

Pan-African Strategies for Environmental Preservation:

Why Women's Rights Are the Missing Link

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INTRODUCTION

The intimate connection between human and environmental rights has been explored extensively.¹ Largely omitted from the discussion, however, is the role rural women have played, and can play, in protecting environmental rights. This Article argues that the protection and fulfillment of women's human rights, in the context of an evolving Pan-African system for the protection of environmental rights, can be a catalyst for positive environmental change in Sub-Saharan African countries. Using examples from several Sub-Saharan African countries, this Article explores the potential benefits of increasing women's participation in their communities as an effective strategy for environmental protection.² Enhancing women's roles in environmental policymaking and granting them greater land rights will result in more effective environmental preservation, while also improving the realization of women's rights.

The environment provides a livelihood for many women in rural areas of Sub-Saharan Africa.³ Agriculture is Sub-Saharan Africa's main economic

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1. See ALAN E. BOYLE & MICHAEL R. ANDERSON, HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION (1996). See generally JAN HANCOCK, ENVIRONMENTAL HUMAN RIGHTS: POWER, ETHICS AND LAW (2003).
2. See FAREDA BANDA, WOMEN, LAW AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE 275-79 (2005) (recognizing that women tend to experience disadvantages such as poverty, discrimination, lack of political power, and land rights more than their urban counterparts). See also Convention on the Elimination of All Forms of Discrimination against Women art. 14, Sept. 3, 1981, CEDAW/C/2007/III/1 [hereinafter CEDAW] (focusing particularly on rural women).
3. I recognize that researching and drawing conclusions about all women is impossible. I do not claim to speak about the individual or collective experiences of all Sub-Saharan African women or all African women in general. Rather, this Recent Development attempts to look at specific examples of different women's involvement in a geographical region's environmental movement and politics, and explain to how their particular efforts show the

stronghold, and the majority of Sub-Saharan Africa's farmers is women. The region is experiencing environmental degradation due in large part to strategies for economic development that force countries to accept payment for dumping and tourism that upset the region's ecosystems. This dilapidation is coupled with a lack of resources to counteract industrial growth and waste and to build knowledge and respect for environmental preservation.⁴ This dilemma threatens the livelihood of many women in Sub-Saharan Africa, compromising not only their basic rights but also the entire population's.

This Article argues that including rural women in the creation of a Pan-African system of environmental rights protection—one that that encompasses the entire African region—is crucial to the system's success. Many women in rural Sub-Saharan Africa, such as those from the Goviefe-Agodome village of Ghana, have “profound knowledge of plants, animals and the ecological processes around them” and yet have been excluded from resource management.⁵ Because they are gatekeepers of agricultural knowledge and managers of local land,⁶ rural women have an important role to play in environmental protection.

A Pan-African system of environmental rights protection could enable rural women to more fully realize their human rights by putting political and normative pressure on governments and providing a mechanism for addressing women's grievances with regard to the environment. Increasing women's access to formal legal land rights in instances where they are lacking and increasing their participation in environmental policy decision-making would empower women and improve the environment.

Part I of this Article advances my proposal for a Pan-African system of environmental rights protection. Although this Article does not address the mechanics of what such a system might look like, the feasibility of such a system is supported by the ongoing development of a Pan-African system for the protection of human rights and increasing global and regional attention to the intersection between human rights and environmental rights. Part II explores the impact of the region's colonial and post-colonial history on environmental degradation and women's rights. This part does not claim that conditions relating to women's rights are similar in all the states on the African continent, nor does

great potential for opening up political processes to women at a broader level.

4. It should be noted from the outset that a discussion of “development” and attendant environmental standards in the region cannot be separated from the social and cultural norms of each country; although in Africa, poverty, along with conflict in the region, is generally a main cause of lack of development. See BANDA, *supra* note 2, at 265.
5. Clement Dorm-Adzobu & Okyeame Ampadu-Agyei, *Women in the Goviefe-Agodome mobisquads, Ghana*, in TOWARDS COMMON GROUND: GENDER AND NATURAL RESOURCE MANAGEMENT IN AFRICA 24 (Asenath Sigot et al. eds., 1995).
6. Shimwaayi Muntamba, *Women and Environment in Africa: Towards a Conceptualization*, in WOMEN'S ROLE IN NATURAL RESOURCE MANAGEMENT IN AFRICA 1, 4 (Eva M. Rathgeber ed., 1989), available at <https://idl-bnc.idrc.ca/dspace/bitstream/123456789/25113/a-42080.pdf>.

it claim that they are identical for all groups of women within any country. Instead, it focuses on the way in which the colonial legacy has created or entrenched barriers to the land rights and participatory rights of many African women, which in turn present obstacles to environmental improvement. Part III presents two case studies of grassroots women's organizations that demonstrate how protecting the human rights of women and involving them in decision-making can improve environmental conditions. Finally, Part IV of this Article suggests that environmental rights may be greatly enhanced by granting rural women increased rights over the land they cultivate and giving them more say in local, national, and regional decision-making processes.

I. TOWARD A PAN-AFRICAN SYSTEM OF ENVIRONMENTAL RIGHTS PROTECTION

In this section, I argue that a Pan-African system of environmental rights protection is needed. By implementing principles on the regional level, a system of environmental rights protection can be established with greater efficiency and success because it will be drawing from the human rights rubric—a structure that has proven both workable and legitimate in the international arena. A Pan-African system for the protection of environmental rights would greatly overlap with the emerging regional system for the protection of human rights, particularly in the area of women's rights. Emphasizing women's rights on the regional level can improve environmental protection and thus the overall status of certain rights for the entire population. Despite the vast diversity present on the African continent, commonalities in women's experience with regard to participatory and land rights support the case for a Pan-African system of environmental rights protection based on the emerging Pan-African system for the protection of human rights.

A. Environmental Rights and Women's Rights in International Human Rights Law

Courts, scholars, advocates, and international bodies have noted the intersection between environmental protections and other human rights objectives.⁷ The important relationship between the environment and human rights can be found underlying much international rights jurisprudence. As Judge Weeramantry noted in his landmark International Court of Justice (ICJ) decision in the case *Concerning the Gabčíkovo-Nagymaros Project*:

7. Murray Griffin, *Attorneys Turn to Human Rights Allegations as Likely Basis for Climate Change Litigation*, 36 INTERNATIONAL ENVIRONMENT REPORTER 749 (April 15, 2005), available at <http://pubs.bna.com/NWSSTND/IP/BNA/enr.nsf/SearchAllView/4AE2C66CDA4D7AA085256FE400096C07?Open&highlight=AFRICA>.

[t]he protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.⁸

Because of the fundamental nature of the connection between human and environmental rights, Lalanth de Silva, founder of the Environmental Law Alliance Worldwide, a global network of public interest lawyers, noted that “Environmental litigation is increasingly coming under the rubric of human rights.”⁹ Many scholars and advocates have similarly observed the interdependence of environmental protections and other human rights objectives. As human rights expert Professor Dinah Shelton explains:

the primary objective of human rights law is to allow individual self-actualization by protecting each person from abuse of power by State agents, and by ensuring that basic needs can be fulfilled Environmental law, in turn, seeks to protect and preserve the basic living and nonliving resources and ecological processes on which all life depends.¹⁰

Thus, the ability of an individual to realize her most fundamental human rights is contingent upon environmental protection.

The United Nations (“UN”) recognizes the potential of utilizing the human rights paradigm for furthering environmental rights, and various UN bodies advocate a combined approach towards promoting human and environmental rights. Perhaps the most commonly known example is the UN’s annual consideration of environmental problems through several of its human rights organs—an agenda undertaken as a result of the protestations of African states over human rights violations caused by transnational toxic waste dumping in their territories.¹¹ Another example is the United Nations Development Programme (UNDP), which has stated that integrating sustainable environmental policies into development objectives is a human rights issue.¹² States sometimes even report on environmental issues in their periodic updates under the

8. Gabcikovo-Nagymaros Project (Hung. v. Slov.), Judgement, 1997 I.C.J. 88, 91-92 (Sept. 25) (separate opinion of Judge Weeramantry), available at <http://www.icjci.org/docket/files/92/7383.pdf>.

9. Griffin, *supra* note 7, at 749.

10. Dinah Shelton, *The Environmental Jurisprudence of International Human Rights Tribunals*, in LINKING HUMAN RIGHTS AND THE ENVIRONMENT I (Romina Picolotti & Jorge Daniel Taillant eds., 2003).

11. *Id.* at 2.

12. Anne Hellum, *Towards a Human Rights Based Development Approach: The Case of Women in the Water Reform Process in Zimbabwe*, LAW, SOCIAL JUSTICE & GLOBAL DEVELOPMENT, June 21, 2001, at n.13, http://www2.warwick.ac.uk/fac/soc/law/elj/Igd/2001_1/hellum/.

