

# Journal of Conflict Management & Sustainable Development



Protecting Our Endangered Species for Sustainability

Hon. Prof Kariuki Muigua

Changing The Narrative on the Right to a Clean and Healthy Environment: Analysing

Fleria Katherine Atieno

Ecocentrism as a Possible Method of Environmental Governance in Kenya

Felix Otieno Odhiambo

Journal of Appropriate Dispute Resolution (ADR) & Sustainability Volume 2 Issue 3 Review

James Njuguna

Integrating Environmental Social & Governance (ESG) Principles into Corporate Governance  
in Kenya: Trends, Challenges, and Best Practices

Murithi Antony

Chepkoech Charity

Problematic Overlaps and Duplication of Mandates of State and Governmental Agencies  
in Kenya: Proposals for Legal and Institutional Reform

Michael Sang

Embracing Science and Technology for Ecosystem Health, Community Resilience and Sustainability

Hon. Prof Kariuki Muigua

Lesson Study: Towards an Improved Instruction in Stem Education in Junior Secondary  
Schools in Kenya

Dr Rodgers Cherui  
Dr Simon Kipkemei  
Dr. Winnie Waiyaki

Book review: Towards Human Rights and Prosperity for All

Mwiti Muriithi

Management of Industrial Wastewater in Kenya: Case study of Mavoko

Catherine Sanitta

Does the Law Work? A Case of Kenyan Prison Congestion and the Witchcraft Act

Hon. Muthoni Njagi

Fostering Sustainable Lifestyles for Posterity

Hon. Prof Kariuki Muigua

Legislating to Protect and Compensate Whistleblowers in Kenya: An Appraisal of the  
Proposed Whistleblower Protection Bill, 2023

Michael Sang

The Phenomena of Resource Curse and How to Navigate around it

Bona Bol Madut Ayii

Primary Teacher Education and Kenya's Vision 2030. The Lacuna in the Transformation  
Agenda

Dr. Cherni, Rodgers,  
Dr. Simon Kipkemei  
Dr. Winnie Waiyaki

Mitigating the Environmental Impact of Oil: Strategies for Sustainable Development

Paul Dheil Gum

The Implications of Implementing Kenya's Electronic Travel Authorisation (eTA) System:  
A Comparative Appraisal

Michael Sang

Volume 11

Issue 5

2024

ISBN 978-9966-046-15-4



## **Journal of Conflict Management and Sustainable Development**

**Volume 11 Issue 5**

**2024**

# **Journal of Conflict Management and Sustainable Development**

## **Typesetting by:**

Anne W. Kiramba  
P.O. Box 60561 – 00200,  
Tel: +254 737 662 029,  
Nairobi, Kenya.

## **Printed by:**

Mouldex Printers  
P.O. Box 63395,  
Tel – 0723 366839,  
Nairobi, Kenya.

## **Published by:**

Glenwood Publishers Limited  
P.O. Box 76115 - 00508  
Tel +254 2210281,  
Nairobi, Kenya.

**© Glenwood Publishers Limited**

All rights reserved. No article published in this journal may be reproduced, transmitted in any form, stored in any retrieval system of any nature without prior written permission of the copyright holder. The views expressed in each article are those of the contributors and not necessarily those of Glenwood Publishers Limited.

### **Editorial Board**

**Hon. Prof. Kariuki Muigua**

*Managing Editor*

Ngararu Maina  
Salome Karimi Ngore  
Hon. Endoo D. Chepkemei

### **Editorial Team**

Emmanuel Mwati Muriithi  
Anne Wairimu Kiramba  
Grace Chelagat-Tanah  
James Ngotho Kariuki  
Silver Andrew Ouma  
Natasha W. Kahungi  
Anthony Luganje  
Linda Namiinda  
Paula M. Kilusi

### **Advisory Board**

Hon. Dr. Wilfred A. Mutubwa  
Dr. Lilian Namuma S. Kong'ani  
Dr. Kenneth Wyne Mutuma  
Dr. Johana Kambo Gathongo  
Dr. Felix Otieno Odhiambo  
Dr. Jane Mutheu Mutune  
James Ndung'u Njuguna  
Dr. Peter Gitahi Munyi  
Prof. Tom Ojienda Sc.  
Abdirazak Mohamed  
Dr. Naomi Njuguna  
Prof. George Osanjo  
Prof. Thuita Thenya  
Dr. Fidele Masengo  
Dr. Francis Kariuki

*This Journal should be cited as (2024) 11(5) Journal of cmsd*

**ISSN : 3008-1238**

## Editor's Note

Welcome to the *Journal of Conflict Management and Sustainable Development*, Volume 11, No.5. The Journal is an interdisciplinary publication that focuses on key and emerging themes in Conflict Management, Sustainable Development and other related fields of knowledge.

Sustainable Development has been embraced at both the global and national levels as the blue print for socio-economic development and governance. The Journal interrogates and offers solutions to some of the current concerns in the Sustainable Development Agenda. It also explores the role of Conflict Management in the attainment of Sustainable Development.

The Journal has witnessed significant growth since its launch and is now a widely cited and authoritative publication in the fields of Conflict Management and Sustainable Development. The Editorial Team welcomes feedback and suggestions from our readers across the globe to enable us to continue improving the Journal.

The Journal is peer reviewed and refereed in order to adhere to the highest quality of academic standards and credibility of information. Papers submitted to the Journal are taken through a rigorous review by our team of internal and external reviewers.

This volume contains papers on various themes including: *Protecting Our Endangered Species for Sustainability; Changing The Narrative on the Right to a Clean and Healthy Environment: Analysing Ecocentrism as a Possible Method of Environmental Governance in Kenya; Integrating Environmental Social & Governance (ESG) Principles into Corporate Governance in Kenya: Trends, Challenges, and Best Practices; Problematic Overlaps and Duplication of Mandates of State and Governmental Agencies in Kenya: Proposals for Legal and Institutional Reform; Lesson Study: Towards an Improved Instruction in Stem Education in Junior Secondary Schools In Kenya; Management of Industrial Waste water in Kenya: Case study of Mavoko; Does the Law Work? A Case of Kenyan Prison Congestion and the Witchcraft Act; Fostering Sustainable Lifestyles for Posterity;*

*Legislating to Protect and Compensate Whistleblowers in Kenya: An Appraisal of the Proposed Whistleblower Protection Bill, 2023; The Phenomena of Resource Curse and How to Navigate around it; Primary Teacher Education and Kenya's Vision 2030. The Lacuna in the Transformation Agenda; Mitigating the Environmental Impact of Oil: Strategies for Sustainable Development; and The Implications of Implementing Kenya's Electronic Travel Authorisation (eTA) System: A Comparative Appraisal. The Journal also contains a book review of Towards Human Rights and Prosperity for All and a review of Journal of Appropriate Dispute Resolution (ADR) & Sustainability Volume 2 Issue 3.*

We welcome feedback, comments and critique from our readers to enable us to continue improving the Journal.

I wish to thank all those who have made this publication possible including reviewers, editors and contributors.

The Editorial Team also welcomes the submission of articles to be considered for publication in subsequent issues of the Journal. Submissions can be channeled to [admin@kmco.co.ke](mailto:admin@kmco.co.ke) and copied to [editor@journalofcmsd.net](mailto:editor@journalofcmsd.net). Our readers can access the Journal online at <https://journalofcmsd.net>.

**Hon. Prof. Kariuki Muigua Ph.D, FCIArb, Ch.Arb, OGW.**  
**Professor of Environmental Law and Conflict Management**  
**Editor, Nairobi,**  
**November, 2024**

## **Changing The Narrative on the Right to a Clean and Healthy Environment: Analysing Ecocentrism as a Possible Method of Environmental Governance in Kenya**

*By: Fleria Katherine Atieno\* & Felix Otieno Odhiambo\*\**

### **Abstract**

*Man's intricate relationship with nature bears a strong influence upon the approach taken in terms of environmental conservation and governance. This is particularly evident in the Kenyan legal framework, which this article argues, is largely anthropocentric. Anthropocentrism is a type of environmental conservation and governance approach which perceives nature as an object of exploitation rather than a subject to be valued and protected. This paper, however, offers a contrary view that anthropocentrism does not offer the best alternative to environmental conservation and management. Instead, it calls for a paradigmatic shift that vouches for the alternative view of ecocentrism. Ecocentrism offers the view that the environment is supposed to be conserved for its own sake and not just for the value it has to humanity. This paper argues that even though the Constitution of Kenya 2010 provides for the right to clean and healthy environment, the recognition of this right does not, however, acknowledge the intrinsic value of the environment and, as such, the provision does not fully protect non-human species for their ecological and intrinsic value. This paper, therefore, suggests the need for recognition of environmental rights and the embracing of ecocentrism as an alternative to environmental governance to ensure that non-human entities also get to be fully protected.*

### **1.1 Introduction**

The environment and nature are considered important because of the value that they have for humanity.<sup>1</sup> This perception has shaped how the environment is

---

\* Bachelor of Laws (LL.B) (forthcoming December 2024) (Kenyatta University). Fleria has a passion in Environmental and Climate Change Laws. This article is an adapted extract from Ms. Atieno's LL.B. Dissertation work which has since been successfully submitted for examination for the award of the Bachelor of Laws degree of Kenyatta University. She can be reached through P.O. Box 517 Nairobi, mobile number +254758638387 and email address [katherinefleria@gmail.com](mailto:katherinefleria@gmail.com)

managed and protected down to the laws that govern it. It is, however, noteworthy that the environment has largely been protected only to the extent that it serves the interests of human beings.<sup>2</sup> This widely used approach is known as anthropocentrism.<sup>3</sup> The alternative to this approach of environmental management is ecocentrism. Ecocentrism refers to the protection of the environment for its own sake and not just because of the value that it has to humanity.<sup>4</sup>

