

A Rights-Based Approach to Greening the Justice System

Jack Mwimali ^{*1}, Moses Marang'a ², Edgar Ayongah ³, Irene Ndirangu ⁴, & Martha Bowen ⁵

¹ Professor of Law, JKUAT & CEO/Auditor, National Council for Law Reporting

² Executive Director, National Council on the Administration of Justice

³ Programs Officer, National Council on the Administration of Justice

⁴ Programs Officer, National Council on the Administration of Justice

⁵ Legal Assistant, National Council for Law Reporting

* E-mail of the corresponding author: jmwimali@kenyalaw.org

Abstract

With climate change adversely affecting individuals and communities in diverse ways, from extreme weather conditions to diminishing access to natural resources, violations of the rule of law often arise. To mitigate or address these violations, one or more justice system institutions come into play. These institutions undertake diverse greening initiatives as part of a primary function or procedural role. These initiatives, as explored and argued in this paper, should be approached from a rights-based perspective. Broadly, a rights-based approach to greening the justice system entails integrating environmental protection considerations into its functioning, operational processes and practices while respecting the rights of humans and nature. It accentuates the fact that the impacts of climate change worsen the various vulnerabilities faced by individuals and communities in society, particularly the poor, marginalised and indigenous populations. To strengthen a rights-based approach to greening the justice system, deliberate actions are essential to protect the well-being of the most vulnerable populations and natural resources while promoting inclusive solutions. These actions involve, among others, enforcing environmental laws, timeously holding violators accountable and promoting sustainable green practices. By adopting a rights perspective in greening, the justice system can help build a more resilient, dynamic and accountable society.

Keywords: Climate Change, Greening, Rights, Justice System

DOI: 10.7176/JLPG/142-01

Publication date: September 30th 2024

BACKGROUND

The justice system, comprising state and non-state institutions or agencies, with a mandate of resolving conflicts and handling one or several aspects of the administration of justice, plays a critical role in maintaining the rule of law and the delivery of justice. In recent times, the justice system has been adopting greening while maintaining the rule of law and delivering justice. As noted by Aleknevičienė & Bendoraitytė (2022), greening aids in reducing greenhouse gas emissions and reinforces efforts to address the adverse impacts of climate change. Within the justice sector, greening the system involves integrating environmentally friendly practices into day-to-day functions and operations. Further, it entails addressing criminal and social justice issues while protecting and conserving the environment (White & Graham, 2015).

Given the involvement of many justice sector institutions in maintaining the rule of law and delivery of justice, a systems approach to service delivery suffices. An integral aspect of a systems approach to service delivery is guaranteeing the respect and enforcement of human rights in all justice sector institutions and at every stage of the administration of justice. Knox and Morgera (2022) expound on the presence of an autonomous right to a healthy environment, which includes procedural access rights in environmental treaties and the application of the rights to life in human rights conventions. It has also been rightly observed that promoting the enjoyment of human rights helps to advance climate mitigation and adaptation. For instance, UNFPA & Queen Mary University of London (2023) advocates for integrating rights-based approaches into national climate commitments. Human rights exist as part of the larger ecosystem.

In the broad paradigm of environmental sustainability, therefore, it is paramount to note that observance of human and other rights is embedded within the broad justice system operations. Indeed, with the emergence of climate change and environmental sustainability, there has been a clamour to include human rights dimensions in ecological issues. The right to a clean environment, the right to a peaceful environment, the right to access environmental information, the right to participate in environmental decision-making, and the right to access justice in environmental matters are among the most prominent components of green environmental human

rights. Furthermore, various aspects of greening permeate the justice sector operations, from functional greening to physical, procedural and human resources greening.

It is against this background that this study has explored how the justice system can integrate a rights-based approach to greening and environmental sustainability while providing recommendations to be adopted by justice sector actors. A rights-based approach to greening the justice system can be viewed through the prism of entrenching rights into the justice system's functioning and operations. In this paper, emphasis has been placed on entrenching human rights in greening, greening to address vulnerability, and jurisprudence on the rights-based approach to greening the justice system.

The study examines a rights-based approach to greening the justice system on the premise that its institutions are expected to maintain environmental and social order, protect individual and collective environmental rights, and provide mechanisms for addressing conflicts and violations of these rights. Since the justice system is meant to safeguard the observance of human rights and implement the rule of law throughout the justice chain, entrenching a rights-based approach to greening must be seen as essential for sustainability and the continued observance of the rule of law. The study further recognises that a rights-based approach to greening is fundamental in addressing existing vulnerabilities and marginalisation brought about by the adverse effects of climate change. It builds upon the global and regional instruments, research and policies on environmental justice, sustainability, human rights, climate change and environmental preservation.

FRAMEWORKS, THEORIES AND CONCEPTUALISATION OF A RIGHTS-BASED APPROACH TO GREENING THE JUSTICE SYSTEM

Various legal and normative frameworks, as well as theories and concepts, profoundly influence the incorporation of human rights in various aspects of greening the justice system. The impact of these frameworks, theories, and concepts shapes the application of rights principles to greening the justice system.

Legal and Normative Frameworks on Greening the Justice System

The human rights-based approach to advancing environmental sustainability within the justice system underscores the necessity of establishing legally binding frameworks and normative structures. These frameworks are designed to guide justice sector institutions in integrating eco-friendly practices into their operations and functions, reducing their environmental footprint, and promoting sustainable practices.