International Covenant on Economic, Social and Cultural Rights, as Tunisia did in 1986.¹³

Moreover, there is growing international appreciation for the value of human rights-based strategies for environmental preservation that emphasize increasing women's rights and ability to participate in political communities.¹⁴ The United Nations and regional governmental organizations have recently begun to pay attention to the role the historic disenfranchisement of certain groups of women has played in environmental degradation. International bodies have begun to recognize that enhancing women's roles and increasing their land rights can lead to greater protection of the environment, increasing the entire populations' enjoyment of certain human rights, such as those to health and life.

The intersection between women's rights and environmental rights has received particular attention in the African context. A pivotal summit on environmental conditions in Africa, the African Ministerial Conference on the Environment (AMCEN), was first assembled in Cairo, Egypt, in 1985, and now meets every two years.¹⁵ This conference explores the nexus between environmental and basic human rights.¹⁶ It aims to bolster environmental advocacy on the continent and to assure that the population's needs are met in a sustainable fashion.¹⁷ The role of women in sustainable development and other environmental issues arose concretely during the third session of the Conference in 1989 in Nairobi, Kenya.¹⁸ The Conference recommended both general and specific steps for integrating women and women's grassroots organizations into the process of preventing environmental degradation on the African continent, citing women's workshops on arid lands in Dakar, Senegal as a model.¹⁹ The Conference further stated that its committees should "take measures" to put the recommendations of the African Women's Assembly on Sustainable Development into action, namely to empower rural women as part of a larger strategy to promote sustainability.²⁰ During the eighth session of the Conference,

13. See Tunisia, *Implementation of the International Covenant on Economic, Social and Cultural Rights; Initial Reports Submitted by States Parties to the Covenant, In Accordance with Council Resolution 1988 (LX), Concerning Rights Covered by Article 10-12, delivered to the United Nations Commission on Economic, Social and Cultural Rights*, U.N. Doc. E/1986/3/Add.9 (1987).

14. See BANDA, *supra* note 2, at 275-79 (recognizing that rural women tend to experience disadvantages such as poverty, discrimination, lack of political power and land rights more than their urban counterparts). See also CEDAW, *supra* note 2, at Art. 14 (focusing particularly on rural women).

15. United Nations Environment Programme, Regional Office for Africa Homepage, http://www.unep.org/roa/amcen/About_AMCEN/ (last visited Jan. 22, 2008).

16. *Id.*

17. *Id.*

18. Section G of the Third Session is entitled "The Role of African Women." AMCEN Res. 3/2, p. 5, U.N. Doc. UNEP/AMCEN. 3/2 (May 10-12, 1989), available at http://www.unep.org/roa/Amcen/docs/AMCEN_Decisions/PDF/Amcen%203%20decisions.pdf.

19. *Id.*

20. *Id.*

held in Abuja, Nigeria, in 2000, AMCEN mentioned the importance of integrating “women’s groups,” among other sectors of society, into the development process in order to take advantage of their particular skills and environmental knowledge.²¹

Other international bodies recently have begun to include women’s participatory rights in programs for sustainable development. In 1990, the UN released the concise *Resolution on the Integration of Women in Development*,²² which was specifically concerned with the plight of African, mainly rural and indigenous, women as the region continues to develop. The resolution called for a halt to gender discrimination and for taking concrete measures to increase female participation in the political decision-making process. The resolution referenced the *Lagos Plan of Action* and the *Arusha/Nairobi Strategies for the Emancipation of Women*, two earlier African-promulgated schemes for increasing women’s rights that expressly recognized the key role of women in the process of development.²³ The Security Council called for training programs that would lead to the increased inclusion of women in Pan-African decision-making on every level.²⁴

In November 2002, the FAO’s New Partnership for Africa’s Development (NEPAD) formulated the *Comprehensive Africa Agriculture Development Programme* which set goals of improving agricultural techniques, improving land and water management, increasing market access, and reducing hunger, poverty, and rural disasters in Africa.²⁵ The impetus for doing so was the importance of agriculture for most Sub-Saharan African economies coupled with major food insecurity and other agricultural problems that disadvantage farmers and their communities.²⁶ The program took particular note of the need to pay attention to small-scale female farmers as a means of improving the productivity of agriculture.²⁷ The role of women in these development and trade processes is captured specifically in the chapter entitled the “Role of African Women in Rural Development.”²⁸ The *Programme* recognized the entrepreneurial role that women often play in rural African agricultural economies, noting particularly

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21. AMCEN Res. 8/5, U.N. Doc. UNEP/AMCEN. 8/5 (April 3-6, 2000), *available at* http://www.unep.org/roa/Amcen/docs/AMCEN_Decisions/PDF/Amcen%208%20decisions.pdf.
 22. CM/Res. 1215(L) 1989, *reprinted in* 2 AFR. J. OF INT’L. & COMP. LAW 338 (1990).
 23. *Id.*
 24. *Id.*
 25. *See generally* NEW PARTNERSHIP FOR AFRICA’S DEVELOPMENT, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, COMPREHENSIVE AFRICA AGRICULTURE DEVELOPMENT PROGRAMME (2002), *available at* http://www.fao.org/docrep/005/y6831e/y6831e-01.htm#P24_4948.
 26. *Id.* at Ch. 1.3, African Agriculture in Crisis, *available at* http://www.fao.org/docrep/005/y6831e/y6831e-02.htm#P117_27706.
 27. *Id.* at Ch. 1.6, A Vision for African Agriculture, *available at* http://www.fao.org/docrep/005/y6831e/y6831e-02.htm#P180_37990.
 28. *Id.* at Ch. 5.6.4, Role of African Women in Rural Development, *available at* http://www.fao.org/docrep/005/y6831e/y6831e-06.htm#P1524_344480.

that women tend to reinvest in their communities, both financially and socially.²⁹ Environmental benefits result from cooperatives and other farmer's associations, information training sessions, and enforcement of property rights, policies and programs which NEPAD suggests also contribute to "well-functioning agricultural markets."³⁰

This increasing attention to the intersection between human rights, women's rights, development, and environmental protection—particularly in the African context—lays the groundwork for a Pan-African system of environmental rights protection that incorporates the perspectives of rural women.

B. The Case for a Pan-African System of Environmental Rights Protection

In Africa, "law is plural and complex."³¹ The Islamic legal presence in Northern Africa, the Francophone, Lusophone, and Anglophone colonial legal traditions, the Dutch-Roman influenced laws of Southern Africa, and the customary law of indigenous communities are just a few of the various modes of legal interpretation that impact women in Africa.³² Despite this tremendous variety, the regional experience is a necessary level of analysis. It is impossible to understand the evolution of the Pan-African system of redress for human rights violations—and this Article's proposal for a system for addressing environmental rights—without contextualizing them within the effects of the continent's colonial and pre-colonial histories and how these histories have played out across the region.

Africa's history has influenced heavily the development and focus of its regional human rights law and enforcement mechanisms, although the subject is much more complicated than discussed here. In the wake of colonialism, the "African preference" as pronounced by African leaders, has generally been not for individual rights, but rather for collective rights focused on self-

29. *Id.*

30. *Id.*

31. BANDA, *supra* note 2, at 4.

32. This Article does not argue that there is one common experience amongst the vastly diverse experiences of fifty-three nations and their citizens, including their respective complicated and unique histories, environments, cultures, and gender roles, both historical and modern. African pre-colonial and colonial histories differed greatly from state to state and across regions depending on numerous factors, including indigenous cultures and the strategy of each European colonizer. Particularly, in North Africa, the unique intricacies of Islamic law and culture, and the distinct South African history are not specifically addressed here. Nonetheless, the impact of European colonialism has had effects on nearly the entire African continent, including a role in shaping the widespread abuse of human rights and the environmental degradation. *Id.* at 265. To ignore this regional experience and how it has affected women's rights on the continent would hinder the contextual understanding that is necessary for improving environmental conditions, as well as women's rights, across the entire region. The evolution of effective regional and continental systems of human and environmental rights law in other parts of the world provides hopeful models, which make a discussion of a Pan-African system of rights and accompanying dispute resolution techniques appropriate.

determination, equality of all people, liberation, international peace, as well as the rights of minorities, the environment, and especially development.³³ The African Union (AU), founded in 1999 as the Organization of African States (OAS), aims to unify the continent while also addressing an array of problems due to colonialization, development, and other factors. The African Court of Justice and the African Court on Human and People's Rights, organs of the AU, were established under the African Charter of Human and People's Rights, which is a foundational document of the AU.³⁴ This pattern parallels the evolution of other regional human rights structures such as those in Europe and the Americas.³⁵ For example, the Inter-American Commission and Court of Human Rights have been greatly influenced by the region's experiences with disappearances, which were prevalent in such countries as Chile, Argentina, and Guatemala in the 1970's and 1980's.³⁶ While not every state in the Americas has gone through a period of "desaparacidos" (disappearances),³⁷ the systematic kidnapping and killing of thousands of people, initiated and executed by military governments, gave rise to a regional problem that demanded a regional solution. The outcome was the development of a regional human rights discourse and a set of instruments that were grounded in the atrocity of disappearances and the issues accompanying such mass violations of human rights.³⁸

