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LINKING ENVIRONMENTAL PROTECTION AND POVERTY REDUCTION IN
AFRICA: AN ANALYSIS OF THE REGIONAL LEGAL RESPONSES TO
ENVIRONMENTAL PROTECTION

Emeka Polycarp Amechi

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1

INTRODUCTION

The Environmental Action Plan of the New Partnership for Africa's Development (NEPAD-EAP) identifies poverty as the main cause and consequence of man-made environmental degradation and resource depletion in Africa.¹ Poverty is multidimensional,² and goes beyond lack of income to include as proposed by the United Nations Development programme (UNDP), 'the denial of opportunities and choices most basic to human development - to lead a long, healthy, creative life and to enjoy a decent standard of living, freedom, dignity, self-esteem and the respect of others'.³ In essence, poverty is not only about economic disempowerment, but also involves political, social, environmental and cultural disempowerments.⁴

Environmental degradation and poverty are inextricably intertwined.⁵ The consequence of this linkage is a vicious cycle in which poverty causes the degradation of the environment, and such degradation in turn perpetuates more poverty.⁶ As aptly observed by Fabra '...poverty and environmental degradation are often bound together in a mutually reinforcing vicious cycle, and thus human rights abuses related to poverty can be both cause and effects of environmental problems'.⁷

It follows that if poverty is the main cause of environmental degradation in Africa, then policies, programmes and legal provisions (regulations, bylaws, rules etc) designed to protect the environment in the region will be unsuccessful without a significant improvement in the living standards, wellbeing and livelihoods of the poor.⁸ However, this is not an exclusive relationship as the protection of the environment is vital to the achievement of poverty reduction in Africa.⁹ This is due to the fact that the poor in Africa, who are mostly found in the rural areas of the region, are basically reliant on resources obtainable from their environment for sustenance, and hence, are severely affected by environmental degradation.¹⁰ As aptly stated by Kante, 'for the poor, nature offers a series of goods of inestimable value, on which they depend absolutely: That sums up their life. Environmental damage, which represents a financial loss for the rich,

1 See New Partnership for Africa's Development (NEPAD), Action Plan of the Environment Initiative of the New Partnership for Africa's development, 2003, para 23, available at <http://www.unep.org/roa/Amcen/docs/publications/ActionNepad.pdf>.

2 For a comprehensive treatment of the nature, dimension and manifestation of poverty, see Focus on Global South, Antipoverty or Anti Poor? The Millennium Development Goals and the Eradication of Extreme Poverty or Hunger, 2003, available at www.un-ngls.org/orf/Anti%20Poverty%20or%20Anti%20Poor.pdf.

3 United Nations Development Programme (UNDP), *Human Development Report: Human Development to Eradicate Poverty* 5 (Geneva: UNDP, 1997).

4 See World Resources Institute et al, *The Wealth of the Poor - Managing Ecosystems to Fight Poverty* 6 (Washington DC: WRI, 2005); Sonja Vermuelen, 'Reconciling Global and Local Priorities for Conservation and Development', in Dilys Roe ed., *Millennium Development Goals and Conservation: Managing Nature's Wealth for Society's Health* 74 (London: IIED, 2004); Dilys Roe and Joanna Elliot 'Meeting the MDGs—Is Conservation Necessary', in Dilys Roe ed., *Millennium Development Goals and Conservation: Managing Nature's Wealth for Society's Health* 13 (London: IIED, 2004); Genevieve Renard Painter, Gender, Millennium Development Goals, and Human Rights in the Context of the 2005 Review Processes 19 (Report for Gender and Development Network, October 2004), available at www.choike.org/documentos/mdg_women2004.pdf; and Center for Human Right and Global Justice, *Human Rights Perspective on the Millennium Development Goals* 18 (New York: Center for Human Right and Global Justice, 2003), available at <http://www.chrgj.org/images/NYUCHRGJMDGREPORT2003.pdf>.

5 See New Partnership for Africa's Development, note 1 above, Para 1.43.

6 *Id.*, para 3. See also Walter V. Reid et al. *Millennium Ecosystem Assessment: Ecosystem & Human Well-Being: Synthesis* 62 (Washington DC: Island Press, 2005).

7 Adriana Fabra, *The Intersection of Human Rights and Environmental Issues: A Review of Institutional Development at International Level* (Background Paper prepared for Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Geneva, 14-16 January 2002), available at <http://www2.ohchr.org/english/issues/environment/environ/bp3.htm>.

8 See New Partnership for Africa's Development, note 1 above.

9 See Reid et al, note 6 above at 40; and International Food Policy Research Institute, *Ending Hunger in Africa: Prospects for the Small Farmer* 2 (Washington, DC: International Food Policy Research Institute, 2004).

10 *Id.* at 61. See also Jennifer C. Mohamed-Katerere & Mayar Sabet, *African Environmental Outlook 2: Our Environment, Our Wealth* 13 (United Nations Environment Programme (UNEP), 2006).

is a much more serious matter for the poor, leading to the loss of their livelihood'.¹¹ Therefore, it can be argued that any sustainable approach to the reduction of poverty in Africa requires an improvement of the natural resource base upon which most of the poor are dependent on.¹² This argument has been recognised by various experts with regard to the realisation of the Millennium Development Goals (MDGs), a poverty reduction strategy that seeks to improve the well-being and livelihood of the poor in Africa.¹³ The MDGs are now generally accepted as a blueprint for poverty reduction and overall sustainable development of developing countries in the 21st century.¹⁴

In view of the mutual linkage between environmental protection and poverty reduction in Africa, the question is to what extent do the various legal interventions for the protection of the environment in Africa recognise this linkage by promoting poverty reduction and socio-economic development as integral aspect of their objective of ensuring environmental protection in the region. This is very important as the enforcement of these legal instruments is vital to the protection of the environment in Africa, which in turn, could give zest to the quest to achieve poverty reductions initiatives like the MDGs in the region. This enquiry starts with a discussion of the regional attempts to

address environmental concerns in Africa. This is very important as it will shed light not only on the various interventions instituted to protect the environment in Africa, but also, the underlying principle of environmental protection in the region. This will be followed by an analysis of the legal instruments for the protection of the environment in Africa to determine their linkage with poverty reduction. The focus will be limited only to regional environmental instruments. Finally, this article is concluded with the recommendation that since these legal instruments aim *inter alia* to promote poverty reduction and socio-economic development in Africa, African governments should promote their implementation as a means of enhancing the achievement of poverty reduction initiatives such as the MDGs in the region.

2 REGIONAL ATTEMPTS TO ADDRESS ENVIRONMENTAL CONCERNS

The first regional attempt to address environmental concerns in Africa was the adoption of the African Convention on the Conservation of Nature and Natural Resources, by the defunct Organisation of African Unity (OAU) on 15 September 1968 at Algiers, Algeria.¹⁵ It should be noted that while the adoption of the Convention by the then newly independent African nations constituted the first regional attempt to address environmental concerns in the region, it was not the start of environmental protection in Africa as the protection of the environment was an integral part of the religious, cultural and social life of Africans before their colonisation and subsequent independence.¹⁶ This

11 See Bakary Kante, 'The Environment, the wealth of the poor?', *Poverty & Environment Times* No. 2 March 2004.

12 See Reid et al., note 6 above at 49 & 61; Mohammed-Katerere et al., note 10 above at 90 and Sue Mainka, Jeff McNeely & Bill Jackson, *Depend on Nature: Ecosystem Services supporting Human Livelihoods* 16-17 (Gland: IUCN, 2005).

