Constitutional Environmental Rights and State Violence: Implications for Environmental Justice in Protected Forests

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ABSTRACT

In this article, I examine environmental justice in a context where environmental rights legalize the subjection of people to harm resulting from conservation, first because the environment is privileged with constitutional rights to be protected, and second because this right is imposed on citizens. To unpack this complexity, I engage with literature on environmental rights and environmental justice from a legal and political ecology perspective. I then use the case of protected forests in Zimbabwe to show how the constitutional right to promote conservation for the benefit of present and future generations, on the contrary, exposes citizens residing in and adjacent to protected forests to diverse forms of state violence. Such violence subsequently takes away the right to equal access to natural resources and often comes with injustices around human dignity, culture, recognition, and the overall right to life. I broadly argue that state ideas on environmental rights, and their embeddedness in violent practices, have implications on environmental justice in the way they privilege ecological justice without recognizing justice for humans in relation to their environments.

Keywords: environmental rights, environmental justice, state violence, protected forests

INTRODUCTION

The introduction of environmental rights to the constitution has attracted debates around transformative constitutionalism, particularly in countries with long and ongoing histories of resource inequality and social injustices.[1,2] Indeed, commitment to environmental protection for people's well-being as enshrined in the idea of environmental rights does, to a large extent, reflect on the state's legal commitment to addressing past environmental injustices and upholding human rights linked to environmental issues. Using the case of protected forests (also here referred to as state forests) in Zimbabwe, this article, however, argues that state ideas on environmental rights and their embeddedness in violent practices have implications on the realization of environmental justice in the way they privilege ecological more than human welfare. The constitution plays a role in shaping state ideas by recognizing existing legal frameworks in the realization of environmental rights.

Ultimately, the way environmental rights are interpreted and implemented undoes, rather than promotes, any transformative processes of bringing environmental justice to people.

The prevailing notion of transformation and the position of law as the foundation for environmental rights and justice[3] is, therefore, put to test.

Zimbabwe has 21 protected forests managed by the state through its authority, the Forestry Commission (FC, also referred to as the state forest authority). These forests were gazetted during Rhodesia to support the growth of British Capitalist Cecil John Rhode's economic empire—an empire he acquired through what has been described as the grand theft of land and resources in Africa.[4] To grow his empire, Rhodes used a racist political system that disregarded the importance of Africans[5] and stripped them of their basic human rights connected to access and control of environmental assets. During the creation of protected forests, the same racist political system was used. It came with a huge cost, as thousands of people were inhumanly evicted from their land and homes.

A new order of control, endorsed by the Forest Act Chapter 19:05 of 1948 (hereafter, the Forest Act), was instituted to prevent all evicted persons from returning while privileging white settlers and colonial capital.[6] Until now, people living adjacent protected forests have restricted to no access to resources that were once part of their everyday lives and culture. As Rhodesia, transitioned to Zimbabwe in 1980, very little has changed in terms of forest administration, not even the inclusion of environmental rights in the constitution of Zimbabwe gazetted in May 2013 has resulted in any substantial transformation.

As I develop the articles argument, the first section explores legal and political ecological debates around the connections between environmental rights, human rights, and environmental justice. In the following section, I provide a contextual background of constitutional environmental rights in Zimbabwe's protected forests. Next, I turn to how the legitimization and use of state violence is an integral part of the structure and rationalization of environmental rights. In the last section, I reflect on the implications for environmental justice.

LEGAL AND POLITICAL-ECOLOGICAL DEBATES ON ENVIRONMENTAL RIGHTS, HUMAN RIGHTS, AND ENVIRONMENTAL JUSTICE

Environmental rights gained worldwide recognition in international and national law after the 1972 Stockholm Declaration on the Human Environment. This is necessary to mention because to understand the legal and political-ecological aspects of environmental rights and their linkages to human rights and environmental justice requires us to briefly turn to the outcomes of this iconic conference 50 years ago. One of the key outcomes was the recognition that the environment and humans need each other for their well-being. Hence in Principle 2 of the Stockholm Declaration, it was declared that “[t]he natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”