Several global and regional instruments guide the justice sector players in entrenching greening processes in their day-to-day work. The Stockholm Convention on Waste Management, for instance, emphasizes the need to manage waste effectively to prevent environmental harm caused by Persistent Organic Pollutants (POPs). The convention calls for the apprehension and prosecution of offenders. This highlights the justice system's crucial role in safeguarding public health and environmental rights by holding accountable those who violate the environment, thereby advocating for citizens' rights to a pollution-free environment.

The United Nations Framework Convention on Climate Change (UNFCCC) also brings to the forefront the ideals of inclusivity and participatory governance in addressing climate issues, resonating strongly with human rights principles. By encouraging justice practitioners to adopt these inclusive and cooperative approaches, the Convention aims to minimize confrontations and encourage resolutions that support the collective right to a stable climate and enhance participatory governance in climate-related issues. The UNFCCC's principle on adaptation would require that the justice sector establish specialized environmental dispute resolution systems, thereby strengthening the observance of the critical right to access to justice.

The Sustainable Development Goals (SDGs), especially SDG 16, emphasise the promotion of peaceful and inclusive societies for sustainable development, access to justice for all, and building effective, accountable institutions at all levels. SDG 16 further calls for inclusiveness and access to information and further seeks to promote non-discrimination through inclusiveness for all for sustainable development. This goal highlights the crucial link between environmental sustainability and human rights protections, envisioning the justice system as a critical protector of individuals' rights to live in a healthy environment.

The Rio Declaration on Environment and Development introduces environmental protection into the development dialogue. It advocates peaceful resolution to ecological disputes, aligning with human rights principles. Principle 10 is particularly notable for supporting access to information and justice and participation in environmental matters. The declaration is fundamental to creating transparent, fair and accessible legal and administrative processes for environmental issues, solidly rooted in the right to a clean and healthy environment. Principle 20 integrates gender equality, a human right, by recognising the critical role of women in environmental management and development.

For its part, the World Charter for Nature, adopted in 1982 by the UN General Assembly, sets out in Article 23 that all persons, by their national legislation, shall have the opportunity to participate, individually or with others, in formulating decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage. The Charter promotes the right to access justice and public participation in environmental matters.

The 1972 Stockholm Declaration also set the stage for integrating human rights perspectives into environmental policies and laws. By prioritizing legal actions against climate change, the justice system is crucial in safeguarding the rights to life, health, and a clean environment. Proactive measures in investigating, arresting, prosecuting, and trying environmental offenders are vital to protecting these rights.

Regional frameworks, such as the European Climate Law, the African Union's Agenda 2063, and the ASEAN Declaration on Environmental Sustainability, also provide a clear framework for institutions to address climate change and environmental degradation through the lens of human rights. These frameworks emphasize the justice system's duty to enforce laws that mitigate climate change impacts and protect the environment, thereby advancing both environmental sustainability and human rights.

In a nutshell, the human rights approach to greening the justice system is embedded in the existing legal and normative instruments geared towards a more environmentally friendly society. These instruments ought to guide the development and enforcement of environmental policies and actions that fulfil human rights.

Theoretical Framework on Human Rights Approach to Greening

It is important to recognise that greening is a complex issue that has to be examined through various frameworks from disciplines such as environmental studies, sociology, criminology, law, economics and political science to offer a comprehensive underpinning. Jabareen (2009) and Tourangea (2022), emphasise the importance of a multidisciplinary approach in investigating and understanding complex phenomena. In this respect, a systems approach can be used to offer an appropriate basis for theorising the human rights approach to greening the justice system. Therefore, the broad theoretical underpinning of the study is the systems approach to greening, which views the various justice sector institutions as being interconnected rather than as isolated entities. The approach provides a basis for mainstreaming a rights-based approach in all facets of climate change responses, both mitigation and adaptation.

According to Arnold and Wade (2015), a system comprises groups or combinations of interrelated, interdependent, or interacting elements forming collective entities. Hence, systems thinking consists of elements, interconnections and a function, pointing to synergistic analytic skills for understanding systems and predicting their behaviours (Arnold & Wade, 2015). According to Tourangeau (2022), the hallmark of systems thinking is the numerous concepts used to respond to problems within complex systems, diverging viewpoints, incomplete knowledge and many relationships. White (2018) and Ramage and Shipp (2020) contribute to systems thinking by emphasising the well-being of the environment and incidences of harm.

From a systems approach, it is possible to highlight some fundamental theories that can help justice sector stakeholders adopt a human rights approach to greening. According to the human rights theory of environmental protection, for example, human rights are conceived to encompass not only human interests but also ecological integrity. This approach is crucial for addressing the significant impact of human activities on the environment. The field of human rights offers distinct mechanisms and methods to empower states, communities, and individuals to protect both human rights and ecosystems. For instance, Chalabi (2018) developed a model outlining the nature, scope and content of the right to a clean environment, demonstrating that this right exists on individual, collective, and global levels. This model provides practical guidance for a wide range of governmental and non-governmental justice sector actors.

Another critical theory is the eco-justice theory developed by Martinez Alier. In his influential work on the environmentalism of the poor, published in 2002, Alier highlighted the connection between environmental sustainability and social justice by emphasising the environmental impacts of legal processes and policies. The theory promotes a balanced approach that aligns environmental concerns with social justice imperatives (Martinez, 2002). It also offers a less-explored perspective on integrating environmental issues into the justice system, considering justice system agencies as essential in addressing social injustice resulting from environmental harm.

The environmental justice theory, for its part, centres on environmental disparities among various social groups and emphasises the unequal effects of environmental risks and dangers on marginalised communities. The theory calls for the right of workers to a safe and healthy work environment, rejecting the idea that they should have to choose between an unsafe livelihood and unemployment. It also opposes the harmful practices of corporations and investigates the structural and procedural components of the justice system and their influence on human and environmental rights (Martinez, 2002).