13 Grained from the Millennium Declaration adopted at the Millennium Summit in September 2000 (UN Doc. A/Res/55/2, 18 September 2000). The MDGs are eight development goals with time-bound and quantified targets were grained from the provisions of the Millennium Declaration, adopted at the Millennium Summit in September 2000. The goals are eradicating extreme poverty and hunger; achieving universal primary education; promoting gender equality, reducing child mortality; improving maternal health; combating HIV, Malaria and other diseases; ensuring environmental sustainability; and developing a global partnership for development.

14 See United Nations, Millennium Development Goals Report 2005, 3 (New York: United Nations, 2005) and UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals 2-4* (Geneva: UNDP, 2005).

15 African Convention on the Conservation of Nature and Natural Resources, Algiers, 15 September 1968, OAU Doc. No. CAB/LEG/24.1.

16 See Emeka Polycarp Amechi, 'Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment under the African Charter on Human and Peoples' Rights', 5 (1) *Law, Environment and Development Journal* 62-63 (2009).

was evident in the adoption of environmental conservation and management practices such as the designation of sacred forests, groves, rivers, and animals; designated market periods and locations; designated bathing and laundry places in streams and rivers; and prohibition of defecating or urinating in village amenities like roads, rivers and stream.¹⁷ These practices which to a certain extent, account for the pristine condition of the natural environment in Africa before colonisation, were based on the traditional African notion of the unity of humanity and nature, and therefore, emphasised conservation and sustainable utilisation of natural resources by man.¹⁸

However, the potential of these ancient African practices in curtailing environmental degradation was weakened by colonisation. This is due to the fact that the efficacy of these practices is heavily dependent on the inhabitants of these rural towns and villages existing as a homogenous unit. With colonisation, came the transformation of hitherto rural towns into urban areas. It also brought about migration to urban areas in search of better income. The development of urban areas and the subsequent rural-urban migration contributed to cultural disintegration of both urban and rural areas with adverse consequence for the environment, as traditions that honour nature and maintain the man/nature balance were gradually eroded.¹⁹ In addition, Christianity, which is closely associated with colonisation, introduced a system of beliefs that questioned the religious basis of these practices and their enforcement institutions as their sustaining system of beliefs, taboos, myths and totems were branded as 'ungodly'.²⁰ Furthermore, colonialism

led to the establishment of formal administrative structures that took over the administration of Africa's natural resources from the traditional system. However, such administrations were meant principally to serve the interest of foreign merchants and their home governments in the exploitation of Africa's natural resources and not in their sustainable use and management.²¹ As observed by Boahen [the] main *raison d'être* [of colonialism] was the ruthless exploitation of human and material resources of the African continent to the advantage of the owners and shareholders of expatriate companies and metropolitan governments and their manufacturing and industrial firms'.²²

The colonial governments did make efforts to arrest the rapid degradation of the environment by promulgating environmental regulations at the regional and national levels. However, these regulations were sectoral as they addressed only specific natural resources valuable to the colonial administrations.²³ Also, they were mostly 'use-oriented' as their specific focus is on the allocation and exploitation of natural resources rather than management.²⁴ For example, in the area of wildlife conservation, their efforts were limited to the preservation of game stocks that are increasingly being depleted at an alarming rate, in order to guarantee continuing access to such species by elite white hunters.²⁵ For environmental issues other than natural resources conservation, the colonial administrations took a rudimentary approach to such issues by treating them as merely involving environmental sanitation or purely a health

17 *Id.* at 62.

18 *Id.* at 63.

19 See African Conservancy, *The Environmental and Cultural Disintegration of Africa*, available at http://www.africanconservancy.org/about/documents/Problem_1206.pdf and G.O. Anoliefo, O.S. Isikhuemhen & N.R. Ochiye, 'Environmental Implications of the Erosion of Cultural Taboo Practices in Awka-South Local Government Area of Anambra State, Nigeria: 1. Forest, Trees, and Water Resource Preservation', 16 *Journal of Agricultural and environmental Ethics* 281, 282-283 & 285 (2003).

20 See James C. Murombezi, *Pre-colonial and Colonial Conservation Practices in Southern Africa and their Legacy Today*, 2003, available at <http://dss.ucsd.edu/~ccgibson/docs/Murombedzi%20-%20Pre-colonial%20and%20Colonial%20Origins.pdf>.

21 See John Agbonifo, *The Colonial Origin and Perpetuation of Environmental Pollution in the Postcolonial Nigerian State*, available at <http://lilt.ilstu.edu/critique/fall2002docs/jagbonifo.pdf>.

22 Quoted in Agbonifo, note 21 above.

23 For example, the 1933 London Convention (Convention Relative to the Preservation of Fauna and Flora in their Natural State) adopted by Africa's colonial masters and which entered into force on 14 January 1936, has as its main objective -the preservation of plants and animal species that are valuable and popular with trophy hunters.

24 See International Union for Conservation of Nature, *An Introduction to the African Convention on the Conservation of Nature and Natural Resources* (Gland: IUCN, IUCN Environmental Policy and Law Paper No. 56, 2004).

25 See Murombezi, note 20 above at 6-11.

problem.²⁶ Thus, for complex environmental issues like poisonous or hazardous wastes emanating from the activities of transnational companies that pollute the air, water and land, there were little or no legislative efforts by the colonial administration to control them.²⁷

At independence, the protection of the environment did not feature much in the agenda of most African countries as principal emphasis was placed on economic development, which most often was undertaken without due regard to the negative effects on the environment.²⁸ The scant regard for the environment was also evident at the regional level as the Charter of the now defunct Organisation of African Unity (OAU) formed by newly independent African States on 25 May 1963, made no express reference to environmental protection.²⁹ What could be construed as implied references to environmental protection can be seen in the third preambular paragraph of the Charter that speaks of the duty of African leaders to 'harness the natural and human resources of our continent for the total advancement of our peoples in all spheres of human endeavours'³⁰ and the objective of the OAU to

coordinate and intensify their cooperation and efforts to 'achieve a better life for the peoples of Africa'.³¹ The OAU sought to change this state of affairs in 1968 by adopting the Algiers Convention,³² in an attempt to address Africa's environmental concerns.³³

However, the adoption of the Convention while marking the beginning of a formal attempt by the newly independent African nations to address environmental concerns in the region did not have the anticipated effects of stimulating further environmental developments either at the regional or national levels in Africa, where most nations until recently, lacked comprehensive environmental regulatory frameworks.³⁴ The late 1980 and 1990s witnessed an increase in environmental consciousness on the part of African leaders, as they became increasingly aware of the actual and potential negative effects of persistent degradation of the environment and natural resources on human health and well-being.³⁵ Several factors were responsible for this increase in environmental consciousness. These include the United Nations Conference on the Human Environment, 1972 and subsequent

26 See E.O. Akanki, 'Air Pollution Control Law', in J.A. Omotola ed., *Environmental Law in Nigeria Including Compensation* 202 (Lagos: University of Lagos, Faculty of Law, 1990).