In the African context, the marginalized status of women, arising out of the intersection of indigenous customs and colonial experiences, heavily impacts human and environmental rights and forms a regional basis of experience. While variation is great, customary law—laws that have traditionally been followed in particular social contexts—often deny women's right to own property.³⁹ While

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33. Sakah Saidu Mahmud, *The State and Human Rights in Africa in the 1990s: Perspectives and Prospects*, 15 HUM. RTS. Q. 485, 488 (1993).
 34. See African Union in a Nutshell, http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm. See also African International Courts and Tribunals (PICT), <http://www.aict-ctia.org/index.html>.
 35. Europe and the Americas already provide models of regional systems of human rights protection at various stages of development that can be utilized for environmental rights claims including the European Commission on Human Rights, the European Court of Human Rights, the Inter-American Court on Human Rights, and the Inter-American Commission on Human Rights. See generally Jorge Daniel Taillant, *Environmental Advocacy and the Inter-American Human Rights System*, in LINKING HUMAN RIGHTS AND THE ENVIRONMENT 118 (Romina Picolotti & Jorge Daniel Taillant eds., 2003); Dinah Shelton, *The Environmental Jurisprudence of International Human Rights Tribunals*, in LINKING HUMAN RIGHTS AND THE ENVIRONMENT (Romina Picolotti & Jorge Daniel Taillant eds., 2003).
 36. Linda Drucker, Recent Development, *Governmental Liability for "Disappearances": A Landmark Ruling by the Inter-American Court of Human Rights*, 25 STAN. J. INT'L L. 289, 291 (1989).
 37. Jerome Shestack, *Case of the Disappeared: In Foreign Countries, Missing Persons are the Nightmare Victims of State Terrorism*, 8 HUM. RTS. 24, 24-25, 51-55 (1980).
 38. Juan E. Mendez & Jose Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 HAMLINE L. REV. 509, 509-74 (1990).
 39. BANDA, *supra* note 2. One must also recognize the multifaceted feminist debate concerning western versus non-western feminist ideologies. *Id.* at 7-8. This debate includes many differing opinions on the roles of race, class, religion, and colonialism in a gendered analysis

women in some Islamic legal systems and matrilineal societies have land rights equal to those of men,⁴⁰ more common is the case that women's rights are severely limited under customary or religious law.⁴¹ Rules implemented by various colonial regimes often entrenched discrimination against women present in customary law.⁴² Even in countries where discrimination and gender bias are invalid under official state law, many African women today suffer from systematic discrimination concerning laws of property ownership.⁴³ In rural contexts especially, systems of gender inequality traceable to colonial influence result in women being denied title to their land.⁴⁴ Thus, the lingering effects of colonialism on women's rights and the environment felt across the African continent—to be explored in greater depth below—renders necessary a regional system of environmental rights protection.

II. THE IMPACT OF COLONIALISM ON WOMEN'S RIGHTS AND ENVIRONMENTAL RIGHTS

A. Environmental Rights and the Status of Women in Pre-Colonial Customary Law

In pre-colonial Africa, women often played a key role in indigenous systems of environmental protection. Contrary to arguments made by some commentators that Europeans generated the original concept of environmental protection on the continent,⁴⁵ many communities in Africa, and particularly women from these communities, were utilizing and respecting their environment as a means of survival, pursuant to their own understandings, for many years before colonial contact. Ghanaian women, for example, traditionally occupied managerial roles over soil, energy, water and forest resources and had deep knowledge of resource management techniques passed down for generations through the female lineage.⁴⁶ Similarly, in Kenya, women were tasked with balancing utilization of land for immediate sustenance with what would now be

of women's experience throughout Africa, and even in the very conception of feminism itself. *Id.* at 7-10. See generally OYERONKE OYEWUMI, *THE INVENTION OF WOMEN: MAKING AN AFRICAN SENSE OF WESTERN GENDER DISCOURSE* (1997).

40. Munteмба, *supra* note 6, at 2.

41. Michael Kevane, *The Land Tenure Rights of African Women*, in *WOMEN AND DEVELOPMENT IN AFRICA: HOW GENDER WORKS* 47, 51 (2004).

42. *Id.* at 84.

43. Ann Whitehead & Dzodzi Tsikata, *Policy Discourses of Women's Land Rights in Sub-Saharan Africa*, in *AGRARIAN CHANGE, GENDER AND LAND RIGHTS* 67, 79 (Shahra Razavi ed., 2003).

44. See *id.* at 98.

45. NOMSA D. DANIELS, *CRITICAL ISSUES: PROTECTING THE AFRICAN ENVIRONMENT* VOL. 3/4 11-12 (1992).

46. Dorm-Adzobu & Ampadu-Agyei, *supra* note 5, at 49.

seen as sustainable development principles, promoting the land's long-term regeneration.⁴⁷

Pre-colonial systems of property law were different from Western systems of land ownership in that they mostly referred to access to land, as opposed to ownership of it.⁴⁸ Across Sub-Saharan Africa, land was often held semi-communally, as opposed to individually.⁴⁹ Men and women generally played complementary roles in agricultural production, sharing the main goal of meeting fundamental community subsistence needs.⁵⁰ Though scholars debate the meaning (and possible myth) of communal property in pre-colonial Sub-Saharan Africa,⁵¹ it is clear that individual property rights were usually viewed as secondary to the welfare of the community as a whole.⁵² Where systems of individual inheritance of property were present in pre-colonial Africa, many such systems provided for sole inheritance of land and property by male descendants.⁵³ For example, indigenous Kenyan women such as the *Agikulu* and *Luo* could not own or inherit land.⁵⁴ As we will see below, colonial regulation of land ownership entrenched gender inequality present in pre-colonial societies.

As with land ownership rights, pre-colonial systems of dispute settlement did not uniformly favor men. In many pre-colonial African communities,⁵⁵ dispute settlement was based on accommodating all of the parties involved in the argument with the purpose of restoring peace and harmony. In Kenya, for instance, the concepts of obligation and compensation that are familiar to Western systems of dispute resolution were not a part of a majority of traditional systems of conflict settlement.⁵⁶ Native women in pre-nineteenth century Sub-Saharan Africa sometimes played an active role in dispute settlements as well. During court proceedings of the *Bantu Tirki* of Western Kenya, for example,

47. Patricia Kameri-Mbote, *Women, Land Rights and the Environment: The Kenyan Experience*, 49 DEV. 43, 46 (2006), available at <http://www.palgrave-journals.com/development/journal/v49/n3/pdf/1100274a.pdf>.
48. *Id.* See also Cynthia Grant Bowman & Akua Kuenyehia, *Women and Access to Land, in WOMEN AND LAW IN SUB-SAHARAN AFRICA* 128 (2003). See generally Carola Lentz, *Introduction to LAND AND THE POLITICS OF BELONGING IN WEST AFRICA* (Richard Kuba & Carola Lentz eds., 2006) (arguing for a new and more varied African-centric approach to studying the politics of land in West Africa that accounts for a much more complex system of land ownership).
49. See Bowman & Kuenyehia, *supra* note 48, at 128.
50. See Cyril Kofie Daddieh, *Production and Reproduction: Women and Agricultural Resurgence in Sub-Saharan Africa, in WOMEN AND DEVELOPMENT IN AFRICA: COMPARATIVE PERSPECTIVES* 166 (Jane L. Parpart ed., 1989).
51. See Lentz, *supra* note 48.
52. GEORGE B. N. AYITTEY, *INDIGENOUS AFRICAN INSTITUTIONS* 37 (2d ed. 1991).
53. See *id.* at 93 (discussing *Xhosa* and other legal systems of property law).
54. Mumbi Mathangani, Comment, *The Triple Battle: Gender, Class and Democracy in Kenya*, 39 HOW. L.J. 287, 293 (1995).
55. I speak here of recorded legal history in certain African societies before the nineteenth century colonization of the continent.
56. J.B. Ojwang with Calestous Juma, *Towards Ecological Jurisprudence, in IN LAND WE TRUST: ENVIRONMENT, PRIVATE PROPERTY AND CONSTITUTIONAL CHANGE* 313 (Calestous Juma & J.B. Ojwang eds., 1996).

elderly women could ask permission to express their opinions on a case or introduce evidence.⁵⁷ However, pre-colonial legal systems varied considerably. The *Shona* of Zimbabwe solved family disputes only through the senior men of the family.⁵⁸

B. The Impact of Colonialism on Women's and Environmental Rights

Across the African continent, colonialism had a devastating impact on indigenous systems of environmental protection and on women's rights. The influx of European colonialists scrambling to control the African continent in the nineteenth century, culminating in the Berlin Act of 1885,⁵⁹ fragmented African societies by creating artificial physical borders and granting possession of these new nations to different colonial powers.⁶⁰ While European powers did adopt some conservation practices, their main motivation for doing so—sport hunting—contrasted sharply with the chief motivations of indigenous communities—preservation and sustainability.⁶¹ The colonialists executed the process of dividing up the territory, slavery, and the exploitation of natural resources for immediate profit without concern for the welfare or future of the indigenous populations and their environments.⁶²

In many cases, the colonial experience diminished women's local authority and control over land, leading to negative consequences for the environment. Under European rule, women were systematically excluded from positions of authority and suffered the dual prejudices of race and gender discrimination.⁶³ The implementation of European forms of land inheritance and social limitations on land ownership tended to exacerbate discrimination against indigenous women⁶⁴ by either stripping them of any rights they initially enjoyed, or else installing rules and laws that reinforced women's second-class stature in society.