The other notable theory is restorative justice, which exemplifies reparation and restoration of relationships and the promotion of communal healing as critical roles of the justice system. Applying restorative justice to address environmental crime would require adjustments in its application to non-environmental crime (Pain et al., 2016).

The green criminology theory also offers another good backdrop for greening the justice system. The initial discussion of green criminology appeared in 1990 (Lynch et al., 2021) and was proposed as a unique speciality within the broader discipline of criminology. The theory looks at criminology as transcending acts adjudged as criminal to cover other societal harms (Brisman, 2014). It emphasises environmental harms as actionable regardless of legality and concentrates on exposing criminal environmental commissions and omissions (Stretesky & Lynch, 2014). While the traditional restorative justice theory does not recognise the non-human victims, such as the natural environment with the flora and fauna as holders of rights, green criminology theory offers a more holistic approach that ties the legality and uncertainty of harm with human and non-human life and the environment. According to Sollund (2021), adopting an interdisciplinary, non-speciesist green criminology is essential for confronting environmental crimes and harms.

However, it is essential to be sensitive to Halsey's (2004) warning that criminalising behaviour is an inferior way of reducing its occurrence. Thus, other social theories come in handy. For example, while the norm-activation theory seeks to explore the influence of moral behaviour on environmental issues (Zhang et al., 2013), the social identity approach reviews how group identification and shared beliefs predict environmental actions. The approach suggests that environmental actions among people in an organisation are predicted by factors such as in-group identification, in-group norms and goals, and collective efficacy beliefs (Fritsche et al., 2018). Closely related to the social identity approach is the social exchange theory, which suggests that when organisations support employees, a positive connection and a sense of reciprocity is created (Paillé et al., 2019). Therefore, it is imperative for individuals and communities to be aware of their environmental rights to allow behavioural and consciousness change.

Therefore, through the existing theories, justice sector institutions can incorporate a rights-based approach into their respective environmental sustainability goals and practices in line with their institutional functions and operations. For instance, Employee Green Behaviour (EGB) can also integrate aspects of human rights, especially workers' right to a safe and healthy work environment. Moreover, rights-based approaches can also be adopted in technology adoption and community engagement greening of the justice system.

Conceptual Framework on Rights-Based Approach to Greening

Conceptually, it is notable that the impacts of climate change are not uniform and may amplify existing inequalities, a rights concern. The inequalities covering economic status, gender, age, geographic location and nationality shape an individual's or a community's vulnerability to environmental changes. Hence, the concept of rights-based greening intertwines the observance of inherent rights with the quest for ecological balance, requiring a nuanced understanding of the diverse vulnerabilities that exist within societies.

The justice system is crucial in safeguarding rights worldwide. By adopting rights as a foundational principle for environmental protection, it is possible to foster a deeper connection between human rights and the rights of nature. Moreover, promoting environmental constitutionalism is vital. It recognises that a healthy environment is a fundamental right and can address the environmental problems felt most acutely by those often underserved by existing legal structures (May & Daly, 2017).

RIGHTS-BASED APPROACH TO GREENING

A rights-based approach to greening the justice system can be viewed through the prism of entrenching rights into the justice system's functioning and operations. In this paper, emphasis has been placed on entrenching human rights in greening, greening to address vulnerability, and jurisprudence on the rights-based approach to greening the justice system.

Entrenching Human Rights in Greening

Modern international and constitutional laws recognise environmental rights as protected rights that ought to be secured through the justice system. Noteworthy is that enforceable rights related to the environment include those that seek to ensure human flourishing and well-being, such as the rights to life, personal integrity and health. A potential path to greening the justice system has emerged under the transnational Rights of Nature Movement. The movement recognises the right of nature as a response to environmental degradation and that nature has fundamental rights that depend not only on human needs (Gilbert et al., 2023) but should be protected by the law and, in some contexts, is itself granted legal standing. This differs from traditional approaches to environmental law that view the environment solely through human use and exploitation. Thus, it has been argued that nature should be protected and its rights should be adequately balanced alongside human interests (Boyd, 2017).

Myriad examples highlight efforts to entrench human rights in international, regional and local greening. At the international level, for example, the United Nations General Assembly (UNGA) underscored the intrinsic connection between human rights and climate protection, acknowledging the vital role of sustainable development and emphasising the need to safeguard human welfare and rights for present and future generations. Further, the UNGA recognised that environmental degradation, directly and indirectly, undermines the effective enjoyment of all human rights. Thus, on the one hand, the Framework Principles on Human Rights and the Environment require states to guarantee a clean, healthy, safe, and sustainable environment. These obligations are essential when developing and reviewing national legislation on managing renewable natural resources and agricultural development, gender equality and climate change, as well as preventing conflicts arising from competition for natural resources (UNGA, 2018).

Furthermore, the justice system plays a crucial role in protecting property rights by interpreting and enforcing policies and laws on ownership to promote environment-friendly land tenure systems. For instance, advocating for secure land rights would lead to the protection of ecosystems and overall environmental sustainability.

At the regional level, the African Charter on Human and Peoples' Rights recognises the right to a generally satisfactory environment that is favourable to development and imposes obligations on member states to protect it. In America, the Inter-American Court of Human Rights (IACHR) has issued an advisory opinion recognising the right to a healthy environment and highlighting the responsibility of governments for significant environmental damage both within and beyond their borders. The Court emphasised that those potentially affected by transboundary harms must have access to justice regardless of nationality, residence, or the location of the environmental damage. Therefore, citizens of states that recognise the IACHR's jurisdiction can bring claims regarding environmental harms affecting their human rights to the Court.