27 See Agbonifo, note 21 above at 6; L. Feris, 'The Asbestos Crisis-the Need for Strict Liability for Environmental Damage', *Acta Juridica* 289-291 (1999) and Raewyn Peart & Jessica Wilson, 'Environmental Policy-making in the New South Africa', 5 *SAJELP* 238 (1998).

28 See Ifeanyi Anago, *Environmental Impact Assessment as a Tool for Sustainable Development: The Nigerian Experience* (paper prepared for FIG XXII International Congress, Washington D.C., USA, 19-26 APRIL 2002), available at http://www.fig.net/pub/fig_2002/Ts10-3/TS10_3_anago.pdf and Shadrack W. Nasong'o & Wilfred N. Gabsa, *Environmental Policy and Politics of Ecologism in Cameroon and Kenya*, available at <http://www.jsda-africa.com/jsda/Fallwinter2000/articlespdf/ARC-Environmental%20Policy%20and%20the%20Politics%20of%20Ecologism.pdf>.

29 It can be argued that African leaders at that point in time did not see environmental protection as meriting their attention in view of their economic backwardness and the fact that most of Africa was still under colonialism.

30 See the Preamble to Organisation of African Unity (OAU) Charter, available at http://www.africa-union.org/root/AU/Documents/Treaties/text/OAU_Charter_1963.pdf.

31 *Id.*, Art iii (3). See also Fatsah Quguerouz, *African Charter on Human and People's Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* 364 (New York: Kluwer Law International, 2003).

32 See African Convention on the Conservation of Nature and Natural Resources, note 15 above.

33 It should be noted that before the Convention, there are other conventions with specific aims like the Convention of the African Migratory Locust Organisation, adopted by 22 African States on 25 May 1962 in Mali and entered into force on 13 April 1963; and the Phyto-Sanitary Convention for Africa, adopted at Kinshasa (Congo DRC) on 13 September 1967 (not yet in force).

34 See Morne van der Linde, 'African Responses to Environmental Protection', 35 *CILSA* 101 (2003); Nasong'o & Gabsa, note 28 above at 86-87; Yemi Osibanjo, 'Some Public Law Considerations in Environmental Protection', in Omotola ed., note 26 above at 129; O.A. Bowen, 'The Role of Private Citizens in the Enforcement of Environmental Laws', in Omotola ed., note 26 above at 153; Akanki, note 26 above at 202 and Jennifer A. Storm, 'South Africa's New Environmental Policies: Making Green the New Dominant Color', 9 *Georgetown Int'l Envtl. L. Rev.* 644 (1997).

35 van der Linde, note 34 above at 101-102. See also IUCN, note 24 above at 1-2 and Nasong'o & Gabsa, note 28 above at 70-80 & 90-91.

United Nations Conference on Environment and Development (UNCED), 1992 that triggered heightened global activity in the area of environmental awareness and management;³⁶ the 1989 First African Regional Conference on the Environment and Development, held in Kampala, Uganda, and which place further emphasis on environmental concern;³⁷ the menace of toxic waste dumping in Africa evidenced by the dumping of toxic waste in 1988 at Koko, Nigeria, and recently in Cote d'Ivoire in 2006;³⁸ and with reference to South Africa, the abolition of the apartheid policy and regime that have had adverse environmental consequences.³⁹

The increase in environmental consciousness among African leaders led to the establishment of legal, institutional and policy frameworks for the protection of the environment at the regional, sub-regional and national levels. These include the adoption in June 1981 of the African Charter on Human and Peoples' Rights and its 2003 Protocol on the Rights of Women in Africa, which not only provides for the right of all people to a generally satisfactory environment favourable to development,⁴⁰ but also, enforcement mechanisms such as the African Commission on Human and

Peoples Rights,⁴¹ and the African Court on Human and Peoples' Rights.⁴² In addition to providing for the right to environment, the OAU in 1991 adopted the Convention on the Ban of Import into Africa and the Control of Transboundary Movements of Hazardous Waste within Africa,⁴³ to control the influx and dumping of toxic wastes in the region. To ensure a holistic approach to the protection of the environment in Africa, the African Union (AU) which replaced the OAU, at its second Summit held on 11 July 2003 in Maputo, Mozambique adopted the Revised African Convention on the Conservation of Nature and Natural Resources.⁴⁴ The Revised Nature Convention improves on the original Algiers Convention by providing not only the conservation and management of natural resources, but also, provides for institutional structures to facilitate implementation by the States parties as well as establishes mechanisms to encourage compliance and enforcement.

36 See IUCN, note 24 above at 1 and Michael Ochieng Odhiambo, Legal and Institutional Constraints to Public Interest Litigation as a Mechanism for the Enforcement of Environmental Rights and Duties in Kenya, (Proceedings of the Fifth International Conference on Environmental Compliance and Enforcement), available at <http://www.inece.org/5thvol2/odhiambo.pdf>.

37 See the Kampala Declaration on Sustainable Development in Africa, Kampala, 12-16 June 1989, OAU Doc No 2153b 26/04/1989.

38 See van der Linde, note 34 above at 101-102 and K.M. Mowoe, 'Quality of Life and Environmental Pollution and Protection', in Omotola ed., note 26 above at 181.

39 See Peart & Wilson, note 27 above at 238-242 and Phia Steyn, 'The Lingering Environmental Impact of Repressive Governance: The Environmental Legacy of the Apartheid Era for the New South Africa', 2 (3) *Globalizations* 392-400 (2005).

40 See Art. 24, African Charter on Human and Peoples' Rights, Banjul, 27 June 1981, OAU Doc. CAB/LEG/76/3 rev.5, 21 *Int'l Leg. Mat.* 58 (1982) and Art. 18, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Maputo, 13 September 2000, CAB/LEG/66.6.

41 A quasi-judicial organ established pursuant to article 30 of the African Charter on Human and Peoples' Rights, note 40 above.

42 See Art. 1, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT III. (The Court and the African Court of Justice (ACJ) have now been merged into a single new court known as the African Court of Justice and Human Rights. It appears that until the coming into force of the ACJHR Protocol, the ACHPR will continue to function separately from the ACJ. See Art 3, 5 & 7, Protocol on the Statute of the African Court of Justice and Human Rights, 1 July 2008, available at <http://www.africa-union.org/root/au/documents/treaties/text/Protocol%20on%20the%20Merged%20Court%20-%20EN.pdf> (not yet in force).

43 See Convention on the Ban of Import into Africa and the Control of Transboundary Movements of Hazardous Waste within Africa, Bamako, 30 January 1991, 30 *Int'l Leg. Mat.* 775 (1991).

44 African Convention on the Conservation of Nature and Natural Resources (Revised Version), Maputo, 11 July 2003 (not yet in force), available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/nature%20and%20natural%20resources.pdf>. It should be noted that this decision to adopt the Convention is line with the AU's objective of promoting sustainable development at the economic, social and cultural levels. See Art. 3(j), Constitutive Act of the African Union, Lome, 11 July 2000, CAB/LEG/23.15.