57. AYITTEY, *supra* note 52, at 48.

58. *Id.* at 87.

59. BANDA, *supra* note 2, at 14-15.

60. *Id.* at 14.

61. Sport hunting stimulated initial conservation legislation, such as the move by British Prime Minister Robert Gascoyne-Cecil in 1897 to limit ivory exports from East Africa. Daniels, *supra* note 45, at 12. See generally R.W. Beachey, *The East African Ivory Trade in the Nineteenth Century*, 8 J. AFR. HIST. 269 (1967) (discussing the immense ivory trade that came out of Africa, and specifically East Africa, during this period).

62. See generally UNITED NATIONS UNIVERSITY, MALDEVELOPMENT—ANATOMY OF A GLOBAL FAILURE (Samir Amin ed., Michael Wolfers trans., 1990) (Chapter 7—*Inter-African and South-South Cooperation; Pan-Africanism in the light of the colonial inheritance* and Chapter 1—*Africa's Economic Backwardness: The Origins of Africa's Agricultural Failure*), available at <http://www.unu.edu/unupress/unupbooks/uu32me/uu32me00.htm#Contents>. Again, while pre-colonial and colonial African histories differed greatly, common to most states in the region is a period of European (or Arab) colonization.

63. IRENE DANKELMAN & JOAN DAVIDSON, WOMEN AND ENVIRONMENT IN THE THIRD WORLD: ALLIANCE FOR THE FUTURE 15 (1998). See also BROKIE M. KETHUSEGILE ET AL., BEYOND INEQUALITIES: WOMEN IN SOUTHERN AFRICA (WOMEN IN DEVELOPMENT, SOUTHERN AFRICA AWARENESS) 23 (2000) [hereinafter WIDSAA].

64. DANKELMAN & DAVIDSON, *supra* note 63, at 15.

While in some instances indigenous women lost powers they had previously enjoyed, colonial regulation often simply reinforced customary norms of female inferiority.⁶⁵

Environmental protection was also threatened by the diminished status of women. Though pre-colonial women often did not share equal land rights with men over communally or semi-communally held property, their disadvantage was compounded in colonial years.⁶⁶ As land was privatized, women became dependent on minimal compensation for their labor in contrast to previously enjoyed semi-ownership of production and profits. The governing legal regimes left them without recourse for inequitable treatment; they were prohibited from making decisions about, or profiting directly from, the land they cultivated. Scholars have noted that in some countries, like Kenya, women, unlike men, had virtually no hope of acquiring work in the colonial administration.⁶⁷ This dearth of opportunities resulted in women's increased reliance on the land and their own labor for their survival at the same time as their rights to land ownership were restricted.⁶⁸

The standing of women in Africa was also affected by colonial introduction of cash crops for exportation. Traditional support units were fragmented as locals began migrating out of their communities in order to find work in the burgeoning cities, and resources that were supposed to bring mutual advantages for importing and exporting countries were drained from local economies by the new export economies.⁶⁹ Economic restructuring often resulted in the privatization of what was once communal land, as was the case in Ghana.⁷⁰ This upset the delicate balance of gender roles in traditional Ghanaian societies. Without access to job opportunities in the colonial regimes, women were severely disadvantaged and forced to work the land for a livelihood.⁷¹ Even today, after Ghanaian *Asante* women fought to loosen these restrictions and now own a share of the cocoa farms—a primary source of economic input for the country—the growth of female farm ownership lags.⁷² Likewise, in Kenya, the individualization of property and vesting of titles in men alienated women who had been the managers of land, even though they remained its tenders.⁷³ Women

65. Mathangani, *supra* note 54, at 288.

66. *Id.*

67. Uche U. Ewelukwa, *Centuries of Globalization; Centuries of Exclusion: African Women, Human Rights, and the "New" International Trade Regime*, 20 BERKELEY J. GENDER L. & JUST. 75, 90 (2005).

68. *Id.*

69. *Id.* at 89-90.

70. *Id.* at 132.

71. *Id.* at 90.

72. Gareth Austin, *The Political Economy of the Natural Environment in West African History: Asante and Its Savanna Neighbors in the Nineteenth and Twentieth Centuries*, in LAND AND THE POLITICS OF BELONGING IN WEST AFRICA 187, 194 (Richard Kuba & Carola Lentz eds., 2006).

73. Kameri-Mbote, *supra* note 47, at 45.

were the main producers of agricultural output, yet the process of modernization disproportionately allotted benefits to males.⁷⁴

C. Women's and Environmental Rights in Post-colonial Africa

As a region, Africa struggles with economic growth and environmental problems. Post-independence era African states are often caught up in replicating colonial relationships whereby their environment and resources are drained for the benefit of developed states.⁷⁵ Groups such as tourists and corporations often profit from the resources and ecological wealth of the region, at the expense of communities.⁷⁶ Due to the African continent's colonial history, contemporary environmental issues arise within a context of abuse, poverty, and industrialization, factors that catalyzed the western environmental movement.⁷⁷ Though a discussion of economic development and attendant environmental standards in the region cannot be separated from the social and cultural norms of each country, certain widespread phenomena have been identified as reasons for underdevelopment, including global power dynamics, poverty, and conflict across the region.⁷⁸

Post-colonial legal reforms infused African societies with rules that did not mesh with local realities, while also undermining traditional forms of dispute settlement—leaving women unprotected in either legal system.⁷⁹ While the specifics vary greatly among societies, indigenous women in many Sub-Saharan cultures tend to be the messengers of cultural values, intermediaries in conflicts, facilitators of peace negotiations, and connectors of hostile communities through marriage.⁸⁰ Many tribal women had inadequate rights to participation in local legal systems prior to colonization, but generally speaking, indigenous legal apparatuses did focus on reconciliation through restoring social harmony to the community.⁸¹ As indigenous dispute resolution practices faded from use, so did the traditional role of women as peacemakers and mediators in their communities.⁸² Generally, colonial systems of governance excluded women

74. Mathangani, *supra* note 54, at 309.

75. With some notable exceptions, including the Green Belt Movement in Kenya and the Naam Movement in Burkina Faso, both of which will be discussed in Part III.

76. W. PAUL GORMLEY, HUMAN RIGHTS AND ENVIRONMENT: THE NEED FOR INTERNATIONAL COOPERATION 54 (1976).

77. Daniels, *supra* note 45, at 13.

78. BANDA, *supra* note 2, at 265.

79. Whitehead & Tsikata, *supra* note 43, at 84 (quoting Gita Gopal, *Overview* in GENDER AND LAW: EASTERN AFRICA SPEAKS CONFERENCE ORGANIZED BY THE WORLD BANK AND THE ECONOMIC COMMISSION FOR AFRICA 1-14 (G. Gopal & M. Salim eds., 1998).

80. See generally UNESCO, WOMEN AND PEACE IN AFRICA: CASE STUDIES ON TRADITIONAL CONFLICT RESOLUTION PRACTICES 7-8 (2003) [hereinafter WOMEN AND PEACE IN AFRICA], available at <http://unesdoc.unesco.org/images/0013/001332/133274e.pdf>.

81. AYITTEY, *supra* note 52, at 67.

82. See generally WOMEN AND PEACE IN AFRICA, *supra* note 80, at 7-8 (detailing a collection of case studies concerning the role of women as peace-makers in Sub-Saharan Africa; how

from decision-making roles; this has carried over to post-colonial societies, where women are often excluded from local, national, and regional decision-making regarding land management and the environment.⁸³

Women's inability to hold title to land in many post-colonial African states relegated indigenous women to particularly inferior and precarious positions as they became increasingly dependent on agricultural labor to sustain themselves and their families. The growth and development of urban centers, especially following the Second World War, caused many African men to migrate to the cities,⁸⁴ leaving their wives as heads of households in rural territories.⁸⁵ More recently, many African households are run by females, who must raise, feed, and clothe all of the children by themselves.⁸⁶ These single-parent families tend to be poorer on average than those that still have participating males;⁸⁷ the number of these households continues to increase to this day according to the Food and Agriculture Organization of the United Nations (FAO).⁸⁸

An estimated seventy percent of all Africans today rely on the environment for all or a large part of their income and food.⁸⁹ Women contribute between sixty and eighty percent of the labor for food production for both household use

essential their role was to conflict-solving, and how these traditional customs should be revived).