Elsewhere, within the Council of Europe, it has been acknowledged that there are interconnected challenges of climate change, biodiversity loss and pollution. The Council has recognised that this has adverse effects on vulnerable populations and has consequently adopted recommendations concerning human rights to be implemented by member states. Under these recommendations, member states are obligated to prioritise the prevention, precautionary and polluter-pay-principles to mitigate environmental harms and to hold those responsible accountable. Additionally, states are required to ensure intergenerational equity in current actions and not compromise the well-being of future generations (Council of Europe, 2022). The states must also ensure that corporate entities comply with human rights standards and environmental principles in their operations (European Network of National Human Rights Institutions, 2022).

At the national level, some national constitutions, local laws and court rulings have recognised nature or natural entities as having legal rights or personhood, thus enabling them to enforce the enjoyment of human rights. These legal implications are evident in the constitutions of Ecuador and Bolivia, court decisions from Colombia, Bangladesh and India, and legislative provisions in Uganda, New Zealand, and Spain (Kauffman & Martin, 2017).

Greening to Address Vulnerability

Persistent and continuing climate change yield vulnerability. As noted by Newell (2022), climate change disproportionately affects marginalised groups who bear the brunt of its effects despite contributing minimally to it. The impact of climate change varies based on factors such as economic status, gender, age, geographical location, and nationality, leading to inequalities. The variation stems from discriminatory socio-economic systems, which impede access to resources and services (FAO, 2024). Focusing on a rights-based approach to greening is ideal to address this vulnerability as it recognises that persons are affected in diverse ways. Hence, it has been argued that distinguishing the different social groups is necessary to give specific attention to those already marginalised (Sida, 2018). This opinion is concurred by McLeod, Barr and Rall (2019), who argue that climate-related crises hinder vulnerable communities to develop resilience and adapt.

It is widely acknowledged that climate change may yield conflicts. In such instances, vulnerable and marginalised communities are disproportionately harmed in the transition to a sustainable environment. For instance, climate change undermines efforts towards peace and security by aggravating land scarcity, urban-rural migrations, and increased patterns in pastoral mobility, as well as increasing the risk of violent conflict (Pörtner et al., 2022). The insecurity linked to climate change includes the impacts on food, water and energy supplies, loss of livelihoods, forced migration and displacement, and increased competition over natural resources (UNEP & EU, 2022). According to FAO (2023), it is usually the vulnerable groups that are adversely affected by climate change, hampering their chances of taking advantage of the available agrifood systems to reduce poverty and hunger. Averting this would require developing formal and informal justice systems capacities to ensure that the rights of individuals and communities regarding land and natural resources are protected (IDLO, 2022). As noted by Damasceno (2016), efficient land use is a tool against climate change as it can help prevent deforestation. As

a solution, and as noted by Picard (2021), the justice sector can ensure that natural resources are fairly and equitably shared within communities.

A link between climate, racial and gender justice has also been made with the recognition that the climate crisis disproportionately impacts marginalised groups, especially where gender, race, and ethnicity are concerned (UNFPA, 2022; EPA, 2021). As the World Health Organization (2014) noted, recognising societal differences is necessary to address the gendered consequences of climate change. For example, Ross and Solinger (2017) recommend a reproductive justice approach for historically marginalised and vulnerable women since climate crises cause significant disruptions in access to healthcare for women. Despite the existence of international legal and policy frameworks, there is also evidence that women and girls are disproportionately affected by the impacts of climate change (IPCC, 2022a). According to the UN (2009) and Awiti (2022), women depend more on natural resources threatened by climate change. They are also at a higher risk of sexual violence, sexual exploitation and abuse, trafficking and domestic violence during disasters (IFRC, 2007). Moreover, after a natural disaster, women are more likely to become victims of domestic and sexual violence (IFRC, 2007).

The realisation of equity and social justice requires recognising the vulnerability of women and men, an essential component to addressing the gendered consequences of climate change (World Health Organization, 2014). The participation and empowerment of women in addressing climate change have been enshrined under the United Nations Framework Convention on Climate Change (UNFCCC, 2023) and are therefore essential. The framework covers equality, human rights, inclusivity and intersectionality in addressing climate change. A report by IDLO of 2021 further provides nuances on climate justice for women and girls advocating for feminist climate action to accelerate climate justice (IDLO 2021). The justice sector can, therefore, minimise inequalities for women by having a multidimensional and gender-responsive action to enhance access to climate justice and rights. For example, in Switzerland, plaintiffs instituted a case in the European Court of Human Rights based on the disproportionate impact of climate change on senior women, demanding federal authorities correct the course of Swiss climate policy (KlimaSeniorinnen, 2023).

Therefore, the justice sector can act as an enabler of access to justice for vulnerable persons. Climate justice requires consideration of vulnerable and marginalised individuals and communities at the core of decision-making and action on climate change. Therefore, it is necessary and urgent to prioritise the most climate-vulnerable groups and invest in people-centred laws and institutions to ensure fairness and inclusivity. For instance, providing pro bono legal aid services in land, environment and climate change-related cases that require the protection of vulnerable groups would be essential. There is a need to correct structural, socio-economic, and intergenerational inequities, which unequally impact vulnerable groups (UNDP, 2023). The justice sector can protect vulnerable groups from harm by enacting and enforcing laws and regulations.

