. Republic of Nigeria* Decision 24/18, Econ. Cmty. W. Afr. States Ct. Just. (July 4, 2018) related to violent border skirmishes that displaced local populations, where the court did not engage with the Article 24 pleading, and *Ako v. West African Monetary Agency*, Decision 28/15, Econ. Cmty. W. Afr. States Ct. Just. (Dec. 2, 2015) mentioned the right only tangentially in a wrongful termination suit.

military.⁵⁸ *Molmou v. Guinée* regarded allegations by 115 people living in the Saoro district of Guinea that the Société Guinéenne de Palmier à Huile et d'Hévées displaced them forcibly from their land.⁵⁹ In both cases, the court's only engagement with Article 24 was to impose a restriction on the right—that it is a “collective right” and thus only applies to a “people” within the definition of international law and not to individuals.⁶⁰ This interpretation differs from that of many courts around the world, which have affirmed both the individual and collective dimensions of the right.⁶¹ Because the court ruled that neither set of plaintiffs qualified as a community or people, it did not allow them to seek relief under Article 24. Neither group was allowed to exercise the right to a healthy environment, and both suits were decided in favor of the defendant states.⁶²

Arguably, lack of implementation and enforcement is the biggest setback for the court in protecting the right to a healthy environment. As David Boyd, U.N. Special Rapporteur on human rights and the environment, emphasized; “relatively few cases reach these regional bodies, . . . remedies thus far have been limited, and on-the-ground implementation of decisions has been modest at best and in some cases,

58. *Osaghae v. Republic of Nigeria*, Decision 03/17, Econ. Cmty. W. Afr. States Ct. Just., at 3–5 (Oct. 10, 2017).

59. *Molmou v. Guinea*, Decision 16/16, Econ. Cmty. W. Afr. States Ct. Just., at 3 (May 17, 2016).

60. *Id.* at 9 (“The first question which arises is therefore to know, in the first instance, whether the applicants really represent a people as their argument might suggest. The answer, for the court, is obviously negative Not being a ‘people,’ the applicants cannot in any way claim the range of rights that international law recognizes for such an entity” (Translated from the original French)).

61. *See, e.g.*, Advisory Opinion OC-23/17, *The Environment and Human Rights* ¶ 59, Inter-Am. Ct. H.R., (Nov. 15, 2017) (“The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life”); *Baadi v. Attorney General*, High Ct. of Kenya, Decision 22/12 (2012) (Kenya) (interpreting the right to a healthy environment set out in article 70 of Kenya’s constitution as applying to individuals); *Slvn. Const. Ct.*, Decision U-I-30/95-26, 1/15-1996 (1996) (Slovenia) (interpreting the standing requirement broadly to find that all persons have an interest in preventing damage to the environment, and that this interest is not restricted to where they reside).

62. *Osaghae v. Republic of Nigeria*, Decision 03/17, at 30; *Molmou v. Guinea*, Decision 16/16, at 12 (listing also additional reasons for its ruling in favor of the defendants, including a lack of evidentiary support).

completely nonexistent.”⁶³ Boyd cited the decision by the African Commission because, “despite praise for the legal precedent established by the Commission’s ruling” that widespread oil pollution violated the right to live in a healthy environment, “there has been little or no change in the actual environmental conditions endured by communities in oil-producing regions” since the judgement.⁶⁴ Indeed, in 2022, SERAP released a report on the situation concerning communities in the Niger Delta, which found that the region “remains deeply in the grips of squalor, poverty and environmental degradation. A complete contrast to the ‘right to a clean, safe and healthy environment.’”⁶⁵

V. WAY FORWARD

This Annotation contends that the right to a healthy environment is an underutilized tool that could be applied to many of the severe environmental challenges in West Africa. Thus far in West Africa, the right has only been applied to pollution caused by the oil industry in the Niger Delta. However, in other jurisdictions,⁶⁶ the right to a healthy environment has been employed to protect local communities against other potentially polluting corporate projects, such as gold mines near drinking water, offshore oil and gas development, petrochemical projects, and a lack of adequate waste management, sewage treatment, and provision of clean water.⁶⁷ In addition to pollution, the right has been employed to halt or remediate projects that lead to biodiversity loss such as the privatization of public forests,⁶⁸ and even to demand domestic actors to consider the risks of climate change in policy and business practices.⁶⁹ In West Africa, climate change, mining, and drastic changes to forests and other ecosystems are key ecological problems. Each of these could be challenged via the right to a healthy environment and provide relief for victims, including those that are from