This article examines the concept of ecocentrism as an alternative to environmental governance with particular emphasis on the right to a clean and healthy environment as is guaranteed by the Constitution of Kenya 2010. It makes the case that Kenya's existing approach to both environmental rights and governance is insufficient insofar as it is anthropocentric in nature. It goes on to argue that environmental protection is necessary in order to uphold people's right to have a healthy and clean environment. This article concludes by stating that adopting ecocentrism offers a more holistic approach to environmental governance that better serves the interest of both human beings and the

---

*\*\* PhD in Law (UDSM), LL.M (UoN), PGD in Law (KSL), LL.B (UoN) and B.Ed (Kenyatta University); Advocate of the High Court of Kenya presently practicing at Japheth Kenvine Felix & Smith Advocates LLP, Nairobi; Lecturer of Law at the Kenyatta University's School of Law. He can be reached through P.O. Box 43130-00100, Nairobi; mobile number +254721914859 and email address [felixkinmath@gmail.com](mailto:felixkinmath@gmail.com)*

<sup>1</sup> Sidi Supaki, 'Reconceptualisation of Environmental Rights in Kenya: Towards Integration of Ecocentrism and Anthropocentrism in Environmental Conservation', (2022) Kabarak University

<sup>2</sup> Kariuki Muigua, Entrenching Ecocentric Approach to Environmental Management in Kenya, Volume 4, (2022), < <https://www.uonbi.ac.ke/news/entrenching-ecocentric-approach-environmental-management-kenya#> > accessed on 7<sup>th</sup> August 2024

<sup>3</sup> Rosemary Mwanza, 'The Relationship between the principle of Sustainable Development and the human right to a clean and healthy in Kenya's Legal Context: An Appraisal' (2020) *Environmental Law Review* 22 <<https://journals.sagepub.com/doi/full/10.1177/1461452920952584>> accessed on 7<sup>th</sup> August 2024

<sup>4</sup> Ibid



environment.

In order to achieve the above-stated purpose, this article would be organised into six interrelated sections. This first section offers an introduction to the article. The second section explores the idea of environmental rights, more so, within the Kenyan legal context. The third section examines the idea of environmental governance and the theories attendant thereto. The fourth section then explores the legal framework that underpins environmental rights in Kenya. The fifth section of the article then puts a case for the granting of rights to nature. The sixth section then offers concluding remarks with the final section then making recommendations.

## **1.2 Environmental Rights in Kenya**

Environmental rights can be either explicit or implicit.<sup>5</sup> Environmental rights are considered to be explicit if they are clearly defined and enforceable through law i.e. constitutional provisions or statutes they are implicit if they are not directly stated in laws but are inferred from other existing rights.<sup>6</sup> An example of an explicit right guaranteed by the Kenyan Constitution is the right to an environment that is healthy and clean.<sup>7</sup> Implicit rights on the other hand include the right to live and socio-economic rights like the right to healthcare, the right to clean and safe water, and the right to acceptable standards of sanitation.<sup>8</sup>

To begin with, it is important to note that environmental rights are not entirely novel in Kenya given that they were recognized under The Environmental

---

<sup>5</sup> Ibid

<sup>6</sup> Kariuki Muigua, 'Securing Our Destiny through Effective Management of the Environment' (2020) 4(3) *Journal of Conflict Management and Sustainable Development* 1.

<sup>7</sup> Timonah Chore, 'Reconceptualising the Right to a Clean and Healthy Environment in Kenya: The Need to move from an Anthropocentric View to a Bicentric View' (2019) 4(1) *Strathmore Law Review*,

<<https://journal.strathmore.edu/index.php/lawreview/article/view/110/98>>

(accessed on 7<sup>th</sup> August 2024)

<sup>8</sup> Ibid

Management and Coordination Act 1999. However, the Constitution of Kenya 2010 brought a fundamentally big departure in regards to such rights given that it elevated their status from being mere statutory rights to constitutional rights which are protectable under the bill of rights.<sup>9</sup> This approach is far removed from the situation obtaining under the Constitution of Kenya (repealed) which did not incorporate environmental rights under its chapter 5 which protected the bill of rights. Owing to the “anomaly, the consequence was that enforcement of environmental rights posed a great challenge to litigants.<sup>10</sup> This deficiency therefore informed Kenya’s progressive improvement in environmental protection and management. As a result, it informed the radical constitutional shift in the protection of such rights which then led to the crystallisation of such rights as constitutional rights protectable under the supreme law’s rubric of bill of rights under the Constitution of Kenya 2010.

The Constitution of Kenya 2010 acknowledges that the environment is part of the country’s cultural legacy that needs to be preserved for the benefit of both the current and coming generations.<sup>11</sup> Consequently, it is discernible that environmental conservation is essential to the basis of the Kenyan state’s development. The *Adrian Kamotho Njenga v The Council of Governors and 3 others* (2017) case went a long way towards defining the extent of this right.<sup>12</sup> One of the issues raised in this case was what it means to have a clean environment in relation to the use of public roads. It was stated that a healthy and clean environment means an environment free of filth or anything detrimental that could affect the users' physical or mental health. The court then went ahead to hold that the respondents had a duty to implement the right to a clean

---

<sup>9</sup> Joel Kimutai Bosek, ‘Implementing Environmental Rights in Kenya’s New Constitutional Order: Prospects and Potential Challenges’ (2014) 9(2) *AJHRL* <https://www.saflii.org/za/journals/AHRLJ/2014/25.html> accessed 14th November 2023

<sup>10</sup> Ibid

<sup>11</sup> Article 69 of the Constitution of Kenya

<sup>12</sup> *Adrian Kamotho Njenga v The Council of Governors and 3 others* (2017) eKLR

environment on Kenyan roads. Additionally, the court went on to hold that a healthy environment also encompasses road aesthetics and physical facilities.<sup>13</sup> Further, in the case of *Cortec Mining v Cabinet Secretary Ministry of Mining Kenya* (2015), the court held that any genuine and true environmental degradation and pollution, along with evident and real negative consequences on people's lives and their income, flora, and fauna, is a surefire prescription for a catastrophic time bomb that will blow quickly.<sup>14</sup> In this regard, the court stated that the right forbids us from having the luxury of delaying taking action.<sup>15</sup> From the two cases highlighted above it is evident that there is a common thread that is seen, i.e. the fact that the protection of environmental rights in Kenya is by virtue of the impact that they have on the human beings who live within the relevant environment.<sup>16</sup> The problem with this kind of viewpoint is that it is limiting, hence, posing the challenge that the environment can only be appreciated within the context that human beings are at the centre.<sup>17</sup> The limitation with this viewpoint is that it overlooks the fact that the ecosystem is interdependent and that all organisms depend upon each other to survive.<sup>18</sup> The corollary to this predominant view is that we cannot protect one environmental entity's right to a clean environment without considering the same right for all other entities of the environment.<sup>19</sup>

---

<sup>13</sup> Ibid, at paragraph 23 of the Judgement

<sup>14</sup> Paragraph 16 of the Judgment in *Cortec Mining v The CS Ministry of Mining and 9 others* (2015) eKLR

<sup>15</sup> *Cortec Mining v The CS Ministry of Mining and 9 others* (2015) eKLR

<sup>16</sup> BBC, 'How are organisms in an environment interdependent?' *OCR 21<sup>st</sup> Century* <<https://www.bbc.co.uk/bitesize/guides/zctwgdm/revision/5>> (accessed on 13<sup>th</sup> December 2023)

<sup>17</sup> Sidi Supaki, *Reconceptualization of Environmental Rights in Kenya: Towards an Integration of Ecocentrism and Anthropocentrism in Environmental Conservation* (2022) Research Gate.

<sup>18</sup> International Joint Commission, *Rights of Nature*, (IJC Comment files, 2019) <<https://www.ijc.org/system/files/commentfiles/2019-10-Nicolette%20Slagle/FAQ.pdf>> accessed on 15<sup>th</sup> August 2024

<sup>19</sup> Clarice Wambua, 'When can a river sue you? Implementing a rights of nature approach in environmental management' (2022) CDH Incorporated, <<https://www.cliffedekkerhofmeyr.com/news/publications/2022/Practice/Environme>



is protected. An instance of this is the right to an environment that is clean and healthy with regard to, for instance, the heavily polluted Nairobi River. This article submits that if the Nairobi River itself is not shielded from pollution, then the citizens' entitlement to a clean and healthy environment cannot be fulfilled. Having laid down the foregoing background, this article now proceeds to examine the theories of environmental governance in Kenya.

### 1.3.2.1 Natural Law Theory

Natural law theory is based on the idea that there are intrinsically valuable goods that define a flourishing human life.<sup>23</sup> Prioritizing the good and avoiding the bad is one of the main tenets of Natural Law Theory and they are derived from nature and not human-made laws or societal norms.<sup>24</sup> This suggests that environmental exploitation would be improper since it is immoral. However, this theory also argues that human beings have a higher purpose and they are therefore allowed to use the environment for their benefit so long as this use is not exploitative.<sup>25</sup> It also argues that the environment is God's creation and for that reason there is need to protect it and doing this is a way of worshipping God.<sup>26</sup> It also states that some acts of exploitation can be justified, for example, the case of cutting down a tree to provide housing for humans. In this case, the consequences of the two actions are weighed up and they seem fine insofar as animals should lose their homes for humans.<sup>27</sup> This theory is, however, criticized for lacking universality.