Jurisprudence on Rights-Based Approach to Greening

The UNEP & Sabin Center for Climate Change Law at Columbia University (2023) identified that most climate litigation cases rely on human rights enshrined in international law and national constitutions. In this category of cases, plaintiffs often invoke human rights principles embedded in domestic constitutions and international agreements, with corporations and governments being required to protect these rights (UNEP, 2023). By framing the call for climate action as a human rights issue, the cases seek to compel authorities into taking aggressive measures to combat the impacts of climate change and protect vulnerable populations. The other category of cases arises where claimants seek to address failures by corporations and governments to adequately prepare for climate change (UNEP & Sabin Center for Climate Change Law at Columbia University, 2023). The plaintiffs in such litigations often represent vulnerable communities affected by climate-related hazards and argue that inadequate adaptation measures cause harm, displacement and loss (UNEP, 2023). Hence, the lawsuits seek to compel those in authority to fund and implement adaptation strategies and protect the well-being of communities affected by climate change hazards (UNEP, 2023).

Several cases from various international and regional bodies are notable. From a global perspective, the United Nations Human Rights Committee (HRC), which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR), has remained at the forefront of providing access to justice from an environmental perspective. The HRC in *Teitiota v New Zealand* (2015) acknowledged that climate change can be a ground for seeking refugee status from another country. Though the HRC dismissed the matter on merit, it stated that environmental degradation constitutes an adverse threat to the enjoyment of the right to life. The Committee pointed out that the State party's failure to timely implement sufficient adaptation measures constitutes a violation of the obligation to protect the authors' minority culture.

The HRC issued a landmark decision in *Daniel Billy and Others v Australia (Torres Strait Islanders Petition 2022)*. The plaintiffs, in this case, were a marginalised Indigenous community residing in Australia who argued that they were particularly vulnerable to the impacts of climate change. Citing a report from the Torres Strait

Regional Authority, they highlighted that climate change poses significant risks to the islands, marine life and coastal ecosystems, ultimately threatening their rights to life and cultural practices. The complainants also decried the State's failure to address frequent flooding, soil erosion, ocean acidification and coral bleaching. Additionally, they criticised the State's policies that permitted fossil fuel extraction and use, contributing to Australia being ranked second globally in carbon emissions. The HRC, in its findings, concluded that Australia had violated the rights of the indigenous residents under the International Covenant on Civil and Political Rights by failing to protect them from the impacts of climate change.

For its part, the United Nations Committee on the Rights of a Child (CRC) in *Sacchi and Others v Argentina* (2021) assessed the implication of climate change on children's rights. In this case, sixteen children sent a communication to the CRC claiming that Brazil, Argentina, Turkey, France and Germany violated their rights to health and life by failing to adopt adequate measures to address the emission of GHG and failure to curb the emissions as prescribed by the Paris Agreement, 2015. Though the claim was rejected based on admissibility grounds, the CRC agreed with the claimant's assertions that states bear legal responsibility for the detrimental impacts of emissions originating within their borders on children beyond their borders. Additionally, the Committee concluded that young people are subject to foreseeable risks, jeopardising their rights to life and health.

From the African Region, in the case of *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria* (2002) provides insights. In the case, it was alleged that the Nigerian National Petroleum Company, in partnership with Shell Petroleum Development Corporation, had been directly involved in oil production in Ogoni land, causing severe environmental degradation and health issues. The oil consortium disregarded international environmental standards, leading to the disposal of toxic waste into the environment and waterways and frequent spills near villages. Furthermore, the government was accused of violations by providing legal and military support to the oil companies and failing to monitor operations or implement safety measures. The African Commission outlined state obligations not to interfere with the activities of its citizens and to protect them from violation of their rights by third parties. The State of Nigeria had violated Article 24 of the African Charter in failing to prevent pollution and facilitating operations of oil corporations in Ogoni land.

In the Americas, in a 2017 advisory opinion concerning the interpretation of Articles 1(1), 4(1) and 5(1) of the American Convention on Human Rights (ACHR), the Inter-American Court of Human Rights (IACHR) recognised the right to a healthy environment as an independent right within the framework of the IACHR. By explicitly articulating the right to a healthy environment, the IACHR laid the foundation for a more comprehensive approach to address climate-related challenges within the Inter-American human rights system (Mardikian & Galani, 2023).

The IACHR in *Yakye Axa Indigenous Community v Paraguay* (2005) held that Paraguay had failed to adopt adequate measures to ensure its domestic law guaranteed the community's effective use and enjoyment of their traditional land, thus threatening the free development and transmission of its culture and traditional practices. The Court concluded that Paraguay had violated the rights to property protection and the right to life since it had prevented the community from accessing its traditional means of livelihood, citing the State's failure to adopt necessary measures to ensure the community lived under dignified conditions during the period they had to do without their land. The Court concluded that the State was obligated to adopt positive measures towards a dignified life, particularly when high-risk, vulnerable groups were at stake. Consequently, the Court ordered the State to submit land to the community at no cost and to provide basic goods and services necessary for the community to survive until they recovered their land.

In *Baraona Bray v Chile* (2022), the IACHR found that Chile violated the complainant's right to freedom of expression. Domestic courts convicted the complainant for defamation after accusing a Chilean senator of having exercised political pressure on public authorities to allow the indiscriminate deforestation of the larch tree. For the IACHR, opinions on environmental issues and the role of public officials deserve special protection in society because they are of public interest. On this basis, the Court held that the sanctions imposed inhibited the Complainant from expressing opinions on matters of public interest and constituted an indirect means of restricting freedom of expression in its individual and social dimensions.