The AU and its predecessor OAU also adopted a number of resolutions and declarations with regard to the protection of the environment in Africa.⁴⁵ In addition, several policy documents were adopted for the conservation and management of the environment in Africa. The most recent of such documents is the New Partnership for Africa's Development (NEPAD),⁴⁶ and its environmental action plan, NEPAD-EAP, which emphasise that the environment must be conserved in such a way that it accelerates poverty reduction and sustainable development in the region.⁴⁷ Further progress towards environmental protection in Africa was made by the establishment of the African Ministerial Conference on the Environment (AMCEN) in December 1985, to promote regional cooperation in addressing environmental issues confronting the region.⁴⁸ AMCEN is an inter-governmental body on environment and development and presently the

main policy-making forum for addressing or discussing Africa's environmental problems.⁴⁹ In furtherance of its objectives, AMCEN has adopted a number of declarations relating to the promotion of environmental protection and sustainable development in Africa.⁵⁰

3 NORMATIVE LEGAL FRAMEWORKS

3.1 The African Convention on the Conservation of Nature and Natural Resources (Algiers Convention)

The Algiers Convention before the 2003 revision was described as the 'most comprehensive multilateral treaty for the conservation of nature yet negotiated'.⁵¹ The Convention which was adopted before the hosting of the first global conference on environment, the 1972 United Nations Conference on Human Environment (UNCHE), covers a wide range of environmental issues such as soil, water, fauna and flora, protected species, traffic in

45 The most recent of these environmental declarations include the AU Declaration on Agriculture and Food Security in Africa, Maputo, 10-12 July 2003, Doc. No. Assembly/AU/Decl.7 (II); AU Declaration on Climate Change and Development in Africa, Addis Ababa, 29-30 January 2007, Doc. No. Assembly/AU/Decl.4 (VIII) and the Nairobi Declaration for Sustainable Development of African Mountain Regions, adopted at the African High Summit on Mountains, held in Nairobi, 6 - 10 May 2002.

46 See the New Partnership for Africa's Development (NEPAD): Framework, October 2001, available at <http://www.nepad.org/images/framework.pdf>.

47 Before NEPAD-EAP, there was the Lagos Plan of Action for the Implementation of the Monrovia Strategy for African Development which covers in part environmental concerns as evidenced by its Chapter IX that sets out anticipated on the environment by regional government. This Action Plan, which stimulated the adoption of the African Economic Community Treaty, has now been superseded by NEPAD-EAP parent document- The New Partnership for Africa's Development (NEPAD). In addition to the Lagos Action Plan, A conference of African Ministers of Environment held in December 1985 at Cairo, Egypt, adopted the Cairo Programme of Action for Regional Cooperation on the Environment. The Programme aimed at the mobilisation of regional human, scientific and technical resources to combat the rapid degradation of environmental resources as well as the rehabilitation of such resources on the continent.

48 African Ministerial Conference on the Environment (AMCEN), *History of the African Ministerial Conference on the Environment 1985-2005* xv (Nairobi: AMCEN Secretariat, 2006).

49 AMCEN is currently holding discussions with the African Union Commission (AUC) on issues related to the harmonisation and linkages between the Ministerial Conference and the AUC. It is expected that AMCEN would ultimately become a Specialised Technical Committee (STC) of the African Union Commission in line with the AU Summit's Sirte Declaration of February 2004.

50 See the Kampala Declaration on the Environment for Development, Adopted at the Ninth Regular Session of the African Ministerial Conference on the Environment, Kampala, 4-5 July 2002; Sirte Declaration on the Environment and Development, Adopted at the Tenth Regular Session of the African Ministerial Conference on the Environment, Sirte, 29-30 June 2004; Brazzaville Declaration on the Environment and Development, *in* Report of the Ministerial Segment, Eleventh Session of the African Ministerial Conference on the Environment, Brazzaville, 22-26 May 2006, Doc. UNEP/AMCEN/11/7 (2006).

51 See S. Lyster, *International Wildlife Law* 115 (Cambridge: Grotius Publications, 1985).

specimens and trophies, and conservation areas.⁵² Unlike previous Conventions negotiated by colonial rulers in Africa, the Convention not only moves away from the notion of nature conservation purely for utilitarian purposes, but also, emphasises the principle underlying ancient African environmental conservation and management practices. This is evident in the preamble to the Convention which acknowledges *inter alia* that natural resources constitute a capital of vital importance to mankind; the ever-growing importance of such resources from an economic, nutritional, scientific, educational, cultural and aesthetic point of view; and that the utilisation of the natural resources must aim at satisfying the needs of man according to the carrying capacity of the environment.⁵³ This is further evident in the intention of the contracting parties to undertake 'individual and joint action for the conservation, utilisation and development of these assets by establishing and maintaining their rational utilisation for the present and future welfare of mankind'.⁵⁴

The intention of contracting parties to integrate environmental protection and achievement of sustainable development objectives including poverty reduction in Africa is given concrete prominence in the overriding principle of the Convention which provides that 'the contracting States shall undertake to adopt the measures necessary to ensure conservation, utilisation and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people'.⁵⁵ The reference to 'the best interests of the people' can be construed as referring to their economic, nutritional, scientific, educational, social, cultural and aesthetic interests. Hence, it can be argued that African leaders envisage that the implementation of the provisions of the Convention must not only foster the conservation and management of environmental

resources in Africa, but also, promote poverty reduction and overall socio-economic development in the region. This intention runs through the entire provisions of the Convention relating to the conservation and management of water, flora, and faunal resources.⁵⁶ For example, the Convention requires that its parties in establishing policies for conservation, utilisation and development of underground and surface water, must endeavour to guarantee for their populations a sufficient and continuous supply of suitable water.⁵⁷ Furthermore, parties are required to 'ensure conservation, wise use and development of faunal resources and their environment, within the framework of ... economic and social development'.⁵⁸

Therefore, it will be contrary to the spirit of the Convention if States parties were to adopt or promote conservation measures and policies that focus exclusively on protectionism and human exclusion from ecological resources.⁵⁹ It should be noted that while this principle has not yet been interpreted judicially at the regional level, similar decisions supporting this argument exist at the national level in Africa. For example, this principle can be inferred from the decision of the Kenyan High Court in *Abdikadir Sheikh Hassan and 4 others v Kenya Wildlife Service*,⁶⁰ where the applicants sought an injunction preventing the respondent, from the translocation of a rare endangered species of animals called the 'hirola' on the ground that such action would deprive their local community of a species that forms part of their natural heritage and local ecology. The injunction was granted, but on

⁵⁶ *Id.*, Arts. IV-VII.

⁵⁷ *Id.*, Art. V (1).

⁵⁸ *Id.*, Art VII (1).

⁵⁹ It should be noted that most poor Africans and households are depended on these resources for their sustenance. Thus, adopting such policies will adversely impact on their food security, culture and livelihood thereby exacerbating poverty. See Dilys Roe, 'The Millennium Development Goals and Natural Resource Management: Reconciling Sustainable Livelihoods and Resource Conservation or Fuelling a Divide?', in David Satterthwaite ed., *The Millennium Development Goals and Local Processes: Hitting the Target or Missing the Point?* 56 & 61 (London: IIED, 2003).