It was also recognized that living in an environment that permits a life of dignity and well-being is a human right, and that human beings have the responsibility to protect their environment for present and future generations. Today these principles have been translated

into constitutional environmental rights with many national constitutions across the world, including that of Zimbabwe, recognizing and undertaking to protect the environment for human welfare. Constitutionalizing environmental rights has meant that national governments are responsible for fulfilling these constitutional obligations, while the constitutional court takes the responsibility of enforcing the fulfillment of these rights.[7]

The definition of environmental rights itself has also largely been influenced by the outcomes of the Stockholm Declaration. Shelton[8] shows how environmental rights could easily have two meanings, the first referring to the rights that the environment has for itself, just as human rights refer to the rights human beings possess. The second meaning, which perhaps is more widely adopted and adapted, however, builds on existing substantive human rights with a goal toward environmental protection and is inclined to Principles 1 and 2 of the Stockholm Declaration. Shelton writes: "in a more manageable interpretation, environmental rights refer to the reformulation and expansion of existing human rights and duties in the context of environmental protection."

There are three theoretical takeaways here. The first is that environmental protection is linked to people's rights to livelihoods, health, development, and their overall dignity. Second, therefore, everyone has the responsibility to look after the environment, implying the significance of human rights in addressing environmental issues. The third is that while environmental rights are separate from human rights, they are connected to them. Human rights themselves are, however, a Western liberal ideology designed to be universal to the global human family.[9] Some have, therefore, challenged the purported universality of rights, arguing that they can be divisive in cases where there are differences in values.[10]

Recently, Roy has highlighted that aspects of environmental and human rights are not without conflicts between different sets of values and rights across different geographies, societal classes, and cultures. He has, thus, warned that failure to recognize the particular rights of a given community—that is group rights, for example, women or indigenous people—can lead to or exacerbate conflicts over resources with negative impacts on the environment.[11] The fact that the Universal Declaration of Human Rights was in 1948 when most of Africa was still under colonial rule and the violence that the language of rights has produced cannot be ignored. For example, in apartheid policies, the rights of the white minority were more important than those of the black majority in most of southern Africa.

A relativist thinking around the consideration and application of rights has thus sparked a debate on procedural and political rights in which citizen participation, inclusion, and access to information associated with environmental protection[12,13] are part of realizing environmental rights and addressing the universalistic nature of rights. Although procedural rights do not guarantee environmental protection,[14] this trajectory has been particularly important in the manner it brings the issue of environmental justice into discussions around constitutional environmental rights. However, not all national constitutions specifically state procedural rights are under environmental rights. Sometimes these are implied in a different set of constitutional rights such as the right to administrative justice and access to information, as it is in the Constitution of Zimbabwe.

In general, however, the moral and conceptual dimension of environmental justice has really been focused on human vulnerability in relation to their environments.[15] Hence, fair treatment, participation, and inclusion regardless of race, color, creed, or economic class with respect to environment-related issues around development, and enforcement of laws and policies are some key principles of environmental justice.[16,17] Beyond procedural rights, environmental justice is also conceptualized in the context of distributive and restorative justice, which include broader merits of social justice.[18] The introduction of constitutional environmental rights has, therefore, been seen as potentially progressive, transformative, and restorative particularly in the manner it endeavors to prioritize socioeconomic well-being attached to the environment.[19,20,21]

It is additionally envisaged that such legal commitment will bring some sort of transformation in the way there seems to be an effort toward promoting nonviolent political processes in resource access.[22] Further suggested is that states with procedural environmental rights are more likely able to promote environmental justice.[23]

However, the relationship between constitutional environmental rights, human rights, and environmental justice is not a straightforward one. From a legal perspective, this relationship has been debated because the human-centered utilitarian direction taken by the Stockholm Declaration and adopted in international and national law has been a point of conflict between protecting the environment for its sake versus protecting it for human utility or the preservation of human rights.[24] Boyle[25] also highlights the competing interests between environmental protection and human rights and argues that environmental rights cannot fully exist within the frameworks of human rights law in which the primary objective is to respond to threats to human dignity and existence. As he further explains, in the court of law, it will have to be determined whether human rights law interferes with environmental law or whether environmental rights will hinder the right of the state to enforce economic development.