63. David Boyd, *Catalyst for Change*, in HUMAN RIGHT TO A HEALTHY ENVIRONMENT, *supra* note 2, at 24.

64. *Id.*

65. SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT, WE ARE ALL VULNERABLE HERE: HOW LACK OF ACCOUNTABILITY IS FUELING HUMAN RIGHTS VIOLATIONS IN THE NIGER DELTA 9 (Sept. 28, 2022).

66. *Id.* at 32 (citing cases “in countries as diverse as Russia, Romania, Chile, and Turkey” where citizens brought lawsuits based on their right to a healthy environment and received compensation for damage to their health caused by industrial pollution).

67. *Id.* at 32–34.

68. *Id.* at 36.

69. David Boyd (Special Rapporteur on Human Rights and the Environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 83, U.N. Doc. A/75/161 (July 15, 2020).

“politically weak and marginalized communities.”⁷⁰ There are many such communities that “have enjoyed success in the courts in enforcing their right to a healthy environment.”⁷¹ The recognition of the right on a global scale through the U.N. General Assembly resolution has the potential to strengthen its application in regional and national courts, by helping to standardize or further define the right.⁷² This could be particularly helpful in ECOWAS if it clarified that the right can be claimed individually as well as collectively.

Even if the ECOWAS judgments are not implemented fully, there is still political and social value in a regional tribunal recognizing the right to a healthy environment in different contexts. ECOWAS judgments are looked at as “part of a broader strategy of political mobilization;” a way for those with international law on their side, particularly marginalized communities who previously lacked such legal recourse, to “increase[e] their out of court political leverage.”⁷³ The decisions trigger “domestic debates within national discourse spaces”⁷⁴ and, while member states may not fully implement the judgments due to lack of financial or human resources, the court “enjoys the grudging respect” of member states, and “is not summarily dismissed by even the most recalcitrant states.”⁷⁵

This can be demonstrated in the case of the Niger Delta. Although the impact of the ECOWAS Court of Justice’s ruling in SERAP on the national government has been “sub-optimal,” it is still “significant.”⁷⁶ The decision contributed to the government making efforts to clean up oil pollution in Ogoniland and shaped the contents of Nigeria’s Revised National Policy on the Environment of 2016.⁷⁷ Over time, it has helped make the Nigerian government “more sensitive to the environmental and social responsibilities of the oil companies,” and “to its own duty to ensure the enjoyment of the right to a healthy

70. David Boyd, *Catalyst for Change*, in HUMAN RIGHT TO A HEALTHY ENVIRONMENT, *supra* note 2, at 32.

71. *Id.*

72. G.A. Res. 76/300 (July 26, 2022).

73. Obiora Chinedu Okafor, *On the Modest Impact of West Africa’s International Human Rights Court on the Executive Branch of Government in Nigeria*, 35 HARVARD HUM. RTS. J. 169, 170 (2022).

74. Solomon Ebobrah, *The ECOWAS Community Court of Justice: A Dual Mandate with Skewed Authority*, in INT’L CT. AUTH. 82, 94 (Karen J. Alter et al. eds., 2018).

75. Okafor, *supra* note 72, at 170.

76. *Id.* at 173.

77. *Id.* at 195 (explaining the policy’s goal of improving national justiciability of environmental rights under the National Constitution and under the African Charter that was the basis of the ECOWAS case).

environment.⁷⁷⁸ This demonstrates that rulings from the court have had positive impacts on the recognition of the right to a healthy environment in West Africa. If more cases were brought to the ECOWAS court to expand this body of jurisprudence, it could be a valuable tool in vindicating the right to a healthy environment and addressing the severe environmental and related human rights abuses faced by the West African region.

78. *Id.* at 191.