⁶⁰ *Abdikadir Sheikh Hassan and 4 others v Kenya Wildlife Service*, High Court of Nairobi, Civil Case No. 2059 of 1996.

⁵² The Convention which has been in force since 16 June 1969 has been signed by 40 African countries with 30 ratifications as on 30 January 2009.

⁵³ See preamble to the African Convention on the Conservation of Nature and Natural Resources, note 15 above, Paras 1, 3 & 5.

⁵⁴ *Id.*, Preamble, Para 6.

⁵⁵ *Id.*, Art. II.

the ground that the Kenyan Constitution and other relevant statutes relied upon by the respondent did not entitle it to translocate the animals.⁶¹ In addition, while South Africa has neither signed nor ratified the Convention, it provided for a similar principle amongst the fundamental principles under Chapter two of the National Environmental Management Act (NEMA).⁶² This principle was considered in *Fuel Retailers Association of SA case*,⁶³ where the South African Constitutional Court held that:

One of the key principles of NEMA requires people and their needs to be placed at the forefront of environmental management *Š batho pele*. It requires all developments to be socially, economically and environmentally sustainable.... NEMA therefore requires the integration of environmental protection and economic and social development. It requires that the interests of the environment be balanced with socio-economic interests.... In this sense, it contemplates that environmental decisions will achieve a balance between environmental and socio-economic developmental considerations through the concept of sustainable development.⁶⁴

3.2 African Charter on Human and Peoples' Rights and the Protocol on Women's Rights in Africa

The African Charter on Human and Peoples' Rights which is the foremost human rights instrument in Africa was adopted by African Heads of States and government during the eighteenth ordinary

assembly of the defunct OAU on 27 June 1981, at Nairobi, Kenya. The Charter presently enjoys region-wide ratification. It was adopted to promote and protect human and peoples' rights and freedoms in a continent where human rights violations happen quite often.⁶⁵ The Charter is innovative and different from existing human rights instruments as it embodies Africa's perception of human rights.⁶⁶ The aim of the African experts that drafted the Charter was to create an instrument that will be based on African traditional philosophy and responsiveness to the real needs of Africa.⁶⁷ The most important of such needs was identified as the reduction of poverty and achievement of socio-economic development in the region.⁶⁸ To achieve this purpose, the Charter provides for extensive civil and political rights, as well as socio-economic and cultural rights. These rights are essential to the achievement of poverty reduction objectives and promotion of human dignity as they ensure empowerment, voice, access to social services, and equality before the law.⁶⁹

⁶⁵ See Ouguerouz, note 31 above at 37.

⁶⁶ *Id.* at 41-42. See also Rachel Murray, *The African Commission on Human and Peoples' Rights and International Law* 10 (Oxford: Hart Publishing, 2000).

⁶⁷ This is reflected in the fourth and fifth preambular paragraphs of the Charter which provide that '[r]eaffirming the pledge they solemnly made in Article 2 of the said [OAU] Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa....'; and '[t]aking into consideration the virtues of their historical tradition and the values of African civilisation which should inspire and characterise their reflection on the concept of human and peoples' rights'. The tone for this underlying philosophy was laid down by the late President Leopold Senghor in his opening address to the meeting of the African experts held in Dakar, Senegal, from 28 November to 8 December 1979. In his address, he urged the experts to use their imagination and draw inspiration from African traditions, keeping in mind the values of civilisation and the real needs of Africa (*Cited in Ouguerouz*, note 31 above at 41).

⁶⁸ See Senghor's opening address as *cited in Ouguerouz*, note 31 above at 41. See also the observation of the discussion leader in Seminar on the Study of New Ways and Means for Promoting Human Rights with Special Attention to the Problems and Needs of Africa, Dar es Salaam, 23 October- 5 November 1973, UN Doc. ST/TAO/HR/48, at p. 22, para iii as *cited in Ouguerouz*, note 31 above at 31.

⁶⁹ See United Nations Development Programme (UNDP), *Human Development Report: Human Rights and Human Development* 74-77 (Geneva: UNDP, 2000). See also Center for Human Right and Global Justice, note 4 above at 10-11.

⁶¹ Kenya is a party to the African Convention on the Conservation of Nature and Natural Resources which it ratified on 12 May 1969. It should be noted that while the respondent may have the conservation and management of the animal in mind, the fact the translocation will adversely affect the socio-cultural development of the indigenous community made it contrary to the spirit of the Convention.

⁶² See National Environmental Management Act, Act 107 of 1998, S. 2(2).

⁶³ *Fuel Retailers Association of SA (Pty) Ltd v. Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga, and Others*, Constitutional Court of South Africa, Case CCT 67/06, Decision Delivered on 7 June 2007.

⁶⁴ *Id.*, Para 60.

Most importantly, Article 24 of the Charter provides that 'All peoples shall have the right to a general satisfactory environment favourable to their development'. The inclusion of this novel right in the Charter, is an acknowledgement by its framers of the importance of a healthy environment to Africa's socio-economic development. This can be seen from the fact that the right aims to promote an environment of such quality that is favourable to the development of African people. As observed by Ouguergouz:

'For a great many African peoples, these various aspects of the problem of the natural environment are of vital importance. For them as others, a 'general satisfactory environment favourable to the development' also means a quality environment: in other words, relatively unpolluted air and water, the protection of the flora and fauna which are particularly important as they sometimes form an integral part of the traditional way – food and medicine for example – of certain African people'.⁷⁰

However, the right as contained in the Charter is vague and ambiguous with regard to its meaning and scope.⁷¹ This vagueness can be seen from the fact that the Charter did not give any clear indication of the meaning of the term 'satisfactory' and 'environment' used in framing the right. Nevertheless, It can be argued that the term 'environment' refer to both the natural environment comprising living (biodiversity or ecosystem), and non-living or man-made components of the natural world, as the Charter envisages a *general satisfactory environment favourable* to the development of African people.⁷² Using such expansive interpretation enables not only persons whose access

to streams, rivers, land and clean air has been impeded by environmental degradation, but also, those whose enjoyment or access to their homes and other buildings, as well as shrines, sacred groves and other cultural monuments, to rely on the provisions of Article 24 of the Charter for appropriate relief.⁷³ As aptly suggested by Jan Glazewski with regard to the interpretation of the term 'environment' under Section 24 of the South African Constitution,⁷⁴ 'the term [should] be broadly interpreted to include not only our relationship with natural resources but also our cultural heritage as well as the urban environment'.⁷⁵

In addition, the term 'satisfactory' is ambiguous as it can refer to clean, adequate, acceptable, reasonable, suitable, fitting, pollution-free, healthy or pleasing when qualifying the right to environment as used in the Charter. The ambiguity of these qualifying terms may make the interpretation of the right by the court, environmentalist and human rights scholars difficult.⁷⁶ On the other hand, as argued by van der Linde, '...it could possibly assist positively in that it allows for a wide and more flexible

⁷⁰ See Ouguergouz, note 31 above at 364.