The IACHR declared in *Lhaka Honhat Association v. Argentina* (2020) that Argentina violated Indigenous groups' rights to communal property, a healthy environment, cultural identity, food, and water. For the first time in a contentious case, the Court analysed these rights autonomously based on Article 26 of the American Convention on Human Rights (ACHR) and ordered specific restitution measures, including actions to provide access to adequate food and water and the recovery of forest resources and Indigenous culture. The decision marked a milestone for protecting indigenous peoples' rights and expanding their autonomous rights to a healthy environment, water and food.

In a *Mayagna (Sumo) Awas Tingni City v Nicaragua* (2001) case, the Court was invited to protect the rights of indigenous groups, where a company exploited the resource through forest management concession without consultation with the community. Also, State had failed to demarcate the Awas Tingni communal lands and adopt effective measures to ensure the community's property rights to its ancestral lands and natural resources. In addition, the State had granted a concession on community lands without the concurrence of the community and did not ensure an effective remedy in response to the community's protests regarding its property rights. The Court found that the State violated the American Convention on Human Rights.

Within the Council of Europe, in *Locascia and others v Italy* (Application no. 35648/10, 2023), residents of Caserta and San Nicola La Strada in the Campania region of Italy raised concerns about the refuse collection crisis and pollution from a nearby landfill site leading to environmental damage, health risks, and infringement of their right to a private life. The European Court of Human Rights (ECHR) found a violation of Article 8 of the European Convention with respect to 11 of the applicants. The Court noted that the Italian authorities had not effectively managed refuse collection and disposal services, which breached the applicant's right to respect their homes and private lives.

In *Cordella and Others v Italy* (Application no. 54414/13 and 54264/15, 2019), the ECHR found violations of Article 8 of the European Convention on the right to respect for private and family life and the right to an effective remedy of the Convention. The ECHR concluded that the persistent environmental pollution threatened the health of the applicants and the broader population in at-risk areas. Furthermore, it ruled that national authorities had failed to take necessary measures to protect the applicant's right to private life. The Court also determined that effective remedies were not available to address the applicants' concerns regarding the lack of measures for decontamination of affected areas.

In *Pavlov and Others v Russia* (Application no. 31612/09), the ECHR found in 2022 that Russia had violated Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life. The Court found that Russia had not taken adequate measures to reduce the harmful effects of industrial pollution to residents of Lipetsk resulting in a breach of its positive obligation under Article 8. The Court noted that delays and leniency in enforcing regulations were contributing to pollution. While acknowledging the economic importance of the industrial sector, the Court emphasised the need to balance economic interests with the protection of citizens' rights.

In *Dimitar Yordanov v Bulgaria* (Application No. 3401/09), the ECHR awarded the applicant compensation as a result of the exposure of his property to environmental hazards following the installation and operation of a state coal mine near the applicant's home. The national courts had recognised the illegal operation of the mine. However, they did not find a causal link between the damage to the applicant's home and the infringement of the applicant's right to peaceful enjoyment of his property. The authorities had been responsible for the applicant's property remaining in the area of environmental hazard.

In the case of *O'Sullivan McCarthy Mussel Development Ltd v Ireland* (Application No. 44460/16), the applicant company claimed that the Irish Government's compliance with EU environmental legislation had caused financial losses by restricting mussel seed fishing and cultivation. However, recognising the legitimate objectives of protecting the environment, the ECHR found no violation of EU law. It held that as a commercial operator, the company ought to have anticipated the impact of EU regulations on its business. The Court also found that the company did not bear a disproportionate burden due to the government's actions and that Ireland had struck a fair balance between the Community's interests and individual rights.

The case of *Costel Popa v Romania* (App No. 47558/10, 2016) addressed the right to form an environmental association. The applicant, the founder of an environmental association, complained about the Romanian courts' refusal to register the association without allowing him to address any irregularities in the articles of association, as provided for by national law, which violated his right to association. The ECHR found that the reasons the Romanian authorities gave for refusing registration were not justified by any urgent social necessity. Hence, refusing registration before the association began operating was deemed disproportionate.

In *Rovshan Hajiyev v Azerbaijan* (Applications Nos. 19925/12 and 47532/13, 2021), the ECHR addressed environmental rights against the backdrop of the right to information. The applicant raised concerns about the authorities' refusal to grant him access to information regarding the environmental and health impact of a former Soviet military radar station. The Court found that the information requested by the applicant was indeed of public interest and readily available. Therefore, denying him access to this information hindered the applicant's ability, as a journalist, to fulfil his right to seek and disseminate information.

While the courts highlighted have different jurisdictions and their decisions vary, it is notable that they have taken steps to address the impacts of climate change. Climate justice, which entrenches a rights approach to climate change mitigation, is crucial. International courts and tribunals are, therefore, tools for addressing the

impacts of climate change (Rouby, 2023). Additionally, these decisions carry weight in the development of policies and legislative reforms in mitigating climate change.

CONCLUSION

This paper explored the justice system's role in integrating rights principles to protect and conserve the environment. The rights-based approach to greening the justice system underscores the intersection between justice, rights and environmental sustainability. This approach acknowledges the inherent link between a clean, healthy environment and the fundamental rights of individuals and nature. The approach emphasises the justice system's responsibility in environmental protection as a matter of rights, focusing on legislative, policy, and practical measures to preserve the environment for present and future generations. As the justice system strives to ensure efficient and effective administration of justice, it is crucial to uphold and advocate for the human rights outlined in both national and international instruments. Therefore, it is essential for environmental conservation strategies within the justice sector to consider and encompass inherent rights. To achieve this, it is crucial to integrate rights into ecological conservation efforts in the justice system.