83. *See generally id.*

84. FOOD & AGRIC. OFFICE OF THE UNITED NATIONS, THE STATE OF FOOD AND AGRICULTURE 2002 57, available at <ftp://ftp.fao.org/docrep/fao/004/y6000e/y6000e03.pdf>.

85. *Id.*

86. WOMEN IN DEVELOPMENT SERVICE, FAO, GENDER FOOD SECURITY, Table 3: Percentage of female-headed households in sub-Saharan Africa, available at <http://www.fao.org/docrep/X0198E/x0198e02.htm>.

Countries	Percentage	Remarks
Botswana	46	Late 1980s
Lesotho	72	Late 1980s
Niger	10	Early 1990s
Average Sub-Saharan Africa		Mid 1980s

87. Dankelman & Davidson, *supra* note 63, at 16; *see also* FOOD & AGRIC. OFFICE OF THE UNITED NATIONS, A SYNTHESIS REPORT OF THE AFRICA REGION: WOMEN, AGRICULTURE, AND RURAL DEVELOPMENT (1995), available at <http://www.fao.org/docrep/x0250e/x0250e03.htm>. [hereinafter WOMEN, AGRICULTURE AND RURAL DEVELOPMENT].

88. *Introduction to WOMEN, AGRICULTURE AND RURAL DEVELOPMENT, supra* note 87.

89. Food & Agric. Org. of the United Nations: Document Repository, New Partnership for Africa's Development (NEPAD), *Comprehensive Africa Agricultural Development Program*, Ch. 5.3.4. (Nov. 2002), available at http://www.fao.org/docrep/005/y6831e/y6831e-06.htm#P1524_344480 (last visited Nov. 23, 2007).

and for sale,⁹⁰ but receive less than ten percent of the credit necessary to acquire arable lands.⁹¹ In several countries, women do a great majority of the farming—as much as eighty-six percent in the instance of Kenya.⁹² Rural women, the segment primarily involved in direct agricultural production, are often very dependent on a healthy environment because, in addition to depending on it for their economic labor, they manage the home, participating in activities such as fetching water and collecting wood for fuel—activities heavily impacted by the environment’s well-being.⁹³ The result is that women often bear disproportionately any negative costs associated with environmental degradation without receiving the reciprocal benefits.⁹⁴

Women have by and large been denied a role in the decision-making policies affecting the natural environment upon which they rely so heavily. Though many of Africa’s modern constitutions are brilliantly constructed documents with prohibitions on sex discrimination, “equality” has often been restricted to the civil and political spheres such as voting rights, or has been undermined by systematic exceptions to anti-discrimination prohibitions which have rendered equality meaningless in practice.⁹⁵ Continuing discrimination exists in many countries as governments struggle to balance hybrid legal systems⁹⁶ that incorporate customary, religious, and modern laws descendant from colonial times.⁹⁷

Kenya provides just one example of the way in which discriminatory laws result in the continuing gender-based denial of land rights. Like most of Sub-Saharan Africa, post-colonial Kenya has an agriculturally based economy⁹⁸ that

90. FAO Corporate Document Repository, *The State of Food and Agriculture 2002*, Part II: Regional Review, I. Africa, available at http://www.fao.org/DOCREP/004/y6000e/y6000e07.htm#P207_9835; FAO Corporate Document Repository, *Gender Food Security*, Part II: Women’s Contributions to Agricultural Production and Food Security: Current Status and Perspectives, available at <http://www.fao.org/docrep/X0198E/x0198e02.htm> (last visited Aug. 30, 2007).

91. Jacques du Guerny & Daphne Topouzis, *Gender, Land and Fertility—Women’s Access to Land and Security of Tenure*, SDDIMENSIONS, (March, 1996), available at <http://www.fao.org/sd/wpdirect/wpan0001.htm>.

92. *Id.*

93. WIDSAA, *supra* note 63, at 283. However, men also continue to do agricultural work in many rural areas as well.

94. *Id.* at 128. See also Ewelukwa, *supra* note 67, at 80.

95. See CONSTITUTION, Art. V, § 82(4), 82(6) (1992) (Kenya) (excluding protection against discrimination “with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law”) [hereinafter KENYA CONSTITUTION]; CONSTITUTION, § 23(3)(a) (1983) (Zimbabwe) (excluding protection against discrimination for matters of “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law”); CONSTITUTION, Part III, Art. 23(4)(c) (1991) (Zambia) (excluding “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law” from the anti-discrimination clause of the document).

96. AYITTEY, *supra* at 52, at 68-69.

97. DANKELMAN & DAVIDSON, *supra* note 63, at 5.

98. BENNO NDULU, CHALLENGES OF AFRICAN GROWTH: OPPORTUNITIES, CONSTRAINTS AND

depends heavily on women as the main force behind production.⁹⁹ As with many Sub-Saharan African constitutions,¹⁰⁰ the modern Kenyan constitution contains an equal protection clause in its Bill of Rights, which encompasses a prohibition on gender discrimination.¹⁰¹ Kenyan courts, however, have excluded customary and personal laws, such as marriage, divorce, and other family law issues, from the constitutional prohibition.¹⁰² The Registered Lands Act of 1970¹⁰³ is a contemporary example of how this exemption to anti-discrimination requirements works. While the Act enhanced women's land ownership rights on paper, it is virtually ineffective in practice because women's high illiteracy rates have prevented them from understanding the new law, and as a result, hindered them from demanding its enforcement.¹⁰⁴ As Dr. Patricia Kameri-Mbote, an international human rights and environmental lawyer, observed, "the provisions of the [Registered Land] Act are gender neutral but the application is gendered."¹⁰⁵ Consequently, most indigenous women are still unable to obtain ownership over the land they work, and continue to face difficulties in applying for and receiving financial credit and making choices concerning the management of land.¹⁰⁶ The problem in Kenya is compounded by the patriarchal nature of the country's governmental leadership,¹⁰⁷ which has a history of excluding women from positions. Such behaviors have, not surprisingly, affected women's rights to land and related resources.¹⁰⁸ As noted by Kenyan lawyer and anthropologist Celestine Nyamu-Musembi, land adjudication committees still operating in Kenya—the members-only groups that settle land ownership disputes—are run by men.¹⁰⁹

Gender discrepancies in property rights are present in much of Sub-Saharan Africa.¹¹⁰ In many countries, women have limited ownership rights to land, or what little control they do have derives from their status as wives, a power which terminates if they become widowed or divorced.¹¹¹ While some countries—such as Zimbabwe and Botswana—have enacted legislation

STRATEGIC DIRECTIONS xiii (2007), available at http://siteresources.worldbank.org/AFRIC/AEXT/Resources/AFR_Growth_Advance_Edition.pdf.

99. Mathangani, *supra* note 54, at 302.
100. See, e.g., CONSTITUTION, Art. 11 (2002) (Congo); S. AFR. CONST. 1996, Ch. 2, § 9 (Bill of Rights); CONSTITUTION, Art. 25 (1994) (Ethiopia).
101. KENYA CONSTITUTION, *supra* note 95, at ch. V, 70.
102. Mathangani, *supra* note 54, at 301. See also Kameri-Mbote, *supra* note 47, at 45.
103. The Registered Lands Act, Chapter 300 of the Laws of Kenya (1970).
104. Kameri-Mbote, *supra* note 47, at 45.
105. *Id.*
106. Mathangani, *supra* note 54, at 302.
107. Kameri-Mbote, *supra* note 47, at 46.
108. *Id.*
109. BANDA, *supra* note 2, at 278; C. Nyamu-Musembi, *Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights' in A An Na'im*, in CULTURAL TRANSFORMATION AND HUMAN RIGHTS IN AFRICA 142 (2002).
110. Bowman & Kuenyehia, *supra* note 48, at 128.
111. *Id.*

attempting to close the gender gap in land ownership and marital property rights, enforcement is often weak or nonexistent.¹¹² Commonalities across the African continent relating to the experience of colonialism and its impact on women's rights and the environment suggest that a Pan-African system for the protection environmental rights would be more effective in addressing the region's environmental problems.