---

<sup>23</sup> Colleen McCluskey, *Natural Law Theory and Climate Change*, Routledge, 1<sup>st</sup> edition (2020)

<sup>24</sup> Ibid

<sup>25</sup> Bebhinn Donnley and Patrick Bishop, 'Natural Law and Ecocentrism', (2007) 19 *Journal of Environmental Law*

<sup>26</sup> Lucas Tomaszewski, *Natural Law and the Environment*, < <https://prezi.com/wug-l8j1bkfu/natural-law-and-the-environment/#:~:text=One%20of%20the%20central%20principles,wrong%20as%20it%20is%20evil.>> accessed on 13<sup>th</sup> December 2023

<sup>27</sup> Ibid

<sup>28</sup> This is because it bases itself on the belief in God and this may not apply to societies, and or people, that do not believe in God.<sup>29</sup>

Regarding environmental rights, another interpretation of natural law theory is that it supports the idea that nature has inherent rights.<sup>30</sup> This viewpoint is based on the idea that the environment has an inherent right to live and thrive, just like people do.<sup>31</sup> Legal philosophers and environmentalists who support giving nature legal rights in order to provide more robust and enforceable environmental protections have come to support this approach.<sup>32</sup>

### 1.3.2.2 Ecocentrism

According to ecocentrism, humans only exist because of the kindness and sacrifice made by the environment since they are its children.<sup>33</sup> This theory posits that there is intrinsic value in all living organisms and this flows from the understanding of how the ecological and evolutionary systems work.<sup>34</sup> This theory further proposes that in order to deal with the ecological crisis bedeviling the globe, there is need to have a major shift in the way we relate with nature.<sup>35</sup>

---

<sup>28</sup> Robert George, 'Recent Criticism of Natural Law Theory', (2012) *Oxford Academic* <<https://doi.org/10.1093/acprof:oso/9780198267713.003.0003>>, (accessed on 15<sup>th</sup> August 2024)

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Elf, 'The Rights of Nature: A New Era of Environmental Protection' (2018) *Environmental Law Foundation* <[The Rights of Nature: A New Era of Environmental Protection - Environmental Law Foundation \(elflaw.org\)](https://www.elflaw.org/)> accessed on 15<sup>th</sup> August 2024

<sup>32</sup> Jeremie Gilbert, Ilkhom Soliev, Anne Robertson<sup>1</sup>, Saskia Vermeylen, Neil W. Williams, Robert C. Grabowski, 'Understanding the Rights of Nature: Working Together Across and Beyond Disciplines' (2023) 51, *Human Ecology* 363

<sup>33</sup> Kariuki Muigua, 'Securing Our Destiny through Effective Management of the Environment' (2020) 4(3) *Journal of Conflict Management and Sustainable Development* 1

<sup>34</sup> The Knowledge Project, 'Environmental Ethics' <<https://www.nature.com/scitable/knowledge/environmental-ethics96467512/#:~:text=Environmental%20ethics%20is%20a%20branch,sustain%20bio%20diversity%20and%20ecological%20systems>> accessed on 17<sup>th</sup> November 2023

<sup>35</sup> Ibid

Like the case of Natural Law Theory, this theory also faces its own fair share of criticism. In this regard, one of the criticisms it faces is that it ignores the domineering role that humans have on the environment. Consequently, it becomes difficult to implement considering that it fails to put into content the role that human beings have with regards to the environment.<sup>36</sup> the second criticism of this theory is that it is anti-humanist.<sup>37</sup> In this regard, the theory risks jeopardizing human needs for a supposedly poorly defined greater good.<sup>38</sup> However, the article argues that this criticism fails to take cognisance of the fact that protection of the ecosystem does not necessarily mean a consequent disregard for humanity. This is because an ecocentric approach ensures that human rights to a healthy and clean environment are protected by safeguarding the interests of all the other components of the environment as well.<sup>39</sup> This paper argues for an ecocentric approach because the same ensures a holistic and wholesome approach towards environmental management and conservation.

### 1.3.2.3 Anthropocentrism

The anthropocentric school of thought holds the view that man is superior to the environment and he may use it however he likes.<sup>40</sup> The corollary to the foregoing

---

<sup>36</sup> Helen Kopnina, 'Anthropocentrism :more than just a misunderstood problem', <[Anthropocentrism: More than Just a Misunderstood Problem | Journal of Agricultural and Environmental Ethics \(springer.com\)](#)> (accessed on 2<sup>nd</sup> September 2023)

<sup>37</sup> Vito Du Lucia, 'Beyond Anthropocentrism and Ecocentrism: A Biopolitical reading of Environmental Law' (2017) 8 (2) *Journal of Human Rights and the Environment* 181

<sup>38</sup> Cryer Paul, 'Why Ecocentrism is the Key Pathway to Sustainability' (4<sup>th</sup> July, 2017) *Mahb* < [Why ecocentrism is the key pathway to sustainability - MAHB \(stanford.edu\)](#)>, (accessed on 15<sup>th</sup> August 2024)

<sup>39</sup> Irene Ganner, 'What is Ecocentrism in Philosophy and Environmental Ethics?' *Environmental Ethics*, 6<sup>th</sup> August 2024) <[What Is Ecocentrism in Philosophy and Environmental Ethics? - Environmental Ethics \(iseethics.org\)](#)> (accessed on 15<sup>th</sup> August 2024)

<sup>40</sup> Alexander Gillespie, *International Environmental Law, Policy, and Ethics* (2<sup>nd</sup> edition, OUP 2014)



is that everything that exists in nature does so only to the extent of serving man.<sup>41</sup> Anthropocentrism is human-centered in its approach to environmental conservation and management and completely disregards the intrinsic values of the environment.<sup>42</sup> It is a primarily Western approach to the environmental conservation.<sup>43</sup> Reference to this theory is founded in the Judeo-Christian theology which argues that man is God's representative here on earth and, therefore, is supposed to subdue nature in order to fulfill his needs.<sup>44</sup> It draws the distinction between intrinsic value and instrumental value.<sup>45</sup> On the one hand, instrumental value is the value of one thing as a tool to the realisation of something else<sup>46</sup>. On the other hand, intrinsic value on the other hand means the value of something as an end in itself.<sup>47</sup> In this regard, therefore, the anthropocentric approach assigns intrinsic value to human beings while nature is assigned instrumental value.<sup>48</sup> Aristotle in his book *Politics* exhibits this argument by opining that nature has made all things primarily for the benefit of man.<sup>49</sup> Similarly, Immanuel Kant, in his book *Duties to Animals and Spirits* argues that cruelty to man may encourage one to be desensitized to cruelty to human

---

<sup>41</sup> Rebecca Coffey, 'What is Anthropocentrism?' (3<sup>rd</sup> August 2022) *TreeHugger* <[Anthropocentrism: Definition & Environmental Impact \(treehugger.com\)](https://www.treehugger.com/anthropocentrism-definition-environmental-impact)> (accessed on 15<sup>th</sup> August 2024)

<sup>42</sup> Timonah Chore, 'Reconceptualising the Right to a Clean and Healthy Environment in Kenya: The Need to Move from an Anthropocentric View to a Bicentric View' (June 2019) *Strathmore Law Review* 71.

<sup>43</sup> Tarannum Vashisht, 'Anthropocentric v Ecocentric Approach to the Environment' (2020) *IPleaders* ,<<https://blog.ipleaders.in/anthropocentric-v-ecocentric-approach-to-the-environment/>> accessed on 23<sup>rd</sup> August 2024)

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Emrys Westacott, 'Intrinsic v Instrumental Value' (24<sup>th</sup> May 2019) *ThoughtCo* <<https://www.thoughtco.com/intrinsic-and-instrumental-value-2670651>>, (accessed on 7<sup>th</sup> August 2024)

<sup>48</sup> Ibid

<sup>49</sup> Stanford Encyclopedia of Philosophy, (2022) *Aristotle Political Theory*,<<https://plato.stanford.edu/entries/aristotle-politics/>>, (accessed on 7<sup>th</sup> August 2024)



beings.<sup>50</sup>

This theory has, however, been criticized for centering human beings to the subject of environmental conservation while neglecting the environment and nature.<sup>51</sup> This school of thought has been used to argue for economic growth.<sup>52</sup> Further, it has also been criticized for failing to acknowledge that the increase in population and other human activities is part of the reason for the decline in natural resources.<sup>53</sup>

#### 1.3.2.4 Bicentrism

This approach borrows from both ecocentrism and anthropocentrism. It argues for the need to protect all living organisms including plants and non-sentient beings, this stems from the belief that there is intrinsic value in both.<sup>54</sup> It argues that the interest for all beings is to survive and there is no being that is superior over the other.<sup>55</sup> Sustainable development strategies that satisfy human needs without compromising the health and integrity of ecosystems are supported by bicentrism. It advances the notion that environmental health and human well-being are related and ought to be addressed jointly.<sup>56</sup> Bicentrism promotes

---

<sup>50</sup> Brennan Andrew and Norva Y.S, Lo, *Environmental Ethics*, (Stanford Encyclopedia of Philosophy 2022) <<https://plato.stanford.edu/entries/ethics-environmental/>> (accessed on 17<sup>th</sup> November 2023)

<sup>51</sup> Helen Kopnina, Haydn Washington, Bron Taylor and John J Piccolo, 'Anthropocentrism: More than Just a Misunderstood Problem' (2018) 31, *Journal of Agricultural and Environmental Ethics* 109

<sup>52</sup> Ibid

<sup>53</sup> Layna Droz, 'Anthropocentrism as the Scapegoat of the Environmental Crisis: A Review, Ethics in Science and Environmental Politics (2022) 22 *Journal of Ethics in Science and Environmental Politics*

<sup>54</sup> Muir A, 'An interpretation of the South African Constitutional "Environmental Right" (Section 24 of the Constitution of the Republic of South Africa, 1996) and an Assessment of its Relationship to Sustainable Development' (LM Thesis, University of Kwa-Zulu Natal, Durban, 75).