The rights-based approach emphasises the collective responsibility of all justice actors in supporting and promoting the rights of humans and nature. Therefore, actions and behaviours detrimental to the environment and human rights should be identified and addressed. Enforcing these rights requires the justice system to have effective and proactive remedies for potential and existing violations. These can include court orders that prioritise preventing and stopping environmental damages, offering compensation to victims, and ensuring that environmental rights align with the agenda of greening the justice system.

Additionally, one way of promoting human rights while making the justice system more environmentally friendly is to integrate a rights-based approach into the critical greening elements. These include functional, technological, physical, procedural, human resource, legislative, policy, and community engagement elements. For example, using electronic meetings and remote legal proceedings to reduce carbon emissions supports the right to access justice. Moreover, it is crucial to incorporate rights protections when constructing justice sector buildings as part of the physical greening process. These facilities should adhere to human rights standards for both internal and external users, including people with disabilities.

The rights-based approach is also ideal for integrating environmental considerations into the justice system's human resources, creating a workplace culture that prioritises human rights. This should involve emphasising employees' rights to work in a safe and environmentally conscious atmosphere. Incorporating human rights principles into organisational green behaviour can help achieve this goal. As noted by Ones and Dilchert (2012), Ones et al. (2018), Rawash and Aloqaily (2022), and Zacher et al. (2023), it is pivotal to ensure that the protection of environmental rights is embedded into the organisational green behaviour. Additionally, prioritising green recruitment and career development can protect workplace environmental rights, as Pham & Paillé (2020) and Paillé et al. (2019) have pointed out.

Since the decisions of the justice sector affect the community, they should be conscious of how environmental and human rights affect society. Konyk (2018) agrees that protecting the community's right to health and a clean environment and aligning it with the principles of environmental justice is necessary. Furthermore, transformative climate actions should involve wide-ranging and coordinated political, economic, and social changes. These transformative actions can be achieved by supporting communities in realising their rights to justice. All these measures should promote rights and environmental conservation within the functioning of the justice system.

REFERENCES

- Aleknevičienė, V., & Bendoraitytė, A. (2022). The role of green finance in greening the economy: Conceptual Approach. *Central European Business Review*, 12(8), 105-130.
- Arnold, R. D., & Wade, J. P. (2015). A definition of systems thinking: A systems approach. *Procedia Computer Science*, 44, 669-678.
- Awiti, A. O. (2022). Climate change and gender in Africa: A review of impact and gender-responsive solutions. *Frontiers in Climate*, 4, 1-14.
- Boyd, D. R. (2017). *The Rights of Nature: A Legal Revolution That Could Save the World*. ECW Press.
- Brisman, A. (2014). Of theory and meaning in green criminology. *International Journal for Crime, Justice and Social Democracy*, 3(2), 21-34.
- Chalabi, A. (2018). *National human rights action planning*. Oxford University Press.

- Council of Europe. (2024). *Actions to combat climate change and its impacts*. Council of Europe, Strasbourg, France.
- Damasceno, C. (2016). Insecure land rights in Brazil: Consequences for rural areas and challenges for improvement. *Climate Policy Initiative*.
- EPA. (2021). Climate change and social vulnerability in the United States: A focus on six impacts. *United States Environmental Protection Agency*.
- European Network of National Human Rights Institutions [ENNHRI]. (2022). State of the Rule of Law in Europe in 2022. In *European Network of National Human Rights Institutions (ENNHRI)*.
- FAO. (2024). The unjust climate: Measuring the impacts of climate change on rural poor, women and youth. FAO, Rome.
- FAO. (2023). The status of women in agrifood systems. FAO, Rome.
- Fritsche, I., Barth, M., Phillip, J., Masson, T. & Reese, G. (2018). A social identity of pro-environmental action (SIMPEA). *Psychological Review*, 125(2), 245-269.
- Gilbert, J., Macpherson, E., Jones, E., & Dehm, J. (2023). The rights of nature as a legal response to the global environmental crisis? A critical review of international law's 'greening' agenda. *Netherlands Yearbook of International Law 2021*, 52, 47-74.
- Halsey M (2004) Against 'Green' Criminology. *British Journal of Criminology* 44(6): 833-853.
- IPCC. (2022a). Cross-Chapter Box: Gender, Gender, Climate Justice and Transformative Pathways. In *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Cambridge University Press.
- IPCC. (2022b). Summary for Policymakers in Climate Change 2022: Impacts, Adaptation and Vulnerability. Cambridge University Press.
- IDLO. (2022). Rule of Law Responses to Climate Insecurity. Rome, IDLO.
- IDLO (2021). Climate justice for women and girls: A rule of law approach to feminist climate action. Rome, IDLO.
- Jabareen, Y. (2009). Building a conceptual framework: Philosophy, definitions, and procedure. *International Journal of Qualitative Methods*, 8(4), 49-62.
- Kauffman, C. M., & Martin, P. L. (2017) Can rights of nature make development more sustainable? Why some Ecuadorian lawsuits succeed and others fail. *World Dev*, 92, 130–142.
- KlimaSeniorinnen, S. (2023). Public hearing in Strasbourg on March 29, 2023. KlimaSeniorinnen Schweiz.
- Knox, J. & Morgera, E. (2022). Human rights and the environment: The interdependence of human rights and a healthy environment in the context of national legislation on natural resources. *FAO Legal Papers* No. 109. Rome, FAO.
- Konyk, J. (2018). Green Policing: Recommended Actions for an Environmental Sustainability Plan for the Vancouver Police Department. Vancouver Police Department.
- Lynch, M. J., Long, M. A., & Stretesky, P. B. (2021). Green Criminology. *Handbook of Environmental Sociology*, 355-379.
- Lynch, M. J., Long, M. A., Stretesky, P. B., & Barrett, K. L. (2017). *Green criminology: Crime, justice, and the environment*. University of California Press.
- Martinez-Alier, J. (2002). *The environmentalism of the poor*. <https://doi.org/10.4337/9781843765486>
- May, J. R., & Daly, E. (2017). *Judicial Handbook on Environmental Constitutionalism*. United Nations Environment Programme.
- McLeod, C., Barr, H., & Rall, K. (2019). Does Climate Change Increase the Risk of Child Marriage? A Look at What We Know--And What We Don't--With Lessons from Bangladesh & Mozambique. *Columbia Journal of Gender and Law*, 38(1), 96–145. <https://doi.org/10.7916/cjgl.v38i1.4604>
- Newell, P. (2022, June 27). Climate justice. *The Journal of Peasant Studies*, 49 (5), 915-923.
- Ones, D. S., & Dilchert, S. (2012). Environmental Sustainability at Work: A call to action. *Industrial and Organizational Psychology*, 5(4), 444–466.
- Ones, D. S., Dilchert, S., Wiernik, B. M., & Klein, R. M. (2018). Environmental sustainability at owork. *The SAGE Handbook of Industrial, Work and Organizational Psychology*, 5(4), 351-373.