III. CASE STUDIES OF NGOS INCORPORATING WOMEN'S HUMAN RIGHTS AS A STRATEGY FOR ENVIRONMENTAL PROTECTION

In addition to the specific lingering impacts of colonialism on women's rights and environmental rights, there are at least two other major factors that create obstacles to the development of a Pan-African system for environmental rights protection. First, the chaotic and often repressive political atmosphere in many Sub-Saharan African nations hinders the formation of an effective environmental movement.¹¹³ In Burkina Faso for instance, state-run environmental groups such as Committees for the Defense of the Revolution (CDR)—grassroots organizations of peasant farmers originally formed to advocate for sustainable development—have served as propaganda mechanisms for government policies hostile to women's participation and preserving the environment.¹¹⁴ In Kenya and Tanzania, community self-help groups meant to create a space for expression, education, and solidarity among villagers are viewed as threats to governmental control.¹¹⁵

Second, the concentration of NGOs focusing on environmental and human rights throughout the region is quite uneven. Nations considered relatively politically stable often have a greater number of environmental groups than war-torn countries.¹¹⁶

The stymieing of NGO activity illustrates one way in which the political and social fallout of colonialism, which has plagued Africa at the macrocosmic level, continues to negatively affect environmental improvements in Sub-Saharan Africa. Organizing campaigns spawned by international NGOs and grassroots collectives are in their nascent stages; in many states they have as of yet been unable to successfully counter the economic, political, and social realities that militate against stronger environmental protection strategies.¹¹⁷ However, there are some reliable indications that this pattern is changing in some locations. Community organizations are leading environmental rights movements in the region and deploying numerous tactics, including gender

112. *Id.* at 39-40.

113. Daniels, *supra* note 45, at 20.

114. *Id.* See also PAUL HARRISON, THE GREENING OF AFRICA: BREAKING THROUGH IN THE BATTLE FOR LAND AND FOOD 279 (Acad. Sci. Publishers 1996) (1987).

115. Daniels, *supra* note 45, at 20.

116. *Id.*

117. *Id.* at 21. See also HARRISON, *supra* note 114, at 278.

inclusion, as successful catalysts for environmental change. Two organizations that embody this shift are described below.

A. The Green Belt Movement

Kenya's now famous Green Belt Movement is a prominent example of how effectively promoting indigenous rural women's involvement in institutional environmental planning leads to positive change. Green Belt has been immensely successful in improving the nation's overall human rights conditions—even hastening democratic reforms—by effectuating environmental improvements through a focus on women's empowerment.¹¹⁸ The group was founded in 1977 by Dr. Wangari Maathai, the first woman in Eastern and Central Africa to earn a doctorate¹¹⁹ and the first woman from Africa to be awarded the Nobel Peace Prize.¹²⁰ Green Belt's mission is to plant trees in Kenya in order to reverse devastating deforestation and improve the lives of the women who plant them.¹²¹ Dr. Maathai's Green Belt has grown to include a vast spectrum of advocacy and training programs under the patronage of the Council of Women in Kenya (NCWK).¹²² Since Dr. Maathai began the Green Belt, her movement has been showered with accolades from a diverse range of organizations and individuals.¹²³

Green Belt started with multiple ambitions, one of which was increasing the involvement of indigenous women as equal partners in creating "greenbelts," or newly replanted tracts of previously deforested land.¹²⁴ While all members of the community are encouraged to participate in reforestation efforts, women farmers constitute the majority of Green Belt's constituency by design.¹²⁵ The organization orchestrates trainings to provide women with the skills they need to plant, cultivate, maintain and profit from tree seedlings.¹²⁶ In addition to the recuperative and restorative effects of tree planting on the environment, the proliferation of new vegetation enables women to decrease the time they spend collecting wood for cooking fires, freeing up time for potentially more productive activities, such as increasing their experience and skills in other

118. Green Belt Movement website, <http://greenbeltmovement.org/w.php?id=61> (last visited Aug. 6, 2007).

119. Dr. Waathai is now a member of Kenya's Parliament and the nation's Assistant Minister for the Environment. About Magari Waathai, <http://greenbeltmovement.org/w.php?id=3> (last visited Aug. 23, 2007).

120. The Green Belt Movement Homepage, <http://greenbeltmovement.org/c.php?id=9>. See also Green Belt Movement, *Special Annual Report 2003*, at p. 4, available at http://greenbeltmovement.org/downloads/GBM_Annual_Report_2003.pdf [hereinafter *Special Annual Report 2003*].

121. About Magari Waathai, *supra* note 119.

122. See *Special Annual Report 2003*, *supra* note 120, at 6.

123. *Id.* at 35.

124. DANKELMAN & DAVIDSON, *supra* note 63, at 147.

125. *Special Annual Report 2003*, *supra* note 120, at 7.

126. DANKELMAN & DAVIDSON, *supra* note 63, at 147-48.

industries. Planting trees thus empowers women and their communities to become more self-sufficient.

To date, more than thirty million trees have been planted, resulting in the reforestation of Kenya through scores of greenbelts, vast coverings of new trees that provide fresh oxygen, protect soil, and provide havens for numerous species.¹²⁷ The recent addition of ceremonies to commemorate the completion of large greenbelts has given the movement publicity and fostered a sense of bonding amongst participants of the Green Belt Movement.¹²⁸ Through these ceremonies, women have made connections, sometimes leading to the formation of new organizations.¹²⁹ Thus, the Green Belt Movement increases the national capacity to promote environmental change through increasing rural women's participation in the public sphere.

Currently, 6,000 original planters' collectives have organized themselves into 600 networks. Satellite clusters have also grown out of these collectives; the vast majority of the members remains female.¹³⁰ These networks continue to work throughout Kenya in an organized fashion, planting trees that reforest arid areas of the land while also training new volunteers in reforestation and methods for utilizing trees as both ecological preservation mechanisms and economically profitable natural resources. As of today, 100,000 women have organized tree-planting collectives.¹³¹ This mobilization of strong female networks is an essential element of the movement and powerful tool for reform because women have more information about the land and serve as the main educators of future generations.¹³²

The Green Belt example shows how progress towards environmental rights protection is improved by utilizing local women's strengths in combating deforestation and rehabilitating land. The Green Belt Movement contributes to a healthier environment, supports biodiversity, and alleviates poverty.¹³³ Tellingly, this grassroots environmental movement is led primarily by women who, by dint of their relationship to agriculture and development, were able to identify and formulate effective solutions to an environmental problem affecting themselves and their communities directly. The organization began by tapping into local knowledge of environmental issues which women were uniquely situated to understand and analyze, and has encouraged a mode of self-reliance, where communities can be more self-sufficient in their use of resources.¹³⁴ The model has raised Kenya's environmental integrity.

Green Belt embodies the potential of rural women to increase effective

127. *Special Annual Report 2003*, *supra* note 120, at 6, 10, 12.

128. DANKELMAN & DAVIDSON, *supra* note 63, at 148.

129. *Id.* at 149.

130. *Special Annual Report 2003*, *supra* note 120, at 7.

131. *Id.* at 10.

132. Ewelukwa, *supra* note 67, at 107.

133. *Special Annual Report 2003*, *supra* note 120, at 9.

134. Daniels, *supra* note 45, at 14.

protection of natural resources. The chain reaction which occurred following the organization's focus on increasing village women's participation illustrates how a human rights-based approach incorporating the unique strengths of native Kenyan women into strategies for overall improvement of the environment promotes the human rights and environmental of all. Because women are the gatekeepers of agricultural knowledge and the primary family educators, when their participation in planning and organizing is emphasized the environmental movement's capacity to generate green space increases.¹³⁵ Because of the utilization of indigenous women's unique knowledge and skills, over the years one initial tree turned into an expanse of forested areas throughout Kenya.

B. The Naam Movement

The Naam movement, which started in Burkina Faso in 1967, is another example of an organization that uses the knowledge and skills of rural women to bring about positive environmental change.¹³⁶ The goal of the Naam movement is to educate communities about environmental degradation and conservation practices while simultaneously aiming to reduce poverty through "developing without destroying"—a concept akin to sustainable development.¹³⁷ Rural women were integral to successful localized development and dissemination of energy-efficient technologies that reduced natural resource depletion.

Bernard Ledea Ouedraogo, a teacher who trained rural workers, founded the Naam movement. Ouedraogo was frustrated with the ineffective training of farmers, so he looked to some of the traditional organizational structures of the surrounding villages for a solution. He learned of the *Kombi-Naam*, a native concept wherein all individuals were equal regardless of their gender or social status.¹³⁸ Ouedraogo's decision to replicate this structure is an essential aspect of the Naam movement's ability to break down barriers to effective training, resulting in enhanced protection and efficient utilization of natural resources. By adopting an equality model, Naam utilized villagers' skills, especially women's, to develop low-cost, energy-saving technologies and to develop methods for passing the knowledge of these technologies from generation to generation.¹³⁹ The movement generated the construction of wells, gardens, shops, mills, and dams, and helped develop energy-efficient tools including water filters, all of which used less local resources and were lower in cost.¹⁴⁰

Rural women responded to the Naam project by using their unique

135. Muntemba, *supra* note 6, at 4.

136. TAKEHIKO UEMURA, PEOPLE'S PARTICIPATION/ENV'T RURAL INSTS. & PARTICIPATION SERV., SUSTAINABLE RURAL DEVELOPMENT IN WESTERN AFRICA: THE NAAM MOVEMENT AND THE SIX 'S', <http://www.fao.org/sd/rodirect/ROan0006.htm> (last visited Nov. 15, 2007).