<sup>55</sup> Mouchang Yu and Yi Lei, 'Biocentric Ethical Theories' II *Journal of Environment and Development*

<sup>56</sup> Muir A, *supra*, p. 77.

behaviors and policies that take into account the effects on both people and the environment from an ethical point of view.<sup>57</sup> When making decisions, it aims to strike a balance between social, economic, and environmental objectives.<sup>58</sup>

However, a number of criticisms arise with regard to bicentrism, for instance it is criticized for being ambiguous when it comes to striking a balance between environmental concerns and human needs.<sup>59</sup> Critics contend that it can be difficult to decide whether to put human needs ahead of environmental conservation and vice versa in the absence of defined rules.<sup>60</sup> In addition to this, it is considered that it may be challenging to put bicentric ideals into practice, finding a balance between development and conservation frequently entails difficult trade-offs, and bicentrism might not offer workable answers to these problems.<sup>61</sup> Lastly some environmentalists argue that bicentrism could result in compromises that are insufficient to safeguard the environment. There is a chance that environmental issues will be minimized or neglected in the process of attempting to strike a balance between human and environmental interests.<sup>62</sup>

### 1.3.2.5 Cornucopian Approach

The proponents for this approach simply deny that there is environmental degradation it is an optimistic perspective to human progress and resource availability.<sup>63</sup> They disagree with the notion that the earth's limited resources

---

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Muir A, *supra*, p. 76.

<sup>60</sup> Alexander Whittaker, 'Biocentrism debunked: Understanding What the Theory is about', < [Biocentrism Debunked: Understanding What the Theory is About \(explosion.com\)](https://explosion.com/biocentrism-debunked-understanding-what-the-theory-is-about) > accessed on 15<sup>th</sup> August 2024

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Jo Arney, 'Saving Earth' *Encyclopaedia Earth* <<https://www.britannica.com/explore/savingearth/cornucopian>> (accessed on 23<sup>rd</sup> August 2024)

ought to be preserved.<sup>64</sup> Cornucopians proffer the argument that there are enough resources on earth for everyone and that the said resources can be used by humans without restriction.<sup>65</sup> This theory denies the realities that can be clearly seen, for instance, the effects of global warming that have resulted in the climate crisis that disproportionately affects the countries in the global south, including Kenya.<sup>66</sup>

#### **1.4 Why the Case for Ecocentrism?**

Like has been alluded to under the theory of ecocentrism, this article is premised on the argument that states should align their environmental conservation and management approaches to the principles of ecocentrism. The reason for this argument is that the most prevalent approach adopted by the existing laws, of most countries including Kenya, has been anthropocentrism. This is because of the fact that the laws have placed humankind at the core of environmental protection.<sup>67</sup>

In fact, this view is further supported by the reality that even the concept of sustainable development, as adopted by the Brundtland Commission Report, is defined within anthropocentric lenses. The Report defined sustainable development as development that meets the needs of the present generation without compromising the needs of future generations.<sup>68</sup> Considering how Kenya still continues to grapple with a number of environmental rights

---

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Saroj K. Mishra, Pankaj Upadhyaya, John T. Fasullo, Narayan Prasad Keshri, Popat Salunke, Arunabha Ghosh, Asiya B. Sainudeen & In-Sik Kang, 'A Need for Actionable Climate Projections Across the Global South' (2023) 13 *Journal of Nature Climate Change* 883

<sup>67</sup> Collins Odote, 'Human-Rights Based Approach to Environmental Protection: Kenyan, South African and Nigerian Constitutional Architecture and Experience' in Michael Addaney, Ademola Oluborode Jegede (eds) *Human Rights and the Environment under African Union Law* (Palgrave Macmillan, 2020)

<sup>68</sup> Ibid

violations, it is submitted that this is a strong pointer that the anthropocentric approach has not been very successful towards entrenching environmental rights. Consequently, this article argues that ecocentrism is a better alternative towards ensuring that environmental rights are protected adequately.

The article's position is, for instance, supported strongly by Thomas Berry arguments on nature and nature's rights.<sup>69</sup> Berry argues that the rights of nature are ecocentric in the sense that nature is entitled to have rights because of its intrinsic value, i.e. nature's rights are inherent and inalienable.<sup>70</sup> He contends that nature's rights take the form of a claim-duty approach, meaning that humans have an obligation to defend and promote nature's rights and that nature may assert those rights through a representative.<sup>71</sup> He further argues that nature's rights are specific to an entity, hence, for example, the rights of a forest may be different from those of a river.<sup>72</sup> Lastly, he argues that the rights accruing to nature are not absolute as they can be limited, for instance, where they affect the rights of other species.<sup>73</sup> In instances where such rights are to be limited, then he is of the opinion that the rights that are in the best interest of mother nature should be upheld.<sup>74</sup>

Similarly, Christopher Stone also aligns his thoughts with ecocentrism by arguing that trees, as well as other natural resources, should have a legal personality.<sup>75</sup> He opines that natural resources should be able to institute a claim in their own names. In this regard, he proffers the argument that a river should,

---

<sup>69</sup> Thomas Berry, *Principles on Earth Jurisprudence*, extracted from Thomas Berry, *Evening Thoughts: Reflecting on Earth as Sacred Community* (originally published by San Francisco: Sierra Club Books & University of California, 2006)

<sup>70</sup> Ibid

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Christopher Stone, *Should Trees Have Standing?: Law, Morality and Environment*, (Oxford University Press, 2010)

for example, be able to place liability on the polluter from changing its state from oxygenated to heavily polluted.<sup>76</sup> Similarly, he further argues that a river should also be able to get a judgement in its favour and in situations where monetary sums are paid, they should be used towards the restoration of the river instead of compensating the residents who are affected by pollution.<sup>77</sup> This would therefore mean that natural resources have rights which are similar to those of human beings. However, the rights ascribable to natural resources would mainly relate to the right to institute and respond to claims, property rights and the right to enter into contractual agreements.<sup>78</sup>

### **1.5 Legal Framework Governing Environmental Rights in Kenya**

Over time, the Kenyan law on environmental rights has truly made a lot of progress considering that there was a time when instituting a claim on the violation of environmental rights was such an uphill task. There is no better instance that best demonstrates this fact than the circumstances relating to the *Wangari Maathai v Kenya Times Media Limited* (1989) eKLR where the plaintiff instituted a claim seeking a temporary injunction to prevent the Defendant from constructing a complex at a recreational park. Despite the merits of the case, the suit was dismissed on a technicality on the ground that the plaintiff lacked *locus standi*. It was submitted by the defendant, an argument that was upheld by court, that it was only the Attorney-General who could institute such a claim. This is just one of the many instances where a claim to protect the environment failed.

#### **1.5.1 International Legal Framework**

##### **1.5.1.1 Hard Law**

Under international law, hard law consists of legally binding instruments such as treaties and conventions in which countries agree to sign and ratify and are as

---

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> Ibid

such obligated to comply with their terms.<sup>79</sup>

#### **1.5.1.1.1 The United Nations Convention on Biological Diversity 1994**

The Convention plays a crucial role in the discussions on sustainable growth, despite not directly creating a provision for the rights of nature, it invites member states to agree on a global policy for nature where it seeks to recognize the rights of nature.<sup>80</sup> Kenya as of June 1992 became a signatory to this convention and thus is obligated to promote and encourage the conservation of biological diversity.<sup>81</sup> As such, establishment of mechanisms such as the Environmental Impact Assessment test that is provided for in the Environmental Management and Coordination Act is a reflection of the country's commitment to the CBD.<sup>82</sup>

#### **1.5.1.2 Soft Law**

Soft law under international law includes declarations, guidelines, resolutions and codes of conduct that are not legally binding and whose compliance is often voluntary.<sup>83</sup>

##### **1.5.1.2.1 The Earth Charter 2000**

This declaration is one of the few frameworks that acknowledges the inherent worth of the environment, it lays forth the primary values on which to build a peaceful just and sustainable world in the present age. It purposes to develop in the global community a sense of purpose and shared responsibility and

---

<sup>79</sup> Law School Buddy, 'Hard Law v Soft Law in International Law', (16<sup>th</sup> March 2021) *Law School Buddy*, <[Hard Law vs. Soft Law in International Law - Law School Buddy](#)> accessed on 2<sup>nd</sup> September 2023

<sup>80</sup> Ibid.

<sup>81</sup> Kariuki Muigua, 'An Overview of the Convention on Biological Diversity', (The Lawyer Africa, 26<sup>th</sup> March 2022), <[An Overview of the Convention on Biological Diversity - The Lawyer Africa](#)> accessed on 2<sup>nd</sup> September 2024

<sup>82</sup> Ibid

<sup>83</sup> Law School Buddy, 'Hard Law v Soft Law in International Law', (16<sup>th</sup> March 2021) *Law School Buddy*,1 <[Hard Law vs. Soft Law in International Law - Law School Buddy](#)> (accessed on 2<sup>nd</sup> September 2023)

interdependence for the good of mankind and for generations to come. It is informed by the need to protect nature as it is and also the need to preserve environmental resources for the benefit of humanity.<sup>84</sup>

#### **1.5.1.2.2 The Declaration of the United Nations Conference on the Human Environment of 1972**

This declaration was a commitment to both current and upcoming generations and it also set the tone for the Rio declaration by raising discussions on the connections between the industrialization of states and the negative impacts it had on the environment.<sup>85</sup> It further acknowledged that in order for people to be able to enjoy their human rights, there was necessity to ensure that the environment in which they lived in was healthy as well.<sup>86</sup>

#### **1.5.1.2.3 The Rio Declaration on Environment and Development of 1992**

This declaration made an attempt to balance the need for economic growth and environmental conservation as such popularizing the term sustainable development.<sup>87</sup> The Brundtland Commission whose recommendations served as the foundation of the Rio Declaration established among other things, the precautionary principle and the principle of civic protection of basic ecological values.<sup>88</sup> It also recognizes that involving everyone impacted by an issue has the greatest chance of solving environmental problems.<sup>89</sup> Encouraging public participation, redress when necessary, and ensuring citizens have access to information about how their natural resources are being used are all emphasized