What Boyle brings here is perhaps elaborated by the legal case of customary fishing rights in South Africa, where conflicting interests between environmental law and customary law rights and associated human rights are made evident and brought to the fore of the constitutional framework.[26] More importantly, the case demonstrates that provisions made for environmental rights in the constitution are not only open-ended but also laden with ambiguities and disputation regarding how such provisions are read with other sets of human and socioeconomic rights with direct bearing on the environment. Although environmental protection and human rights represent overlapping social values of environmental ethics and justice, my own reading is that legal complexities in interpreting these rights are inevitable.

Perhaps this is the point where political ecology comes in to discourage the use of law in addressing legal complexities, instead complementing legal frameworks with analytical tools that unravel the political dynamics underpinning struggles over environmental rights.

The position of political ecology has not been to define environmental rights or dealing with the legal complexities, but rather unearthing the sociopolitical power struggles underpinning their realization. In the conservation landscape in which this article is situated, these include

the ongoing struggles between proponents of community-based natural resource management models pushing for inclusive and just conservation practices, and advocates of the barriers approach.[27,28] The back to the barriers movement—a group of uncompromising and influential conservationists working with powerful philanthrocapitalists, is concerned with the environmental impacts of development, and fear for what they call a looming global environmental crisis.[29]

Within this movement, there has been an unrelenting political unwillingness to yield to human-centered approaches as broadly enshrined in the concept of environmental rights. The nature of their resistance is best displayed by the resurgence of fortress conservation, which has become intensely violent and lethal due to the introduction of, and huge financial support for, militarized conservation tactics in the last two decades.[30,31,32]

Even greater resistance is coming from what has emerged as the half-earth movement, orchestrated by the powerful global north. The half earth movement is advocating for an increase in area under strict fortress conservation so that at least half of the earth's surface is managed under protected areas completely free of human beings.[33,34] However, the half-earth idea has been critiqued as radical and unjust with extensive negative consequences on human beings that will only widen the nature/human divide without addressing the root causes of environmental degradation.[35] Also feared is the deepening of spatial injustice and structural inequality that will come with land grabbing, predominantly in the global south.[36,37] Nonetheless, supporters of neoprotectionism think that the political-ecological critique and convivial perspectives it forges exhibit an anthropocentric bias. They argue that, in fact, a just conservation program is one that is aware of justice toward nonhuman species.[38,39] These debates are important because of their usefulness in revealing the extent to which the interpretation and implementation of environmental rights, human rights, and environmental justice are also contentious outside the faculty of law.

These debates tend to boil down to the actors involved in interpreting these terms, the power they possess in the political landscape, as well as the context of their political geographies.[40] In this article, I focus on the state as the key actor. The state in collusion with conservationists often holds the hegemonic view that "environmental protection is a prerequisite or precondition to the exercise of fundamental rights," in which case it then uses such preconditions to deprive people of enjoying their right to the environment.[41]

In the next sections, I provide evidence for why this statement holds true by turning to the case of protected forests in Zimbabwe. Much of the evidence is inspired by my previous work in Sikumi Forest Reserve, but I also provide examples from other forest reserves. In providing this evidence, my contribution to the broader conversations on constitutional environmental rights is that state interpretation and implementation of these rights constrain the course of transformative environmental justice.

THE CONTEXT OF CONSTITUTIONAL ENVIRONMENTAL RIGHTS IN ZIMBABWE'S PROTECTED FORESTS

Environmental rights made their first appearance in Zimbabwe's environmental law through the Environmental Management Act, Chapter 20:27 of 2002 (EMA Act). The EMA Act outlines that [e]very person shall have the right to a clean environment that is not harmful to health and access to environmental information and protect the environment for the benefit of present and future generations, and to participate in the implementation of the promulgation of reasonable legislative, policy, and other measures that prevent pollution and environmental degradation and secure ecological sustainable management and use of natural resources while promoting justifiable economic and social development.[42]

These provisions are backed by several principles in subsection 2 that facilitate the inclusion and participation of citizens in environmental matters. When the Constitution of Zimbabwe was amended in 2013, environmental rights became a constitutional right under section 73. In addition to what was specified in the EMA Act, the constitutionalization of environmental rights came with further emphasis on the promotion of conservation, and the role of legislative, and “other measures” in achieving environmental protection.[43] Thus, the conservation of protected forests is legally implied in the constitution under section 73(1)(*b*)(*ii*)(*iii*) and section 73(2). What these provisions also imply is the recognition and application of the Forest Act. However, the entire section is silent on procedural justice related to this right.