⁷¹ It has been argued that such ambiguity is symptomatic of the vague and laconic way in which much of the Charter is drafted. See Robin Churchill, 'Environmental Rights in Existing Human Rights Treaties', in Alan Boyle & Michael Anderson eds., *Human Rights Approaches to Environmental Protection* 106 (Oxford: Oxford University Press, 1998) and van der Linde, note 34 above at 106.

⁷² Other meaning of the term 'environment' includes setting, situation, background and location. See Ouguergouz, note 31 above at 361.

⁷³ It appears that courts in South Africa subscribe to an expansive interpretation of the term 'environment' and thus, are willing to uphold this right where it can be proved that the non-natural aspects of the environment are affected by pollution and other environmental degradation. See *Minister of Public Works and others v. Kyalami Ridge Environmental Association and Another*, Constitutional Court of South Africa, Decided on 29 May 2001, 2001 (3) SA 1151 at 1178 C-J. (the Constitutional Court held that the Respondents (Kyalami residents) have not shown as a probability that the action of the government in establishing a camp for displaced people at the premises of the Leeuwkop prison will have a significant effect on the environment.); and *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd and Others*, High Court of South Africa, Eastern Cape Division, 2004 (2) SA 393 at 411J-413D (allegation that the 1st respondent's polluting activities have adverse effects *inter alia* on the materials in the premises of the first defendant not proved and thus, prayer for an order shutting down the 1st respondent's tanning processes not given).

⁷⁴ See Constitution of the Republic of South Africa, Act 108 of 1996.

⁷⁵ Jan Glazewski, *Environmental Law in South Africa* 76 (Durban: Lexis Nexis Butterworth, 2nd ed, 2005).

⁷⁶ See Churchill, note 71 above at 106 and van der Morne, note 34 above at 106.

interpretation'.⁷⁷ The effect of this ambiguity is that the meaning of the term 'satisfactory' is now a matter of subjective value judgement.⁷⁸ Flowing from the above, it is submitted that the best way out of this definitional muddle is for the courts, environmentalist and human rights scholars in each specific context to adopt such meaning of the term 'satisfactory' that will as much as possible give effect to the intention of the Charter's framers, that is, guaranteeing for average Africans, the right to an environment of such a nature that will ensure their overall economic, social and cultural development.⁷⁹ Such interpretation will make it possible to widen the scope of the right to cover any instance of environmental degradation that is inimical to socio-economic development of African citizens and not be limited only to pollution, dumping of toxic wastes and wastes generally.⁸⁰ This is reflected in the decision of the African Commission on Human and Peoples' Rights (African Commission) in *Social and Economic Rights Action Center (SERAC) and another v Federal Republic of Nigeria*,⁸¹ where without expressly clarifying the meaning of the term 'satisfactory', the Commission's view of the meaning of the right to a satisfactory environment can be gleaned to include *inter alia* an environment free from pollution and ecological degradation, and environment of such quality that can secure an ecologically sustainable development and use of natural resources.⁸²

Furthermore, the Charter linked the right to a satisfactory environment to the issue of development. The Charter did not define the meaning of the term 'development'. Despite this

omission, it appears that the Charter envisages socio-economic development. This is arguably based on the premise that the drafters of the Charter by linking the right to development, envisage that African citizens should not only be able to live in a undegraded and pollution-free environment, but also, be able to access the resources provided by their environment in order to develop to their full potential.⁸³ In essence, the right to a general satisfactory environment under the African Charter is a composite right, and thus, measures taken to protect the environment in terms of this right must also promote poverty reduction and socio-economic development.⁸⁴ This argument is not only consistent with the principle underlying both ancient African conservation practices and sustainable development,⁸⁵ but also, the philosophy underlying the adoption of the entire Charter, which is to address the real needs of Africa, of which economic under-development was identified as the most important. Such philosophy is evident in a more recent declaration of the 13th Conference of Non-Aligned Countries (most African countries are members) stating:

'Sustainable development, therefore, must be considered in the wider context of sustained economic growth. States have the sovereign right to exploit their resources in accordance with their own environmental and development policies. [less industrialised

77 *Id.* See also Morne van der Linde & Lirette Louw, 'Considering the Interpretation and Implementation of Article 24 of the African Charter on Human and Peoples' Rights in Light of the SERAC Communication', 3 *African HRLJ* 174 (2003).

78 Alan Boyle, 'The Role of International Human Rights Law in the Protection of the Environment'. in Boyle & Anderson eds., note 71 above at 50.

79 *Id.*, 50-51.

80 See Churchill, note 71 above at 106.

81 Communication 155/96, Decision of the African Commission on Human and Peoples' Rights. (Interpreting this right under the African Charter), available at http://www.achpr.org/english/Decison_Communication/Nigeria/Comm.155-96.pdf.

82 *Id.*, Para 52.

83 See Ougergouz, note 31 above at 364. See also Better Environment, Better Tourism: Building the Age of Hope in South Africa, (An Address by the Deputy Minister of Environmental Affairs and Tourism, the Honourable Rejoice Mabudafhasi to the National Council of Provinces (NCOP) on 8 June 2006), available at http://www.environment.gov.za/newsmedia/speeches/2006jun8/08062006_2.doc. (Admitting that unless communities living in and around protected areas derive tangible benefits from natural resources, the government will be failing to discharge its responsibilities to its people).

84 See Communication 155/96, note 81 above, Para 52. For similar national decision, see *HTF Developers (Pty) Ltd v. Minister of Environmental Affairs and Tourism and Others*, 2006 (5) SA 512 at 518E-I; *Fuel Retailers Association case*, note 63 above, Para 45; and *Department of Agriculture: MEC Conservation and Environment and Another v. HTF Developers (Pty) Limited*, Case CCT 07/32, Decided on 6 December 2007, Para 24 (hereinafter HTF Developer case II).

85 See Amechi, note 16 above at 63.

countries] cannot forego growth and transformation in the name of conservation of natural resources or for the sake of preserving an unaltered natural habitat. Actions taken to protect the environment by diverting resources from development might in the long run prove to be self-defeating, since they might reduce development thereby limiting the magnitude of resources ultimately available for improving the human environment'.⁸⁶

The link to socio-economic development makes the promotion of the right relevant to the achievement of sustainable development objectives including poverty reduction in Africa. As observed by the Constitutional Court of South Africa in *Fuel Retailers Association of SA (Pty) Ltd v Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga, and Others*, dealing with a similar provision in the South African Constitution, '[s]ustainable development and sustainable use and exploitation of natural resources are at the core of the protection of the environment [in South Africa]'.⁸⁷

On the other hand, the Protocol to the Banjul Charter on the Rights of Women in Africa simply provides that '[w]omen shall have the right to live in a healthy and sustainable environment'.⁸⁸ This environmental provision is mandatory and different from the environmental provision in the Banjul Charter, as it is not linked or made subject to socio-economic development. Despite this omission, it can be argued that the Protocol like the Banjul Charter, envisages that African women should not only be able live in an undegraded and pollution-free environment, but also, access the resources provided by their environment in order to develop to their

full potential. This makes the provision vital to the promotion of the socio-economic development of African women as not only do most poor households in Africa (especially those in the rural area) depend heavily on the environment for their income, health, dietary and energy needs,⁸⁹ but also, the responsibility of sourcing or gathering the resources provided by the environment fall disproportionately on women.⁹⁰ Thus, in instances of environmental degradation, African women are usually forced to travel longer distances and spent more time in accessing environmental resources.⁹¹ Precious time lost that would have been used in performing other household duties, and which in turn, impacts on the amount of time available for schooling and indulging in other livelihood improvement and income-generation activities.⁹²

It can therefore be argued that by guaranteeing African women's access to a healthy and sustainable environment, the AU through the Protocol seeks to promote their socio-economic development. This perhaps explains why unlike Article 24 of the Banjul Charter, Article 18 (2) of the Protocol expressly mandates its States parties to take appropriate measures towards the realisation of the women's right to environment. These include *inter alia* ensuring the greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels; promoting research and investment in new and renewable energy sources and appropriate technologies, and facilitating women's access to, and participation in their control;

⁸⁶ Declaration of the 13th Conference of Non-Aligned Countries, 2000, as cited in Ouguergouz, note 31 above at 369.