---

<sup>84</sup> 'Earth Charter', Charter for compassion, < <https://earthcharter.org/> > (accessed on 7<sup>th</sup> April 2024)

<sup>85</sup> Principle 1 of The Stockholm Declaration on the Human Environment 1972

<sup>86</sup> Taskforce on Nature Markets, Rights of Nature Developments and Implications of Governance for Nature Markets, (Nature Finance, 2022)

<sup>87</sup> Report of the United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, < [A/CONF.151/26/Vol.I: Rio Declaration on Environment and Development](#) > (accessed on 22<sup>nd</sup> October 2024)

<sup>88</sup> Principle 4 of The Rio Declaration of 1992

<sup>89</sup> Principle 10 of The Rio Declaration of 1992

by it.<sup>90</sup>

## **1.5.2 Regional Legal Framework**

### **1.5.2.1 Hard Law**

#### **1.5.2.1.1 African Convention on the Conservation of Nature and Natural Resources 1968**

This regional framework purposes to conserve and ensure environmental resources are used sustainably and to foster a framework for environmental protection.<sup>91</sup> The framework also acknowledges that everyone has a right to a good environment that is conducive to their surroundings.<sup>92</sup> Kenya became a signatory to this convention as from July 2003.<sup>93</sup> Implementation of this convention is seen through legislative provisions such as the Wildlife Conservation and Management Act that provide a legal basis for protecting biodiversity and managing natural resources responsibly.<sup>94</sup>

#### **1.5.2.1.2 The Bamako Convention on Hazardous Waste 1991**

This convention focuses on the regulation of hazardous waste, it also prohibits

---

<sup>90</sup> Ibid

<sup>91</sup> African Union, African Convention of Nature and Natural Resources,< [African Convention on the Conservation of Nature and Natural Resources | African Union](#)>,accessed on 22<sup>nd</sup> October 2024

<sup>92</sup> Article 3 of the African Convention on the Conservation of Nature and Natural Resources 2003

<sup>93</sup> List of Ratification of Kenya Human Rights Treaties ,< [Microsoft Word - JS4 UPR KEN S08 2010 Joint Submission 4 Annex 3.doc \(ohchr.org\)](#)> accessed on 2<sup>nd</sup> September 2023

<sup>94</sup> Wambui Odhiambo ,'National Biodiversity Coordination Mechanism Launched to Enhance Biodiversity Conservation in Kenya',(African Wildlife Foundation,9<sup>th</sup> August 2024),< [National Biodiversity Coordination Mechanism Launched to Enhance Biodiversity Conservation in Kenya | African Wildlife Foundation \(awf.org\)](#)> ,accessed on 2<sup>nd</sup> September 2024



the importation of hazardous waste into the African region.<sup>95</sup> It acknowledges that controls are necessary to mitigate the risks associated with hazardous waste in order to safeguard both the environment and public health.<sup>96</sup> Kenya signed this convention in January 1991 and has taken steps to implement some of its provisions including through implementing the Environmental Management and Coordination Act which provides for means of managing hazardous waste and it further establishes the National Environmental Management Authority that provides guidelines for managing hazardous waste.<sup>97</sup>

#### **1.5.2.1.3 African Charter on Human and People's Rights 1986**

Kenya became a signatory to the African charter in 1992. According to the Charter, every person has a right to a satisfactory standard of environment that is necessary for the development of the person.<sup>98</sup> This right was, for instance, successfully invoked in 2001 by the African Commission on Peoples and Human Rights through its decision in Communication 155/96 - The Social and Economic Rights Action Center and the Centre for Economic, and Social Rights. Through this decision, the Federal Government of Nigeria was held responsible for violating this right in regards to its failure to protect the Ogoni people from the effects of pollution arising from drilling of oil in Ogoniland.<sup>99</sup> The complaint against the acts of pollution was lodged in March 1996 by two non-governmental organisations, namely, the Social and Economic Rights Action Centre (SERAC), based in Nigeria, and the Centre for Economic and Social Rights (CESR) which was based in New York, against the serious acts of pollution arising from the joint drilling venture between the Nigerian National Petroleum Company (NNPC) and the Shell Petroleum Development Company (SDPC). The oil drilling activities had reportedly caused serious environmental degradation and health

---

<sup>95</sup> Ibid

<sup>96</sup> Article 2 of the Bamako Convention on Hazardous Waste 1991

<sup>97</sup> Steiner Achum, *An Introduction to the African Convention on conservation of nature and natural resources*, (IUCN, 2004)

<sup>98</sup> Article 24 of the African Charter on Human and Peoples Rights 1986

<sup>99</sup> Centre for Economic and Social Rights v Nigeria, (2002) ACHPR

problems among the local Ogoni People.<sup>100</sup>

### 1.5.3 National Legal Framework

#### 1.5.3.1 Constitution of Kenya 2010

Right from its preamble, the Constitution of Kenya 2010 recognizes the importance of the environment and stresses that it forms part of the country's cultural legacy. It then emphasizes upon the need to protect it for the benefit of both the present and future generations.<sup>101</sup> The preamble further places a duty upon all citizens to conserve the environment and to require that they use it in a sustainable manner.

The right to a healthy and clean environment is also a key tenet of environmental rights as guaranteed by the Kenyan legal framework.<sup>102</sup> It places an obligation upon the state to ensure that the environment is utilized in a manner that sustains it, to work towards attaining and sustaining a tree cover of not less than ten percent of Kenya's total land mass, safeguard the intellectual property of indigenous communities including their understanding of biological diversity. The Constitution further requires the state to encourage the participation of the public in matters relating to the environment, and reinforces its responsibility towards the creation of procedures for environmental impact assessment, environmental auditing and environmental monitoring. Article 69 also obligates the state to do away with processes that are harmful to the environment and to require that the environment be used only in a manner that benefits the Kenyan people.

In recognizing that the importance of the right to a clean and healthy environment, the Constitution then empowers anyone who claims that their right

---

<sup>100</sup> Fons Coomans, 'The Ogoni Case before the African Commission on Human and Peoples' Rights' (July 2003) 52 (3) *The International and Comparative Law Quarterly* 749.

<sup>101</sup> Preamble to The Constitution of Kenya 2010

<sup>102</sup> Article 42 of The Constitution of Kenya 2010

has been infringed with the right to institute a claim arguing that their environmental rights are threatened, violated or infringed.<sup>103</sup> Towards this end, the Constitution establishes the Environment and Land Court and is primarily responsible for adjudication of cases pertaining to land and environmental disputes, including those concerning land conflicts, environmental planning, climate affairs, mineral and environmental resource disputes.<sup>104</sup> This court has both appellate and original jurisdictions, with the power to determine redress for denial or infringement for all rights.<sup>105</sup> This court may make orders which it deems fit by either preventing the act or omission or compelling a public officer to discontinue the act. Furthermore, it has the authority to provide compensation, and in this instance, proof of loss is not required. To settle any disputes pending before it, the court may also, with the parties' permission, use alternative dispute resolution procedures. Despite the Constitution's very elaborate provisions in regards to environmental rights, it is submitted that one of the gaps in the Kenya's constitutional provisions is that, although there are extensive remedies available in cases where someone's environmental rights have been violated, there is no sufficient mechanism in place to return the environment to its pre-damage state.

In accordance with the Constitution Review Commission, a body established to oversee the comprehensive review of Kenya's Constitution, the reason for which the right to a healthy and safe environment was formed was to ensure that environmental rights were protected and that the environment was managed and conserved in an effective manner. However, the disproportionate emphasis on human needs and interest with regard to the environment has prevented the effective realization of this goal.<sup>106</sup> To effectively achieve the right to an

---

<sup>103</sup> Article 22 of The Constitution of Kenya 2010

<sup>104</sup> Article 162 as read together with Article 165 of the Constitution

<sup>105</sup> Article 162 of The Constitution of Kenya 2010

<sup>106</sup> Daniel Mutunga Nzeki, 'Demystifying the Right to Clean and Healthy Environment in Kenya and How it can be Enforced' (2021) 6(5) *Journal of CMSD* 196 <<https://journalofcmsd.net/wp-content/uploads/2021/07/Demystifying-The-Right->

environment that is healthy and clean, it is implied from reading section 2 of the Environmental Management and Coordination Act 1999 that environmental protection is a necessity.<sup>107</sup>

In line with both their Constitutional and statutory mandates, courts have provided interpretations concerning environmental rights. For instance, the case of *Martin Osano Rabera and another v Municipal Council of Nakuru and 2 others* (2018) eKLR is a good example of the need to protect the environment in order to be able to safeguard the people's right to a clean and healthy environment.<sup>108</sup> In this case, respondents were held to have violated the right to a clean and healthy environment in regards to how they operated a dumpsite which was established within the area where the plaintiff lived. The court, in its analysis of Article 42 of the Constitution, found that the dumpsite in question attracted domestic animals like cows, chicken and goats which, when left unattended, consumed waste matter from the dumpsite. The unsuspecting residents would then consume the meats of these animals thereby leading to the spread of diseases like dysentery. In addition, the dumpsite would harbour rodents that also pose dire health risks to the residents.

Similarly, in *Kenya Association of Manufacturers and 2 others v Cabinet Secretary Ministry of Environment and Natural Resources and 3 others* (2018) eKLR, the principal issue for determination by the court was the validity of a move by the Cabinet Secretary of Environment to prohibit the use of plastics, their importation and manufacture in Kenya. In its determination, the court weighed the commercial interests of the plastics vis-à-vis their environmental rights for the over 40 million Kenyans whom the ban sought to protect. In balancing the said interests, the court held that the need to protect the Kenyans' collective right to a clean and healthy environment clearly outweighed the commercial interests of

---

[to-A-Clean-and-Healthy-Environment-in-Kenya-and-how-it-can-be-Enforced.pdf](#)>  
(accessed on 21<sup>st</sup> March 2024)

<sup>107</sup> Section 2 of The Environmental Management and Coordination Act 1999

<sup>108</sup> *Martin Osano Rabera and another v Municipal Council of Nakuru and 2 others* (2018) eKLR

the plastic bag dealers. These two judicial decisions do, in fact, show that achieving the right to a clean and healthy environment depends on environmental preservation.