The Forest Act is administered by the FC. The central mandate of the FC is in accordance with the Act, to promote conservation through the control and management of state forests. In state forests contiguous to wildlife conservation areas, conservation has further been promoted by the Parks and Wildlife Act Chapter 20:14 of 1975 administered by the National Parks and Wildlife Authority of Zimbabwe (ZimParks). Together, these two pieces of legislation provide legal justification for the conservation of protected forests. What is quite evident, and important to note, is that existing conservation laws are, until now, not aligned with section 73 in terms of environmental rights. For example, nowhere in the Forest or Wildlife Act is the term “environmental rights” mentioned.

Second, while the legislation ensures that the environment is protected, the issue of intergenerational equity is not stated till date in both legal pieces, although it being a buzz phrase in speeches on the purpose of protected forests in Zimbabwe. The Acts' silence on the benefit of present and future generations easily suggests that environmental protection is not intended for citizen benefit. As for protected forests, there is legal evidence from Part II, section 16, and Part III section 33(1)(*c*), of the Forest Act (available online),[44] that protected forests are owned by the Commission. The control and management of protected forests could have nothing to do with environmental rights as enshrined by section 73 of the constitution of Zimbabwe, but for the sole benefit of the Commission as a corporate.

However, even as it is legislatively stated that the FC is the owner of state forests, it uses custodianship grammar in defending its hegemonic control over forests. Over the 10 years that I worked for the FC (2008 to 2018); I came to understand that the custodianship discourse

replaces the Forest Act in aligning conservation practice to constitutional environmental rights. I picked how the FC argued along the rational that by taking legislative measures to achieve and promote conservation, the forest authority as keepers of national forests is assisting citizens in realizing their right to have their environment protected. It follows in this argument that by failing in its responsibilities as custodians of forests and duty-bearers of human welfare related to the environment, the Commission can be held accountable for such failures under section 73 of the constitution. However, the custodianship narrative is not backed by the Forest Act.

If the operationalization of constitutional environmental rights depends on existing laws such as the Forest Act, then how can the FC be held accountable for something not legally provided for? The custodianship narrative may, therefore, be seen as one aimed at only sanitizing the omission of environmental rights in the Act. In practice, the way the constitutional right to environmental integrity is interpreted and implemented by the state forest authority is inclined to ecological more than it is to social welfare and justice because of the economic benefits derived from ecological proceeds. In the following section, I specifically turn to how constitutional environmental rights are practiced and defended on an exclusionary and often violent template that does not embody aspects of human rights but rather exposes citizens to various forms of state-sanctioned violence—consequently, an environment that is harmful to their well-being.

ENVIRONMENTAL RIGHTS AND STATE VIOLENCE IN PROTECTED FORESTS

Because the realization of constitutional environmental rights depends on existing laws, state interpretation and implementation of these rights are inherently guided by existing conservation laws. However, these laws support the colonial ideology that successful conservation can only take place in the absence of human beings—these being mainly black people because of their dependence on natural resources for their survival. The idea of separating humans from nature has legitimized violent exclusionary practices in pre- and postindependence forest administration in Zimbabwe.

The Forest Act itself is characteristically stringent with a legacy rife with dehumanization and dispossession of citizens. In its state, it legitimizes and naturalizes violence. The contradiction between constitutional provisions on environmental rights and guiding legal frameworks leaves the state in an awkward position of having to defend its traditional conservation mandate and still manage the aspirations of its citizens. Hence, my analysis of the linkages between environmental rights and state violence focuses on legal instruments recognized by the constitution.

Given the historical and contemporary social events in and around Zimbabwe's protected forests, the factual context is that the right of every person to have the environment protected is implemented rather harshly and is unbendingly imposed on people. During the forest reservation era (the 1930s to 1960s), thousands of people were forced to leave their homes, compromising their cultural ways of life in the process for the sake of conservation. Forest evictions served colonial objectives, were state-sanctioned, and typically violent in nature, involving the burning and destruction of property, as the state used its monopoly of

force against people.[45] Since then, protected forests are laden with contestations. Contention has, over the years, developed around land and resource access, and how such access is policed by the state forest authority.