⁸⁷ See *Fuel Retailers Association of SA (Pty) Ltd v Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga, and Others*, note 63 above.

⁸⁸ See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, note 40 above, Art. 18.

⁸⁹ For example, in rural Zimbabwe, one third of total household income stems from the bulk of environmental resources. See United Nations Development Programme (UNDP), *The Poverty-Environment Nexus: Reinforcing Linkages 6* (New York: UNDP, Practice Note, 2004) and Mohammed-Katerere et al, note 10 above at 13.

⁹⁰ See Tim Hirsch, 'Ecosystem Protection, a Key to Development', 4 *Environment & Poverty Times* 1 (2005).

⁹¹ See Irene Dankelman, 'No Hope without Gender Equality', 4 *Environment & Poverty Times* 14-15 (2005).

⁹² See Roe & Elliott, note 4 above at 15; Peter Hazlewood, Geeta Kulshrestha & Charles McNeill 'Linking Biodiversity Conservation and Poverty Reduction to Achieve the Millennium Development Goals', in Roe ed., note 4 above at 147; and Balakrishna Pisupati & Emilie Warner, *Biodiversity & the Millennium Development Goals* 13 (Gland: IUCN, 2003).

protecting and enabling the development of women's indigenous knowledge system; and regulating the management, processing, storage and disposal of domestic wastes.

3.3 The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa

This Convention was adopted on 30 January 1991 and entered into force on 22 April 1998.⁹³ It was adopted under the auspices of the defunct OAU as an alternative to the Basel Convention. It should be noted that in the build-up to the Basel Convention, OAU member States were concerned about the issue of toxic colonialism whereby foreign companies will exploit their countries as cheap disposal sites for toxic wastes.⁹⁴ This concern was not misplaced as during the same period, an unscrupulous Italian businessman dumped five shipload of hazardous waste in the small coastal town of Koko, Nigeria, while there were reports of similar dumping in Djibouti, Equatorial Guinea and Sierra Leone.⁹⁵ In addition, there were also reports of some African countries entering into dubious agreements with unscrupulous western companies for the dumping of toxic wastes in their territories.⁹⁶ The Basel Convention by regulating, rather than prohibiting trade in hazardous wastes, was felt by the OAU

member States as not stringent enough to assuage their concerns.⁹⁷ Thus, by signing the Bamako Convention, OAU member States with the exception of South Africa, which was then not a member, seek to ban the import of all hazardous waste into Africa, as well as the imposition of stricter standards on transboundary movement.⁹⁸

The purpose of the Convention is principally to protect the region from the growing threat to human health and the environment posed by the increased generation and the complexity of hazardous wastes. The Convention therefore has a vital link to the promotion of poverty reduction and achievement of socio-economic development in Africa. The linkage may not be readily discernible as there is no express mention of poverty reduction or sustainable development in either the preamble or in the body of the Convention. However, it can be argued that the link can be implied in the provisions of preamble to the Convention which not only recalled relevant environmental provision of the Banjul Charter, but also, were mindful of the spirit, principles, aims and functions of the Algiers Convention, instruments which as earlier discussed are vital to the reduction of poverty in Africa.⁹⁹ In addition, the linkage is implicit in the determination of the parties to protect the human health of the African population and the environment against the adverse effects which may result from hazardous waste pollution.¹⁰⁰ It should be noted that the protection of human health and environment from the adverse effects of hazardous wastes is very important in reducing or preventing the prevalence of diseases which usually causes or

⁹³ See Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, note 43 above.

⁹⁴ David Hunter, James Salzman & Durwood Zaelke eds., *International Environmental Law & Policy* 852 (New York: Foundation Press, 2002).

⁹⁵ See United Nations Commission on Human Rights (UNCHR), Economic, Social and Cultural Rights: Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights (Report Submitted by the Special Rapporteur on Toxic Waste, Mrs. Fatma-Zohra Ouhachi-Vesely, Doc. E/CN.4/2001/55, 19 January 2001), and James Brooke, 'Waste Dumpers Turning to West Africa', *The New York Times*, 17 July 1988, available at <http://www.nytimes.com/1988/07/17/world/waste-dumpers-turning-to-west-africa.html>.

⁹⁶ *Id.*

⁹⁷ See John Ovink, 'Transboundary Movement of Hazardous Waste, the Basel and Bamako Conventions: Do Third World Countries Have a Choice?', 13 *Dick. J. Int'l of Law* 285 (1995).

⁹⁸ However, the Convention complements the Basel Convention as the later makes provision for regional and stricter treaties. See Art. 11(1), Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal, Basel, 22 March 1989, 28 *Int'l. Leg. Mat.* 649 (1987).

⁹⁹ See Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, note 43 above, Preamble, Paras 5 & 12.

¹⁰⁰ *Id.* Para 16.

exacerbates poverty in Africa.¹⁰¹ Hence, it can be argued that the implementation of the Convention is vital to the achievement of poverty reduction in Africa as a hazardous waste-free environment will enable people to enjoy their basic rights to life, health, adequate food and housing, education, satisfactory environment, and traditional livelihood and culture in the region.¹⁰² As observed by Madava, '[h]azardous wastes are potential pollutants of the human and biophysical environment. Waste pollution can cause death as well as rashes, lung and other cancers... Dumping toxic wastes in developing countries where poverty is high is a major drawback in the struggle to catch-up with the developed world.'¹⁰³

3.4 Revised African Convention on the Conservation of Nature and Natural Resources

The Revised Nature Convention was adopted on 11 July 2003 and is not yet in force. The Convention when in force will replace the original Algiers Convention for those African States that have ratified it.¹⁰⁴ The Convention was borne out of the

need to update and strengthen the Algiers Convention, in order to bring it in line with the latest developments and thinking in international environmental law and sustainable development as well as the latest scientific and technological developments in the environmental field.¹⁰⁵ This revision became necessary as the Algiers Convention was adopted before the hosting of the United Nations Conference on the Human Environment, 1972,¹⁰⁶ which catalysed decades of rapid development of environmental thought and treaty law subsequent to the adoption of the Convention.¹⁰⁷ The end product of this revision is a comprehensive regional convention on natural resources, environment and development, and which has aptly been described as a 'road map'¹⁰⁸ for the management of Africa's natural resources. The Convention which when in force shall apply to all areas which are within the limits of national jurisdiction of any Party; and to the activities carried out under the jurisdiction or control of any Party within the area of its national jurisdiction or beyond the limits of its national jurisdiction.¹⁰⁹

The Convention reveals a strong commitment to the achievement of poverty reduction and socio-economic development in the region.¹¹⁰ This is apparent from the Convention's preamble under

101 For example, the MA estimates that Africa's GDP could have been \$100 billion larger in 2000 if malaria which is responsible for 11 per cent of Africa's disease burden had been eliminated 35 years ago. See Reid et al, note 6 above at 61.