#### **1.5.3.2 The Environmental Management and Coordination Act 1999**

This Act, popularly acronymed as EMCA, is the legal instrument that consolidates all matters addressing the environment.<sup>109</sup> In its definition, the environment is made up of the physical components that surround humans, such as land, water, climate, atmosphere, sound, taste, and odour, as well as the biological components of plants and animals and the social components of aesthetics, which encompass both the constructed and natural environments.<sup>110</sup> The Act plays a crucial role in the realization of the right to a clean and healthy environment. It establishes the National Environment Management Authority (NEMA) which is responsible for coordinating environmental management activities and enforcing environmental laws.<sup>111</sup> Furthermore, the Act mandates that any project likely to have a significant impact on the Environment must undergo an Environmental Impact Assessment Test that ensures that environmental impacts of a project are mitigated before the project proceeds.<sup>112</sup> The Act also emphasizes the importance of public participation in environmental decision making including during the Environmental Impact Assessment process.<sup>113</sup> In addition to this, the Act provides a framework for enforcement of environmental rights by establishing an environmental tribunal to handle disputes and ensure compliance with environmental obligations.<sup>114</sup>

#### **1.5.3.3 The Environment and Land Court Act 2011**

---

<sup>109</sup> Section 1 of the Environmental Management and Coordination Act 1999

<sup>110</sup> Section 2 of the Environmental Management and Coordination Act 1999

<sup>111</sup> Section 7 of the Environmental Management and Coordination Act 1999

<sup>112</sup> Section 62 of the Environmental Management and Coordination Act 1999

<sup>113</sup> Ibid

<sup>114</sup> Section 125 of the Environmental Management and Coordination Act 1999

This legislation operationalises the specialized court, i.e. the Environment and Land Court, whose principal mandate is to resolve disputes pertaining to land and the environment, as established under Articles 162 and 165 of the Constitution.<sup>115</sup> The court adjudicates cases and renders decisions in relation to disputes relating to environmental issues, land use and occupation, and title. The court can settle disputes, guarantee adherence to environmental legislation, and enforce rights related to the environment. It has the authority to impose sanctions, including awarding compensation for environmental harm and orders for environmental repair. The concepts of sustainable development, public participation, and access to justice serve as the foundation for the court's operations.<sup>116</sup>

One of this court's decisions which stands out with regard to protection of the environment is that of *Isaiah Luyara Odondo and another v National Environmental Authority and 2 others: County Government of Nairobi and 5 others* (2021) eKLR.<sup>117</sup> The petitioners in this case asked the court to declare that by failing to curb pollution along the Athi and Nairobi Rivers, the County Governments of Nairobi, Kiambu, Machakos, Makueni, Kilifi, and Tana River had breached the Petitioners' rights to a clean and healthy environment. The court agreed with the petitioners and held that by continuing with the actions that contaminated the waterways, the respondents had failed to ensure the petitioners' rights to a clean and healthy environment is upheld.

The court made reference to the approach taken up by New Zealand where The River Whanganui was granted legal personhood, through an act of parliament in

---

<sup>115</sup> Section 2 of the Environment and Land Court Act 2011

<sup>116</sup> Ibid

<sup>117</sup> *Isaiah Luyara Odondo and another v National Environmental Management Authority and 2 others: County Government of Nairobi and 5 others* (Interested Parties) (2021) eKLR

2017.<sup>118</sup> The court made further reference to the Amazon River where the Colombian Supreme Court recognized the river to have rights and hence deserving of protection. In the case, 25 young people made a claim against the government stating their failure to protect the Amazon forest from deforestation, violated the rights to life, health and the environment, as such it was declared that the Amazon was an entity that enjoyed legal rights.<sup>119</sup>

The court acknowledged that granting rights to nature was one of the creative approaches taken up around the world to deal with the issue of pollution. It is however to be pointed out that although the court did not expressly recognise the rights possessed by both the Nairobi River and River Athi, nonetheless, the case points out an increased awareness in the granting of rights to nature as one of the novel approaches that could be adopted to promote environmental protection in Kenya.

#### **1.5.3.4 The Land Act 2012**

The Act, although is primarily concerned with land ownership, tenure and administration, also incorporates and promotes sustainable and productive management of land resources<sup>120</sup>. The relevance of this piece of legislation to the discussion at hand ensues from the fact that most environmental resources whose preservation is necessary for purposes of ensuring a clean and healthy environment, are land-based.<sup>121</sup> As a result, access to and management of land are *sine quo non* towards the upholding of people's rights to a clean and healthy environment.<sup>122\*</sup> Besides, the Act also has certain direct provisions with regard

---

<sup>118</sup> Elin Blakemore, 'This New Zealand River just got the legal rights of a person', (Smart News, 2017), <[Innovative bill protects Whanganui River with legal personhood - New Zealand Parliament \(www.parliament.nz\)](http://www.parliament.nz)> accessed on 15<sup>th</sup> August 2024

<sup>119</sup> Eco Jurisprudence Monitor, 'Colombia Court case on the rights of Colombian Amazon' (2018) *Eco Jurisprudence Monitor* <[Colombia court case on the rights of the Colombian Amazon - Eco Jurisprudence Monitor](#)> (accessed on 15<sup>th</sup> August 2024)

<sup>120</sup> Section 2 of The Land Act 2012

<sup>121</sup> Ibid

<sup>122</sup> Ibid

to environmental protection. One such provision, for instance, is that its section 4 provides that ecologically sensitive areas within public lands ought to be identified and protected from harmful activities.

### **1.5.3.5 The Land Registration Act 2012**

This Act principally provides on registration of rights and interests in land.<sup>123</sup> Section 2 of the Act provides that the Act's main purpose is to establish a system for recording land transactions and ownership. By providing a clear land tenure system it indirectly contributes to the sustainable use of land and hence environmental protection. In addition, it submitted that the Act also has indirect relevance towards ensuring that the Kenyan state meets its constitutional obligation towards maintaining a clean and healthy environment. One way through which this is the case is by requiring that government registration officers comply with principles of environmental governance.<sup>124</sup> In this regard, for example, the land registration officers would be expected not to register and issue titles to persons whose land interests are found within riparian lands. This has for instance been a problem in the recent past when the Government had to resort to demolition of structures whose owners had valid titles that were issued irregularly.<sup>125</sup> By issuing titles within riparian areas, the Government Registration officers undermined the country's collective constitutional obligation requiring that the Government puts into place measures towards ensuring a clean and healthy environment.<sup>126</sup>

---

<sup>123</sup> Section 1 of the Land Registration Act 2012

<sup>124</sup> Section 2 of the Land Registration Act 2012

<sup>125</sup> Collins Kweyu, 'Traders Allege Extortion on Demolition of Buildings on Riparian Lands' (2024) *The Standard* <https://www.standardmedia.co.ke/health/national/article/2001496654/traders-allege-extortion-in-demolition-of-buildings-on-riparian-land> (accessed on 30th August 2024). See also, Gilbert Koech, 'Uproar as Reclamation of Riparian Areas Gains Steam' (4<sup>th</sup> June 2024) *The Star* <<https://www.the-star.co.ke/news/2024-06-04-outcry-as-reclamation-of-riparian-areas-gains-steam/>> (accessed on 30<sup>th</sup> August 2024)

<sup>126</sup> Ibid



#### **1.5.3.6 The Water Act 2016**

This legislation governs the use, preservation, and management of water resources. To ensure the sustainable use of water resources, it establishes under section 7 the Water Resource Management Authority (WRMA).<sup>127</sup> Furthermore, it provides for the protection of water catchment areas by ensuring that they are preserved and this is essential in maintaining the natural flow and quality of natural resources.<sup>128</sup> The Act defines water catchment areas as a vulnerable water resource and provides that special measures are necessary to ensure their conservation.<sup>129</sup> The Act ensures the realization of the right to a clean and healthy environment by encouraging water conservation measures, this is done through vesting all water resources on the state to ensure they are properly managed.<sup>130</sup> Furthermore, the Act mandates the classification of water resources and determination of quality objectives, this helps in setting and enforcing standards for water quality thereby protecting water bodies from pollution.<sup>131</sup>

#### **1.5.3.7 The Wildlife Conservation and Management Act 2013**

This Act provides for the protection and conservation of wildlife and their habitats in Kenya and it also plays an instrumental role in the quest to ensure a clean environment in Kenya. For one, it provides for the preservation of protected areas including national parks, game reserves and sanctuaries in order to safeguard wildlife.<sup>132</sup> In addition, it also regulates the trade in wildlife and wildlife-related products.<sup>133</sup> It also addresses the challenges that come with human-wildlife conflicts while also providing for mitigation measures.<sup>134</sup> The Act promotes community participation in wildlife conservation through the establishment of Community Wildlife Associations. [These associations empower](#)

---

<sup>127</sup> Section 7 of the Water Act 2016

<sup>128</sup> Section 22 of The Water Act 2016

<sup>129</sup> Ibid

<sup>130</sup> Section 5 of the Water Act 2016

<sup>131</sup> Section 83 of the Water Act 2016

<sup>132</sup> Section 15 of The Wildlife Conservation and Management Act 2013

<sup>133</sup> Section 40 of The Wildlife Conservation and Management Act 2013

<sup>134</sup> Section 30 of The Wildlife Conservation and Management Act 2013

local communities to manage and protect wildlife resources, fostering sustainable practices and environmental stewardship.<sup>135</sup>