137. *Id.*

138. *Id.* Although founders of the modern Naam project broadened the group to welcome people of all ages, the original *Kombi-Naam* was comprised only of young men and women. *Id.*

139. *Id.*

140. *See id.*

technical skills, with particular success in the proliferation of energy efficient strategies for the domestic sphere.¹⁴¹ Learning new and simple technologies that could lessen the amount of wood necessary for cooking, for example, was a crucial focus of Naam's environmental work. The success of this project largely hinged upon the participation by female members of local communities, who developed an innovative three-stone stove that used thirty-five to seventy percent less wood than older models.¹⁴² The stove improved environmental conditions and human rights in two concrete ways. First, its fuel efficiency led to the conservation of communities' natural resources, and second, it decreased the amount of time women required for collecting wood before cooking.¹⁴³ As a direct result of the stoves, lumber—an extremely valuable natural resource used in constructing everything from homes to tools—is depleted at a slower pace. The diminished demand for wood simultaneously reduces deforestation.¹⁴⁴

The movement trained women to build and use the stove and pass on their techniques to others.¹⁴⁵ Absent the benefit of the Internet, telephones, or written manuals, women were central to the operation; they orally disseminated the knowledge necessary to build stoves and other innovative community tools.¹⁴⁶ By 1986, 83,500 of these new stoves were in use, translating into a considerable amount of forest preservation and reducing the burden women were forced to shoulder in fulfilling daily household tasks.¹⁴⁷

Large-scale change could only occur through a process of information dissemination and education across numerous communities. Through village teaching seminars, women gained public attention. The women explained how they incorporated environmentally friendly practices into their domestic routines and discussed their experiences with the new ecologically friendlier domestic mechanisms they had developed. The Naam movement enabled indigenous rural women, who were traditionally seen as educators, to share information within their own communities and across village borders, teach each other practices of conservation, brainstorm new technologies, and disseminate information based on a language of common experience in the domestic sphere.¹⁴⁸ The movement has succeeded in enhancing villagers' awareness of environmental degradation and elucidating the positive ramifications of implementing more environmentally friendly domestic technologies.¹⁴⁹

The thousands of Naam groups that have sprung from the initial community movement illustrate the effectiveness of giving indigenous rural

141. *Id.*

142. *See* UEMURA, *supra* note 136.

143. *Id.*

144. *Id.*; *see also* HARRISON, *supra* note 114, at 219.

145. UEMURA, *supra* note 136.

146. *Id.*

147. *Id.* *See also* HARRISON, *supra* note 114, at 219.

148. UEMURA, *supra* note 136.

149. Daniels, *supra* note 45, at 14.

women a chance to participate in shaping environmental organizing and policy.¹⁵⁰ With over 200,000 members, the Naam movement stands among the most successful African environmental movements, illustrating the power of women's knowledge and skills when put to effective use.¹⁵¹

IV. POLICY SUGGESTIONS FOR IMPROVING THE ENVIRONMENT AND WOMEN'S RIGHTS

A. Take Active Measures to Increase Women's Participation in Environmental Decision-Making

The preceding case studies demonstrate the effectiveness of conscientiously vesting women with equal participation rights. While women are underrepresented in formal decision-making, when given the opportunity to do so, they have proven effective at formulating strategies and organizing for conservation. Movements such as Naam and the Green Belt are successful in their environmental advocacy because they directly counter the trend of excluding women. The organizations focus on incorporating forms of knowledge and activism particular to women to promote better environmental practices. Green Belt brought specific attention to women's lack of political authority in Kenyan politics and society while proving how their systematic exclusion has negatively impacted environmental preservation efforts.¹⁵² Naam generated success by using women's knowledge of land management and their position as teachers within local cultures in order to successfully disseminate information. These are only two of many possible models of including women in environmental decision-making.

Development strategies of African states have long included a "gender blind" discourse, often resulting in a failure to account for the different roles that men and women have traditionally been assigned, as well as the legal and social strides made in recent years in attacking discrimination against women.¹⁵³ As a result, plans and policies frequently addressed poorly the ways in which gender

150. However, despite the central role women play in the Naam movement, they are still underrepresented in positions of authority in the "Six S" (Se Servir de la Saison Sèche en Savane et au Sahel), the trans-border organization developed by the founder of the Naam movement to consolidate the efforts of decentralized groups over West Africa. Acknowledging women's skills in communication within their tribes and their distinctive forms of environmental knowledge through proportional representation within the "Six S" would benefit the larger movement. See UEMURA, *supra* note 136. See also HARRISON, *supra* note 114, at 280-84; Daniels, *supra* note 45, at 13-14.

151. Michael Watts, *Visions of Excess: African Development in an Age of Market Idolatry*, 51 *TRANSITION* 124, 139 (1991).

152. Mathangani, *supra* note 54, at 323-24.

153. See Ruth Meena, *Women and Sustainable Development*, VOICES FROM AFRICA (United Nations Non-Governmental Liaison Service) June 1994, at Number 5: Sustainable Development Part 1, <http://www.unsystem.org/ngls/documents/publications.en/voices.africa/number5/vfa5.07.htm>.

operates in different spheres of society, especially failing to account for the intersections of indigenous status, customary law, and occupation. The obstacles presented by many Sub-Saharan indigenous rural women's needs, labor roles, and unique forms of subordination have impeded their participation in environmental planning and development despite the valuable information and skills they can contribute.¹⁵⁴ However, as Anne-Marie Smith and Asha-Kin Duale conclude, "[t]he sheer numerical strength of women in Africa, manifested in their voting power, means that women are in a position to influence democratic constitutional change in a positive way."¹⁵⁵ Women must become integral participants in environmental policy reform.¹⁵⁶

Increasing women's rights and educating particularly vulnerable populations about enforcement mechanisms will assist the groups of women most negatively impacted by histories of inequality in pre- and post-colonial times in voicing their environmental concerns at local, national, and eventually Pan-African levels. In the absence of a Pan-African system for the protection of environmental rights, the African Court on Human and People's Rights and the African Court of Justice, which the African Union plans to merge, are suitable venues for enforcement of basic land ownership rights because their objective is to protect individual and collective rights. Where national court systems fail, Pan-African systems of justice can pressure state judicial systems to change their jurisprudence, and provide a higher echelon of redress for women, their organizations, and their communities.

Although Sub-Saharan indigenous African rural women are not the only subsection of the population impacted by environmental conditions, they have proven crucial to efforts to protect the environment and cultivate natural resources in a sustainable manner because of their particular historic relationships to land and the community.¹⁵⁷ As Nobel Prize-winning economist Amartya Sen noted, "women are increasingly seen, by men as well as women, as active agents of social change: the dynamic promoters of social transformations that can alter the lives of *both* women and men."¹⁵⁸ Because of rural women's unique relationship to the land and their ability to organize effectively for environmental change on the local level, facilitating their involvement at the regional, Pan-African level can enhance environmental protection. Considering the strong link between environmental health and sustainable development with the realization of human rights, it is imperative to aggressively address issues of discrimination against women.

While international bodies increasingly recognize the essential link

154. *Id.*

155. Ann-Marie Smith & Asha-Kin Duale, *The Role of the African Woman in Human Rights Jurisdiction*, 7 CARIB. L. R. 161, 628-29 (1997).

156. See Whitehead & Tsikata, *supra* note 43, at 85.

157. See Muntimba, *supra* note 6, at 4.

158. AMARTYA SEN, DEVELOPMENT AS FREEDOM 189 (1999) (emphasis in original).

between empowering women and protecting the environment,¹⁵⁹ there is still a long way to go towards truly involving women in environmental planning and activities. Similar to the way the minimal presence of women in rural NGOs perpetuates a focus on civil and political rights as opposed to economic, social, and cultural rights,¹⁶⁰ the lack of women involved in Pan-African systems of justice results in a lack of focus on key environmental issues. In particular, these systems could benefit from the knowledge and skills of women who work in agrarian settings. Women, particularly those who engage in small-scale agricultural production and natural resource management, should play a central role in the many stages of developing a Pan-African system of environmental rights regulation. Focusing on empowering rural African women through emphasizing their role in making decisions concerning land use and broader environmental policy planning will ultimately help not only individual women but also their communities and the region as whole. A Pan-African system of environmental protection will profit vastly from empowering these women—a constituency with unique knowledge about land management, resources, and conservation practices.