Postindependence, and after the constitutionalization of environmental rights, violent evictions and forest policing tactics are still legitimate forest administration strategies. The state's flair for violence has consistently been displayed in many ways. For example, during a result-based management meeting in 2014, the FC security department responsible for forest protection recognized the killing, arrest, and eviction of people from protected forests as a key result area and an activity target.[46] The violence of forest policing itself has even been celebrated with forest guards receiving awards for killing trespassers.

The most recent of such awards occurred after one of the forest guards in the company of a police officer shot dead a suspected poacher and injured another in the Pandamasue Forest Reserve. An FC official in the executive celebrated the achievement. According to him, the death of the poacher confirmed that the FC had a robust forest protection unit.[47] The guard in question received a certificate of bravery and prize money in July 2017. Forest evictions themselves are still very much a preferred policing methodology. In 2019, several families living in the Mafungautsi Forest Reserve were evicted from their homes with the help of soldiers and riot police. Houses were burnt and destroyed.[48] These recent evictions exemplify the continued use of violent tactics against citizens by the state. However, such violence could potentially have changed with the coming of a new forest policy.

When the FC embarked on drafting a national forest policy in 2015, there was an expectation that after a national public consultation process, land and resource access issues in protected forests would be resolved. However, the current national forest policy still does not adequately address issues on local people's needs with regard to land and resource access. Instead, it continues to maintain the colonial integrity of protected forests. The forest policy has gone ahead to provide for the absorption of more land for protected forests in line with global green agendas. This is despite that the land question remains a volatile and unresolved matter in Zimbabwe.[49,50] It further provides for measures to be taken to ensure adequate conservation of forest ecosystems.[51]

The violent eviction of several families from the Mafungautsi Forest Reserve led by the national army and police in April 2019 is perhaps a recent example of the measures referred to in the new forest policy. The evictions were without prior notification or consultation and particularly proved that the environmental rights mantra is, in the eyes of the state, not about human but ecological welfare.

The FC has unyieldingly stated that all protected forest will remain intact as provided for by the Forest Act and will continue to be owned and managed by the state for conservation purposes as provided for in the same Act. It has also unequivocally declared that no settlements shall be allowed inside forests. “This is the guidance we get from the Forest Act Chapter 19:05…the Forestry Commission remains bound by these provisions and would like to uphold its loyalty to its mandate with regard to all gazetted forest under its statutory custody,” the state forest authority has firmly argued.[52]

As it were, the Forest Act largely remains a structural barrier to resource access, and a colonial apparatus providing little room for citizen participation, consultation, and fair treatment. It is an embodiment of structural violence and a legal basis upon which forest policing is defended. Forest policing has itself become more violent with the introduction of militarization policies. Since 1991, Zimbabwe's protected forests are patrolled by a military trained forest guard unit called the Forest Protection Unit. The militarization of conservation in Zimbabwe was generally in response to increased rhino and elephant poaching. So, while militarized policies were first launched in national parks, it also became imperative for protected forests contiguous to national parks to adopt the same policies. There is no record of citizen consultation in the decision made by the state authority to turn to militarization.

However, there is a record of increased state violence displaying itself in structural, symbolic, and physical ways. Full conceptualization of these forms of violence and fields examples of how they manifest in protected forests can be found in Mushonga and Matose.[53] In summary, this work demonstrates that how communities living adjacent the Sikumi Forest Reserve have had the right to land and access to resources, and consequently, their resource-dependent cultural rights, rights to health indigenous knowledge, and institutions of control taken away in dehumanizing ways. It brings to attention harrowing experiences of violations perpetrated by the state, and the corollary effects of such violence. Against such evidence, state's keenness to protect the environment is, contrary to section 73 of the constitution, creating an environment that is otherwise harmful to the people's well-being and health. Using methods of war in and around protected areas has generally received condemnation from affected communities beyond Sikumi.[54]

Several scholars in political ecology have also questioned the moral and legal boundary of such methodologies.[55,56,57] However, there is a consistent argument that militarization policies are consistent with “other measures” provided by the constitution to protect national forests from being desecrated by syndicates of organized crime. Such defense reveals how constitutional environmental rights are entangled within the structure and rationalities of state monopoly over the use of violence in forest conservation.