### **1.6 Granting Rights to Nature**

Whereas the proposal to grant rights to nature may today be considered laughable by a great many people, it is however submitted that tenets of this belief system existed even in pre-colonial Kenyan societies.<sup>136</sup> In the traditional African societies, regardless of the ethnicity, belief systems and cultural values were an important aspect of the historical heritage and identity of the people.<sup>137</sup> These communities lived with deep reverence and appreciation of the natural world by acknowledging each other and the general human community of life as they did with the nature around them.<sup>138</sup> This system was anchored on the belief that the existence of the environment was because of God as well as both the seen and unseen entities.<sup>139</sup> These communities believed that land belonged not only to one person but the community as a whole and all the resources ought to have been used for the benefit of the living, dead and the unborn.<sup>140</sup> Notably, however, the emergence of modern institutions has undermined the traditional ways of conserving the environment.<sup>141</sup> However, upon such indigenous beliefs, are some

---

<sup>135</sup> Section 18 of The Wildlife Conservation and Management Act 2013

<sup>136</sup> Julius Gathogo, 'Environmental Management and African Indigenous Resources: Echoes from Mutira Mission, Kenya (1912-2012)' (2013) 39(2), *Studia Historiae Ecclesiasticae*

<sup>137</sup> Garima Rawat and Sanjit Mishra, 'Spirituality and Environment: Significance of Indigenous Knowledge Systems in Africa and challenges' (January 2021) XII(1) *Literary Endeavor* 56

<sup>138</sup> James N. Amanze, 'African Approaches to the Protection and Conservation of the Environment: The Role of African Traditional Religions' (2024) 2750 *Brill Schoningh*, <[https://www.researchgate.net/publication/378997860\\_African\\_Approaches\\_to\\_the\\_Protection\\_and\\_Conservation\\_of\\_the\\_Environment\\_The\\_Role\\_of\\_African\\_Traditional\\_Religions/fulltext/65f5829ac05fd268801a934b/African-Approaches-to-the-Protection-and-Conservation-of-the-Environment-The-Role-of-African-Traditional-Religions.pdf](https://www.researchgate.net/publication/378997860_African_Approaches_to_the_Protection_and_Conservation_of_the_Environment_The_Role_of_African_Traditional_Religions/fulltext/65f5829ac05fd268801a934b/African-Approaches-to-the-Protection-and-Conservation-of-the-Environment-The-Role-of-African-Traditional-Religions.pdf)> (accessed on 19<sup>th</sup> April 2024)

<sup>139</sup> Philomena A. Ojomo, 'An African Understanding of Environmental Ethics: Thought and Practice' (2010) 2 *A Journal of the Philosophical Association of Kenya* 49

<sup>140</sup> Ibid

<sup>141</sup> Kariuki Muigua, Giving Natural Resources a Legal Personality: A Kenyan Perspective (2020) 1 *KMCO*, <<https://kmco.co.ke/wp-content/uploads/2020/11/Giving-Natural->

of the arguments that have been used to justify the recognition of the rights of nature in other jurisdictions. An example of this is where perspectives that place emphasis on an environmentally conscious lifestyle, over economic development, have been enacted in law.<sup>142</sup>

The Kenyan Constitution allows one to institute a claim before a court stating that their right to a healthy and clean environment has been infringed, as a result, people are able to seek, among other remedies, compensation and redress for themselves.<sup>143</sup> Granting legal personality to nature would require the legal framework to recognize the unique nature of the resource entity. This would include, among other things, the right to survive, to clean water and air, right to balance, to remain unpolluted, the right to prevent genetic modification, and the right to prevent human interference with nature's cycles.<sup>144</sup> Furthermore, considering the fact that nature cannot act for itself, it follows that a system of guardianship would need to be established in order to ensure that the environment has a voice.<sup>145</sup> Notably, the recognition of nature's personhood will come with both rights and responsibilities. The Constitution of Kenya defines a person to include both natural and unnatural entities, hence, implying that corporations fall into this category.<sup>146</sup> The foregoing, therefore, means that if the environment is to be granted the same rights as those of a person, then there would be need to expand the definition to include a person as well. Further, there

---

[Resources-a-Legal-Personality-A-Kenyan-Perspective-Kariuki-Muigua-November-2020.pdf](#) >, accessed on 7<sup>th</sup> April 2024

<sup>142</sup> Ibid

<sup>143</sup> Clarice Wambua, 'When can a river sue you? Implementing a rights of nature approach in environmental management,(CDH Incorporated, 15<sup>th</sup> June 2022) <<https://www.cliffedekkerhofmeyr.com/news/publications/2022/Practice/Environmental/environmental-law-alert-15-june-2022-when-can-a-river-sue-you-implementing-a-rights-of-nature-approach-in-environmental-management-.html>> accessed on 7<sup>th</sup> January 2024

<sup>144</sup> Ibid

<sup>145</sup> Ibid

<sup>146</sup> Article 260 of The Constitution of Kenya 2010

will also be need to define on whether the legal personhood entails duties and what these duties would entail seeing that the environment in itself provides humans with immeasurable benefits.<sup>147</sup>

Granting rights to nature would mean the environment in itself would have the *locus standi* to institute court proceedings similar to that of natural and non-natural persons.<sup>148</sup> Having such personality would mean guardians of specific tenets of the environment and natural resources or any well-meaning citizen would be able to file for legal action when the right has been infringed and hold the people responsible for this violation accountable. This would ensure that where the decision is in favor of the environment, one can ensure that redress arising therefrom is applied towards the benefit of the environment by restoring it to its original state prior to the environmental damage, instead of simply granting compensation to victims of the pollution.<sup>149</sup>

## **1.7 Enforcement of The Rights of Nature**

Rights of nature may be enforced in a variety of ways. Some of the most common ways through which the same is attained are as discussed below.

### **1.7.1 Criminal Enforcement**

In Kenya, criminal; enforcement entails various institutions and laws created to maintain public order, to uphold the law and to ensure justice, it focuses on public wrongs and it is the state's mandate to ensure the same is upheld.<sup>150</sup>This

---

<sup>147</sup> Matthew Hunt, 'Rights of Nature: What are they, where do they come from and why they are important', (2022) *Pogust Goodhead* < [Rights of Nature: what are they, where do they come from, and why are they important? - Pogust Goodhead](#)> (accessed on 15<sup>th</sup> August 2024)

<sup>148</sup> Ibid

<sup>149</sup> Sandhya P. Kalmldhad, 'A Shift from Anthropocentric to Ecocentric Approach for Management and Protection of Specific Species: A Case Study' (2018) 22(2) *Indian Journal of Environmental Sciences* 61 <<https://ijesonline.co.in/wp-content/uploads/2018/11/61-67-Kalamdhad-2018.pdf>> (accessed on 18<sup>th</sup> April 2024)

<sup>150</sup> International Commission of Jurists, 'Criminal Justice Reforms: Issues and Options for Kenya', (ICJ,2018)< [CRIMINAL JUSTICE REFORMS: ISSUES AND OPTIONS FOR KENYA - ICJ Kenya \(icj-kenya.org\)](#)> (accessed on 15<sup>th</sup> August 2024)

may apply in the sense that any act or omission which leads to the violation of the rights of nature may be treated as an offence. Criminal enforcement of environmental rights is not a novel concept in the Kenyan legal context, an example of this is the Prevention of Cruelty to Animals Act 1962. This legislation makes it an offence to put animals through torture and anyone found guilty of this offence may be liable to a fine of Kshs. 3,000 or be imprisoned for a period of up to 6 months or to both.<sup>151</sup> Additionally, The Environmental Management and Coordination Act 1999 provides for criminal offences punishable under law for instance, the act provides that water pollution is prohibited and any person found guilty of the same is liable to imprisonment for a term not exceeding two years or a fine not exceeding two million shillings or both.<sup>152</sup> The Forest Conservation and Management Act 2022 also provides that it is an offence for anyone found felling a protected tree, species or family of trees.<sup>153</sup> The Wildlife Management and Coordination Act 2013 also criminally enforces environmental rights i.e. by making it an offence to pollute designated wildlife area contrary to the provisions of the Act.<sup>154</sup>

Another offence that may be included, as a way of enforcing the rights of nature, is the offence of ecocide which is defined as the willful and unlawful actions by humans that are likely to cause mass destruction of the environment.<sup>155</sup> Jurisdictions that recognize ecocide as an offence place the period of imprisonment to be between 8 and 20 years.<sup>156</sup>

### **1.7.2 Civil Enforcement**

Civil enforcement refers to the legal processes and procedures used to enforce private rights and obligations, unlike criminal enforcement which deals with the

---

<sup>151</sup> Section 3(3) Prevention of Cruelty to Animals Act 1962

<sup>152</sup> Section 72 of the Environmental Management and Coordination Act 1999

<sup>153</sup> Section 40 of The Forest Conservation and Management Act 2022

<sup>154</sup> Section 89 The Wildlife Management and Coordination Act 2013

<sup>155</sup> Stop Ecocide International, < <https://www.stopecocide.earth/>>, accessed on 19<sup>th</sup> April 2024

<sup>156</sup> Ibid

state often civil disputes relates to matters between individuals and entities.<sup>157</sup> This may be done through legal representatives, custodians and guardians of nature. They may be individuals, a community of people who act as the face of nature and speak on its behalf approaching the court for an appropriate order and such an order may be used for the benefit of the environment.<sup>158</sup>

## **1.8 Arguments for and Against the Granting of Rights to Nature**

### **1.8.1 Arguments Against Granting Rights to Nature**

#### **1.8.1.1 Lack of Limitation as to the Scope of Nature's Rights**

Critics of the Rights of Nature claim that there is no limitation in regards to what it means to grant rights to nature.<sup>159</sup> They contend that a declaration that "nature should have legal rights" is a way to avoid answering a number of very difficult questions.<sup>160</sup> Some of such questions include the questions such as; Which parts of nature? And what do the rights actually consist of? Etc. Whereas supporters of the Rights of Nature movement argue that all living creatures are entitled to legal protections, critics, however, offer a contrary argument by pointing out the fact that there are probably between 8.7 million and over a trillion species, including microorganisms, on earth.<sup>161</sup> As a result, they argue that seeking to bestow legally