- Paillé, P., MejíaMorelos, J. H., Raineri, N., & Stinglhamber, F. (2019). The influence of the immediate manager on the avoidance of non-green behaviors in the workplace: A three-wave moderated-mediation model. *Journal of Business Ethics*, 155 (4), 723-740.
- Pain, N., Pepper, R., McCreath, M., & Zorzetto, J. (2016). Restorative justice for environmental crime: An antipodean experience. Conference paper. International Union for Conservation of Nature Academy of Environmental Law Colloquium, Oslo Norway.
- Pham, D. T., & Paillé, P. (2020). Green recruitment and selection: An insight into green patterns. *International Journal of Manpower*, 41(3), 258-272.
- Picard, M. (2021). Empowering women in climate, environment and disaster risk governance: from national policy to local action. UN Women.
- Pörtner, H.O., Roberts, D., Poloczanska, E., Mintenbeck, K., Tignor, M., Alegría, A., Craig, M., Langsdorf, S., Löschke, S., Möller, V., Okem, A. (2022). Summary for Policymakers, Climate Change 2022: Impacts, Adaptation and Vulnerability. *Cambridge University Press, Cambridge, UK and New York, NY, USA* (pp. 3–33).
- Ramage, M., & Shipp, K. (2020). *Systems thinkers*. Springer.
- Rawash, H. N., & Aloqaily, A. N. (2022). The impact of green human resources management in the Jordanian Ministry of Justice government institutions. *International Journal of Advanced and Applied Sciences*, 9(11), 113-120.
- Ross, L., & Solinger, R. (2017). *Reproductive justice: An Introduction*. Univ of California Press.
- SIDA. (2018). *The relationship between climate change and violent conflict*. International Organisations and Policy Support Department, SIDA. Skadden, Arps, Slate, Meagher & Flom LLP.
- Sollund, R. (2021). Green Criminology: its foundation in critical criminology and the way forward. *The Howard Journal of Crime and Justice*, 60(3), 304–322. <https://doi.org/10.1111/hojo.12421>
- Stretesky, P. B., & Lynch, M. J. (2014). *Exploring green criminology: Toward a green criminological revolution*. Ashgate Publishing Ltd.
- Tourangeau, W. (2022). A systems-based approach to green criminology. *Critical Criminology*, 30(4), 983-999.
- UNEP. (2023). Report of the conference of the parties to the convention on biological diversity on the second part of its fifteenth meeting. Conference of the Parties to the Convention on Biological Diversity, Montreal, Canada.
- UNEP & EU. (2022). Climate Change and Security Partnership Project - Final Report: March 2017 - February 2022. UNEP.
- UNEP & Sabin Center for Climate Change Law. (2023). Global Climate Litigation Report. UNEP & Sabin Center for Climate Change Law at Columbia University.
- UNFCCC. (2023). Five reasons why climate action needs women. *United Nations Climate Change*. Unfccc.int.
- UNFPA. (2022). In our words: Voices of women of African descent for reproductive and climate justice. UNFPA.
- UNFPA & Queen Mary University of London. (2023). Taking stock: Sexual and reproductive health and rights in climate commitments - A global review. New York. UNFPA & Queen Mary University of London
- UNGA. (2018). Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. *Thirty-Seventh Session, Human Rights Council*. UNGA.
- White, R. (2018). Critical green criminology. In *Routledge handbook of critical criminology* (pp. 120-131). Routledge.
- White, R., & Graham, H. (2015). Greening justice: Examining the interfaces of criminal, social and ecological justice. *British Journal of Criminology*, 55(5), 845-865.
- World Health Organization. (2014). Gender, Climate Change and Health. WHO.
- Zacher, H., Rudolph, C. W., & Katz, I. M. (2023). Employee green behaviour as the core of environmentally sustainable organizations. *Annual Review of Organizational Psychology and Organizational Behaviour*, 10 (1), 465-494.
- Zhang, Y., Wang, Z., & Zhou, G. (2013). Antecedents of employee electricity saving behaviour in organizations: An empirical study based on norm activation model. *Energy Policy*, 62 (C), 1120-1127.