The ongoing structural, physical, and psychological violence is also strongly tied to a kind of neoliberal violence and primitive accumulation function in which extreme conservation policies are being implemented for the profitable utilization of resources by the state and a few others that the state permits.[58] The extraction of economic value is quite evident in Sikumi Forest Reserve, where I studied the militarization of conservation between 2016 and 2018. In this forest reserve alone, the FC owns four photographic safari lodges. It operates one of the lodges from which it directly collects revenue from bed sales. The other three lodges are leased to private white-owned concessionaires on an annual lease fee paid to the state authority. The opportunity to grow in nonconsumptive tourism has become even more important following the withdrawal of government funding on January 1, 2016. Since then, the FC has intensified revenue generation from wildlife management in protected forests.

Beyond Sikumi, the FC has introduced nonconsumptive tourism projects in four other protected forests contiguous to Hwange National Park. The extraction of economic value from protected forests is currently packaged in what is called the Forestry Commission Prospectus

where wealth accumulation from tourism is guided by the “Zimbabwe is open for business and investment in the conservation industry” mantra. Against this mantra, the FC has “undertaken to provide photographic safaris in Kavira Forest, Sijarira Forest, Umguza Forest and Gwampa Forest.”[59]

To maximize economic benefits from wildlife resources, there have been joint efforts between the FC and private tourism investments to fund militarized forest policing with a goal to chiefly secure resources for capital accumulation. In Sikumi Forest Reserve, for example, Elephant Eye Lodge owned by Jenman Safaris, a South African-based company, is partnering with the FC in forest policing. It has supported the militarization of conservation by donating boots, and financial rewards for successful antipoaching activities in the form of what they describe as a poachers' bonus. In 2016, the company pledged to donate 150 rounds of ammunition and a US$500 poachers' bonus and was planning to rehabilitate some dilapidated structures within the forest to house forest guards while they are on patrol.[60] I do not think a coalition for forest protection is an issue.

What I find problematic is that policing efforts have, however, not targeted commercial poaching syndicates for whom militarized policies were supposedly introduced. They have instead predominantly centered on excluding local communities, whose access needs are mostly for their subsistence, in traumatizing and intimidating ways. Ultimately, efforts to securitize natural resources and promote conservation are only benefiting a few “legitimate” users and not the category of “every person” as envisaged by the constitution. The politics of exclusion is deep-seated in the sociopolitical and historical context of conservation in which the rights of black people are marginalized.[61,62] It brings both issues of distributional justice and local economic inequality to question in the quest for environmental rights and sustainable development in conservation spaces.

IMPLICATIONS FOR ENVIRONMENTAL JUSTICE

First, it is important to highlight that the kind of violent environmentalism witnessed in Zimbabwe's protected forests is common in many protected areas around Africa. Examples abound, but the few I refer to here are insightful. Recently, Tanzania was in the media for brutally injuring scores of people protesting forced eviction from their land to create a luxury game reserve.[63] Human Rights Watch has been following records of abusive evictions in Mau Forest in neighboring Kenya for some time.[64]

In April 2022, the Minority Rights Group exposed horrifying human rights violations against the Batwa living in Kahuzi-Biega National Park in the Democratic Republic of Congo.[65] The case of protected forests in Zimbabwe is, therefore, important for its metaphorical value in highlighting how state ideas on constitutional environmental rights are in postcolonial Africa often embedded in exclusionary, violent conservation laws and models, and how this, in turn, characteristically creates distance between conservation law and environmental justice.

Most countries in Africa have a constitution supporting the right of every person to an environment that is healthy and favorable for their development. It, therefore, means their goals for environmental protection are set within the context of environmental rights and the

pursuit for social justice. In practice, however, violent approaches to conservation mean that the journey to environmental justice is at stake, particularly because such violence is sanctioned and perpetrated by the state in structural and direct ways. Outside the conservation of protected areas, the state has the constitutional obligation to ensure that people are not exposed to pollution and other forms of environmental degradation. In conservation, the state has the duty not to cause human rights violations.