---

<sup>157</sup> Terry Njueini, 'Distinction between Civil and Criminal cases in Kenya', (2024) *Haki Africa* <<https://hakifm.or.ke/distinction-between-criminal-and-civil-cases-in-kenya/#:~:text=While%20criminal%20cases%20focus%20on,parties%20and%20provide%20compensation%20or>>, (accessed on 15<sup>th</sup> August 2024)

<sup>158</sup> Ibid

<sup>159</sup> Visa Kurki, 'Can Nature Hold Rights? It's not as easy as you think' (2022) 11(3) *Transnational Environmental Law* 525 <[Can Nature Hold Rights? It's Not as Easy as You Think | Transnational Environmental Law | Cambridge Core](#)> (accessed on 15<sup>th</sup> August 2024)

<sup>160</sup> Tiffany Challe, 'The Rights of Nature: Can an Eco-system bear legal rights?', (Colombia Climate School, 2021), <[The Rights of Nature – Can an Ecosystem Bear Legal Rights? – State of the Planet \(columbia.edu\)](#)>, accessed on 15<sup>th</sup> August 2024

<sup>161</sup> Noah Sachs, A wrong turn with the rights of nature movement, (2023) Vol 36 *Georgetown Environmental Law Review*

binding rights upon every species, as well as upon each individual creature within a species is hardly practical to carry out.<sup>162</sup>

### **1.8.1.2 Judicialization of Environmental Protection**

Furthermore, critics argue that the Rights of Nature movement puts a lot of emphasis on the judiciary with regard to environmental protection and depends on the courts to decide tort-like lawsuits filed on behalf of natural entities against alleged corporate or human wrongdoers.<sup>163</sup> In this regard, critics argue that judicialization is a bad way to deal with environmental problems considering that judges are not technically qualified to take the lead in tackling diffuse and complex environmental problems such as climate change and biodiversity loss. Therefore, it is often argued that the most serious types of environmental damage cannot be prioritized by courts since they only hear lawsuits submitted by litigants.<sup>164</sup>

### **1.8.1.3 Grant of Rights of Nature May be Used as a Legal Weapon Against Other People**

Critics also argue that there will not be many benefits for nature to balance out the repressive outcomes that the Rights of Nature movement is likely to bring about for people.<sup>165</sup> This criticism is premised on the view that the movement aims to subordinate human rights under the constitution and statutes to the legal rights of rivers, plants, and insects, which are considered to be countervailing.<sup>166</sup> The core of the argument by the proponents of the rights of nature is the devaluation of human rights, needs, and interests, which is promoted as a means of ending anthropocentrism in the legal system.<sup>167</sup> The legal ramifications of this

---

<sup>162</sup> Ibid.

<sup>163</sup> Visa Kurki, *supra*.

<sup>164</sup> Ibid

<sup>165</sup> Tiffany Challe, 'The Rights of Nature: Can an Eco-system bear legal rights?' (April 2021) *State of the Planet* <[The Rights of Nature – Can an Ecosystem Bear Legal Rights? – State of the Planet \(columbia.edu\)](https://stateoftheplanet.columbia.edu/)> (accessed on 15<sup>th</sup> August 2024)

<sup>166</sup> Ibid

<sup>167</sup> Ibid



unwarranted interference with people's endeavors would be severe. For instance, we may witness haphazard lawsuits against human endeavors that alter nature in any manner, including as farming, fishing, and building, if Rights of Nature movement viewpoints are adopted.<sup>168</sup> In this regard, for example, even eating, which is one of the near universal human activities that causes harm to living things, may be challenged. People may use nature's newfound legal rights as a weapon against other people, hence, employing them to intimidate adversaries, hurt rival businesses, stall government programs in court, or obstruct desperately needed housing and infrastructure projects.<sup>169</sup>

#### **1.8.1.4 Environmental entities granted legal rights may become vulnerable to law suits themselves**

Another concern that arises with the idea of granting legal personhood and rights to nature and environmental entities is that if nature is deemed a legal entity with rights then does it also mean that it can also be held liable for its acts or omissions?<sup>170</sup> In this regard, for example, could a river be sued for property damage, for instance, if it floods and causes damage? This brings up difficult issues with accountability. In such an instance where the environmental entity is found liable who, then, would be held responsible in terms of compensation or damages, where need be?<sup>171</sup>

It is however submitted that according nature rights under law may not be enough to address the challenge in environmental management and this implementation will not be without challenges. This, however, is no reason to discredit it since the framework of environmental conservation and management

---

<sup>168</sup> Ibid

<sup>169</sup> Ibid

<sup>170</sup> Katie Surma, 'Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests and Wildlife have Standing Too' (September 2021) *Inside Climate News* <[Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests and Wildlife Have Standing, Too - Inside Climate News](#)> (accessed on 15<sup>th</sup> August 2024)

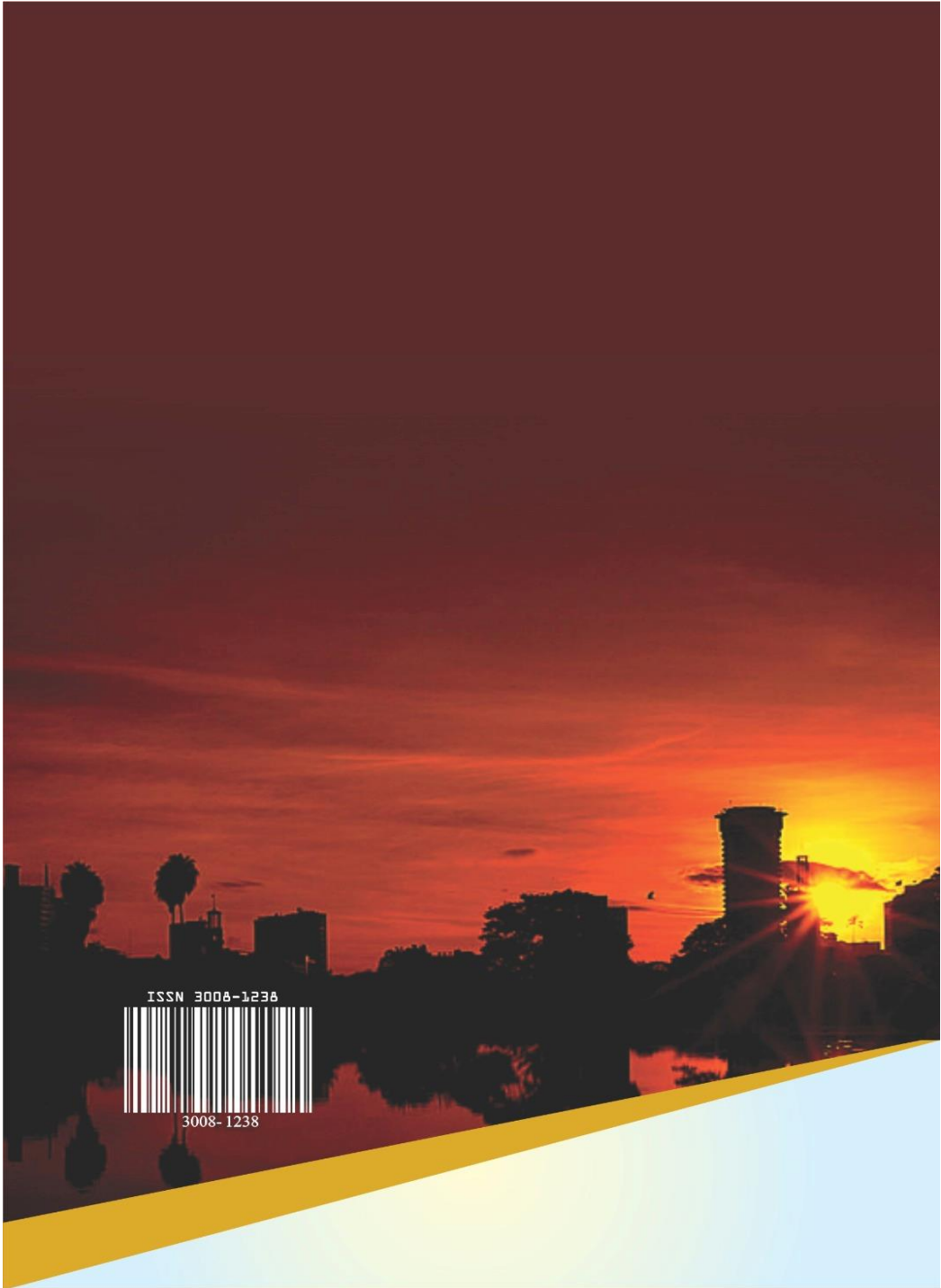
<sup>171</sup> Mauricio Guim, 'Where Nature's Rights Go Wrong' (2021) 107 (7), *Virginia Law Review* 1347.



has a lot more to gain than it does to lose.

### **1.9 Conclusion**

in conclusion, it is noted that the incorporation of ecocentrism into Kenya's legal framework is a daring move in the direction of a sustainable future. Kenya may establish a standard for environmental protection that strikes a balance between human advancement and ecological integrity by rethinking legislative frameworks to recognize the rights of nature. Although the transition to an ecocentric legal framework may not be easy, it would, however, be a necessary step towards offering effective guarantees for future generations' access to the natural legacy. Kenya has the chance to set an exemplary example and become a ray of hope for the pursuit of a more just and environmentally sustainable legal system as the world looks on.



ISSN 3008-1238



3008-1238