B. Protect Women's Equal Right to Land Ownership

Egalitarian land rights are essential to environmental rights and protection. As the key managers and caretakers of the land on which they work,¹⁶¹ rural indigenous women currently possess techniques and cultural traditions that could help reverse ecological degradation in Africa. Different states vary in their treatment of women's land ownership rights, and the origins of inequality are complicated and vary from one nation or locality to the next. Countries that do not have equal land laws should be pressured to rectify the inadequacies in their systems.

Judicial precedent regarding women's land ownership rights is evolving in several African states and beginning to revisit the relationships between customary and colonial legacies of discrimination, and synthesize modern concepts of law and community principles.¹⁶² A landmark case for women's land rights in Sub-Saharan Africa is *Ephrahim v. Pastory and Kaizingele*,¹⁶³ in which the High Court of Tanzania repealed a Haya customary law that allowed only men to sell clan land. The defendant, Ms. Pastory, had inherited land from her

159. *Id.*

160. Bowman & Kuenyehia, *supra* note 48, at 149.

161. Calestous Juma, *Private Property, Environment and Constitutional Change*, in *IN LAND WE TRUST: ENVIRONMENT, PRIVATE PROPERTY AND CONSTITUTIONAL CHANGE*, *supra* note 56, at 365.

162. See *Ephrahim v. Pastory*, [1990] 87 I.L.R. 106 (Tanz. High Ct.).

163. *Id.*; see generally Bowman & Kuenyehia, *supra* note 48, at 186-88; Ewelukwa, *supra* note 67, at 140; Simon Coldham, Case Note, *Bernado Ephrahim v. Holaria Pastory and Gervazi Kaizilege. D. P. P. v. Daudi Pete*, 35 J. AFR. L. 205, 205 (1991).

father, which she subsequently sold.¹⁶⁴ Her nephew claimed that because she was female she could not sell clan land under customary law, and sought to have the transaction voided.¹⁶⁵ The court decided, citing the African Charter and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), along with Tanzanian anti-discrimination law, that this particular customary Haya law was inconsistent with national and international standards of women's rights.¹⁶⁶ In so holding, Judge Mwalusanya interpreted the law as stating that customary law must be interpreted in a way that conforms with the Bill of Rights, and unjust customary laws should be remedied.¹⁶⁷ In essence, the Tanzanian court ruled that if a customary law conflicts with modern standards of women's rights to land ownership, it would not be upheld. This holding is a major achievement for the protection of women's rights to land, because it explicitly states that women's rights are prioritized above discriminatory customary laws. The case has become a benchmark for resolving complicated cases attempting to reconcile conflicting customary, national, and international laws within Tanzania and elsewhere in Sub-Saharan Africa.¹⁶⁸

Pan-African standards for women's rights have helped to begin the process of resolving laws potentially harmful to women's land ownership interests, as the *Pastory* case and Judge Mwalusanya's use of CEDAW and Tanzanian anti-discrimination law has illustrated. Having an applicable standard on the regional level allows women increased opportunities to become decision-making players in environmental policy and practices. It does so by giving them a system of redress in locations where their rights to participate are less developed or have been violated.¹⁶⁹

Microfinance is another method of improving women's land rights. Groups such as the African Women Food Farmer Initiative (AWFFI), founded in 1999, focus on closing the chasm between the amount of labor that women invest in the land and how few rights they have over it. The AWFFI promotes community-based loans and training in business skills.¹⁷⁰ The organization is part of a larger microfinance movement, which promotes lending small sums of money to individuals and groups in underdeveloped countries.

164. Coldham, *supra* note 163, at 205.

165. Ephrahim v. Pastory, [1990] 87 I.L.R. 106, 107 (Tanz. High Ct.).

166. *Id.* at 110.

167. Coldham, *supra* note 163, at 206.

168. *Id.*

169. *But see* Magaya v. Magaya, (1999) 3 L.R.C. 35 (Zimb. Sup. Ct.) in which the Supreme Court of Zimbabwe found against African women's land rights. In *Magaya* the Court upheld a customary inheritance law that gave priority of land rights to male heirs. This case dealt a severe blow to the nascent women's rights movement in Zimbabwe and surrounding nations. However, Zimbabwe has made strides towards turning the *Magaya* case into an anomaly, by reforming inheritance rights and enhancing gender equality.

170. See *Making Microfinance Work in Rural Africa*, MONTHLY NEWSLETTER (The Hunger Project, New York, N.Y.), June, 2006, available at <http://www.thp.org/reports/family/2006/jun/>.

Another microfinance group, the Grameen Foundation and Bank, founded by Professor Muhammad Yunus, recently won the 2006 Nobel Peace Prize for its pioneering work. Many NGOs have since used microfinance as a key element of raising women's social status through focusing their microcredit programs on lending to women.¹⁷¹ As of August 2006, ninety-seven percent of Grameen's 6.61 million borrowers were women, and the rate of repayment is an admirable 98.85%.¹⁷² The organization works in four African countries: Nigeria, Uganda, Cameroon, and Ethiopia.¹⁷³ In Nigeria, only 1.6% of loans are past due.¹⁷⁴ The success of Grameen in Bangladesh, where the microfinance movement originated, illustrates that a high percentage of women customers is linked to extremely high rates of repayment as well as the positive response to these financial opportunities.¹⁷⁵ Microfinance institutions in the Sub-Saharan African region have recorded similar positive results for women's participation. In Benin, women repay their loans at a rate of ninety-five percent, while men's repayment rates are between sixty and seventy percent.¹⁷⁶ The microfinance movement has an impact far beyond rural women's immediate access to credit. The Grameen microcredit movement has enabled an enhanced role for women in environmental development and natural resource conservation.¹⁷⁷ Armed with small loans, women have enhanced their standing in communities as resourceful land managers and businesswomen, enabling their opinions on preservation to be better heard. As a result of access to these loans, rural indigenous women in many Sub-Saharan African societies have taken particularly notable steps towards conserving natural resources, preventing degradation of the environment, and enhancing social welfare.¹⁷⁸ The successes of this movement prove that, given the opportunity, women place a high value on reinvesting in and improving their entire communities.¹⁷⁹

Women's participatory rights may be positively impacted by increasing

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171. Farhad Hossain, *Small Loans, Big Claims*, FOREIGN POL'Y, Sept.-Oct. 2002, at 79, 82 (stating that while there are flaws and limits to the Grameen microcredit program, including its role in women's empowerment, microcredit is still "the best game in town").
172. Muhammad Yunus, *Grameen Bank At a Glance*, Sept. 2007, <http://www.grameen-info.org/bank/GBGlance.htm> (last visited Nov. 14, 2007).
173. Grameen Foundation, http://www.grameenfoundation.org/where_we_work/subsaharanafrica/ (last visited Nov. 14, 2007).
174. *Id.*
175. *See* SEN, *supra* note 158, at 201.
176. Sylvain H. Boko & Rosita Namji, *Assessing the Impact of Women's Participation in Microfinance Programs in Benin*, in WOMEN IN AFRICAN DEVELOPMENT: THE CHALLENGES OF GLOBALIZATION AND LIBERALIZATION IN THE 21ST CENTURY 88 (Sylvain H. Boko et al. eds., 2005).
177. *Id.*
178. Lori Ann Thrupp & Jennifer Green, *Reflections on Gender in Natural Resource Management*, in TOWARDS COMMON GROUND: GENDER AND NATURAL RESOURCE MANAGEMENT IN AFRICA 104 (Asenath Sigot et al. eds., 1995).
179. Thoraya Ahmed Obaid, Executive Dir., United Nations Population Fund, *Empowering Women Through Microcredit: Progress and Possibilities* (Aug. 21, 2002), transcript available at <http://www.unfpa.org/news/news.cfm?ID=145>.

land ownership rights. One study in the 1980s concerning the role of gender in natural resource management in the Malshegu sacred grove in Ghana concluded that the “key issue . . . in the promotion of women’s effective participation is to focus attention on women’s access to and control over such resources as land and trees.”¹⁸⁰

CONCLUSION

This Article has attempted to identify the crucial role women can play in establishing a healthy environment through a proposed Pan-African system of protections for environmental rights. The adoption of a human rights framework that aims to increase the power of indigenous rural women may improve the region’s ecosystems and promote sustainable development. The colonial legacy pervading the region has, in many cases, exacerbated the discrimination present in some customary laws. In several cases, this has resulted in the loss of any property rights that rural indigenous women previously held, a process that seriously encumbers their ability to contribute to environmental policies. Pan-African tribunals and other systems of redress are slowly coming into the being. These mechanisms, outfitted with a strong focus on women’s and environmental rights, may improve the protection of women’s property rights, and consequently the preservation of the natural environment, throughout Africa. When women are given the opportunity, through equal and legally enforceable property rights and involvement in decision-making regarding environmental policy, they can assist in reversing environmental degradation and preserving natural resources for future generations.

180. Dorm-Adzobu & Ampadu-Agyei, *supra* note 5, at 64.