In our recent work on the violence of conservation in Africa, we have argued that it is the state's responsibility to safeguard the aspirations of its citizens even as it pursues the promotion of conservation,[66] because we think that indeed the "the pursuit of conservation goals can aid in the fulfilment of a variety of basic human rights."[67] In this work, we were also aware of how the language of rights has been used in apartheid policies to dehumanize the black majority in Africa. Hence our argument is inclined to converge a discussion on environmental rights and justice that is not centered on human dignity alone nor that of ecology.

Similar to Buscher and Fletcher,[68] we think such discussions should rather be concerned with cultivating human/nature relationships in which human beings and ecology flourish in convivial ways. The state as the duty bearer should, therefore, provide guidelines for convivial conservation that speaks to the needs of its people and environments, not one sanctioned by global green agendas. Taken this way, there should be, therefore, no distance between conservation law, environmental rights, and environmental justice. However, when the state leads atrocities on its citizens for the sake of conservation, it trades outside the course of environmental rights in that it maintains if not widens the human/nature divide, consequently creating an environment that is harmful to those living within it.

Second, it trades outside the course of environmental justice by sustaining conditions for violence, and within such conditions exposing citizens to unjust treatment, trauma, and suffering. Such conditions often lead to insecure rights and produce disgruntled communities in and around protected areas. It has been established by several studies that disgruntled communities often sabotage conservation initiatives,[69,70,71,72] showing the relationship between the fulfillment of human rights related to the environment and environmental protection and *vice versa*.

Overall, because the state in Africa is still burdened by the specter of coloniality, by way of legal frameworks that are still largely colonial, the right to have the environment protected is in fact an insidious threat to human rights particularly because it comes hidden in desirable social aspirations and transformative rhetoric.[73] Social aspirations have never been part of the conservation agenda. And, because the state in Africa is still faced with a decolonial struggle, it has not taken any firm steps toward addressing the colonial legacies of conservation, instead uses its monopoly of force and authority to promote global environmental outcomes that meet international obligations while offering harm than benefits to the ordinary African person.

Another concern for environmental justice is that in some if not many cases, the state is not only the duty bearer of environmental rights but is also the supreme institution in control of

the constitutional court. Ncube *et al.*[74] have argued that claims against the state cannot be resolved in a political system in which the legislature and executive, not the court, set the priorities. In cases where the constitutional court is not independent, where do claims against state environmental injustices go? Perhaps this has been one of the major drawbacks in dealing with cases of environmental injustice perpetrated by the state in Africa. Desperate citizens then tend to protest but are often intimidated by lethal measures taken against leaders of such protests.

The death of South African environmental activist, Fikile Ntshangase, in October 2020,[75] and the disappearance of many environmental activists reported by Global Witness[76] and the Centre for Environmental Rights[77] generally present the plights of environmental justice defenders in Africa and beyond. There is usually no evidence linking the state to such disappearances, but its deafening silence is concerning.

Overall, four aspects of environmental rights and justice are bought to attention. The first is the idea of state custodianship of resources on behalf of the people. We have seen in the case of Zimbabwe's protected forests, that while the state claims to keep resources for people, it, at the same time, prohibits them from accessing the same resources in violent ways. In fact, resources are being managed for the benefit of the state and a small elite population. The second rests upon the codification of environmental rights in the constitution as in itself a platform for the empowerment of local communities.[78] In my view, it is impossible for the constitution to provide such a platform when it is aligned with laws and policies that instead disempower communities.

The third centers on the potential of environmental constitutionalism as a transformative tool.[79] Indeed, the constitution is transformative in the manner it recognizes the centrality of social justice in the achievement of environmental protection. However, the way constitutional provisions are interpreted and implemented could mean a reversal of the transformation process. So, ultimately constitutionalization of environmental rights does not necessarily translate to environmental justice. Lastly, we need to reflect on the practicality of environmental rights in the conservation arena, given the prevailing ideologies of conservation bent on separating humans from nature. Clearly, the conservation ideology is not consistent with aspirations for environmental rights and justice in that it is inherently premised on violence. Therefore, conservation ideology itself needs to be transformed so that it also becomes an ideology about people.[80]

In addition, conservation laws need to be aligned with such changes. Otherwise, the implementation of environmental rights, and achievement of justice in conservation, is without these major changes a pipe dream.

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