102 It is estimated that about 5.2 million people die each year from waste-related diseases in developing countries. See Gary D. Meyers, Glen McLeod, and Melanie A. Anbarci, 'An International Waste Convention: Measures for Achieving Sustainable Development', 24 (6) *Waste Management and Research* 505 (2006).

103 Tinashe Madava, 'Illicit Dumping of Toxic Wastes Breach of Human Rights', 28 *Review of African Political Economy* 288 (2001). See also Ariana Balestrieri, 'Illegal Toxic Trading: The Exchange of a Deadly Good', *Brown Policy Review* 2-3 (2006); and Anne Daniel, 'Hazardous Substances and Waste, Other Than Nuclear', available at http://www.jus.uio.no/forskning/grupper/intrel/YBIEL/Reports2_Check/0603Transboundary%20Movement%20of%20Haz%20Waste.doc.

104 For those that have not ratified it, and are parties to the Algiers Convention, they are only bound by the provisions of the Algiers Convention. The provision of the original Convention will also govern their relationship with parties to the revised Convention. See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Art. XXXIV.

105 See Decision on the Revised 1968 African Convention (Algiers Convention) on the Conservation of Nature and Natural Resources, Doc. EX/CL/50(III), Assembly/AU/Dec.9 (II), available at http://www.africa-union.org/official_documents/Decisions_Declarations/Assembly%20AU%20Dec%209%20II.pdf. See also African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Preamble, Para 13; International Union for Conservation of Nature, note 24 above at 5 and Afrol News, 'Africa to Enhance Nature Conservation', 18 July 2003, available at <http://www.afrol.com/articles/10361>.

106 Note that the adoption of the Convention coincided with the decision of the UN General Assembly to convene the United Nations Conference on Human Environment.

107 See International Union for Conservation of Nature, note 24 above at 4-5.

108 See Afrol News, note 105 above.

109 See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Art. I.

110 See International Union for Conservation of Nature, note 24 above at 3.

which the Heads of States and Government of the AU acknowledge that Africa's natural environment and its resources 'are an irreplaceable part of the African heritage and constitute a capital of vital importance to the continent and mankind as a whole', as well as 'the ever-growing importance of natural resources from economic, social, cultural and environmental points of view'.¹¹¹ The member States also re-affirmed the sovereign right of States to exploit their natural resources pursuant to their developmental and environmental policies, and further reaffirmed that States are responsible for the protection, conservation and management of their environment and natural resources as well as the sustainable utilisation of such resources in order to satisfy human need.¹¹² Most importantly, the Convention states its objectives as enhancing environmental protection, fostering the conservation and sustainable use of natural resources; and harmonising and coordinating policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes.¹¹³ These objectives correspond to key elements of a sustainable development approach and hence, measures adopted towards realising these objectives must enhance and not hinder the achievement of poverty reduction and socio-economic objectives such as the MDGs in Africa.¹¹⁴

The commitment to the achievement of poverty reduction and socio-economic development is further evidenced by the Convention's guiding principles which include the right of all peoples to a satisfactory environment favourable to their

development; the duty of States, individually and collectively to ensure the enjoyment of the right to development; and the duty of States to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner.¹¹⁵ These principles are mandatory and hence, States parties must observe them in the course of taking actions or implementing programmes towards the conservation, management and sustainable use of land, soil, water, vegetation cover; maintaining and enhancing species and genetic diversity of plants and animals; or in establishing and maintaining conservation areas.¹¹⁶ Thus, it would be contrary to the spirit of the Convention if member States were to adopt conservation measures without assessing the potential socio-economic impacts of such environmental projects on the surrounding communities.¹¹⁷

The Convention also mandates its members States not only to ensure that conservation and management of natural resources are treated as an integral part of national and/or local development plans, but also, in the formulation of all development plans, full consideration is given to ecological, as well as to economic, cultural and social factors in order to promote sustainable development.¹¹⁸ These

111 See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Preamble, Paras 2 & 4.

112 *Id.*, Paras. 5 & 6.

113 *Id.*, Art. II.

114 See International Union for Conservation of Nature, note 24 above at 6. See also *HTF Developers (Pty) Ltd v. Minister of Environmental Affairs and Tourism and Others*, note 84 above at 518E-H; *Fuel Retailers Association of SA (Pty) Ltd v. Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga, and Others*, note 63 above at para 65; and *BP Southern Africa (Pty) Ltd v. MEC for Agriculture, Conservation and Land Affairs*, 2004 (5) SA 124 at 151 D-G, (interpreting a similar provision of s 24(a) of the South African Constitution).

115 See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Art. III.

116 See *Fuel Retailers Association of SA (Pty) Ltd v. Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga, and Others*, note 63 above, paras 71-97 and *Bato Star Fishing (Pty) Ltd v. Minister of Environmental Affairs and Others*, 2004 (4) SA 490 (upholding the obligatory nature of similar fundamental principles under chapter 2 of National Environmental Management Act, and section 2 of the Marine Living Resources Act of 1998 respectively).

117 See *Fuel Retailers Association of SA (Pty) Ltd v. Director-General, Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga, and Others*, note 63 above and *Abdikadir Sheikh Hassan and 4 others v Kenya Wildlife Service*, note 60 above.

118 See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Art. XIV. See *MEC for Agriculture, Conservation, Environment & Land Affairs v. Sasol Oil (Pty) Limited and Another*, 2006 (5) SA 483 (SCA), (the South African Court of Appeal upheld the decision of the MEC not to grant the respondent an authorisation to build a petrol station on environmental grounds).

provisions further evidence the desire of African leaders to integrate environmental considerations with socio-economic concerns including the reduction of poverty.¹¹⁹ In addition, the Convention obligates its member States to promote procedural rights by adopting legislative and regulatory measures necessary to ensure timely and appropriate dissemination of environmental information; access of the public to environmental information; participation of the public in decision-making with a potentially significant environmental impact; and access to justice in matters related to protection of environment and natural resources.¹²⁰ These enabling rights are not only essential to environmental protection, but also, poverty reduction as they encourage an integration of democratic values and promotion of the rule of law in broad-based structures of governance, thereby ensuring empowerment, voice, access to social services, and equality before the law.¹²¹

Other relevant provisions of the Convention vital to the reduction of poverty and promotion of socio-economic development in Africa relate to the control of pollution and waste management;¹²² protection of the environment during military and hostile activities; and promoting respect for traditional rights and intellectual property rights of local communities including farmers' rights.¹²³

4 CONCLUSION

The article shows that the various regional legal interventions for the protection of the environment in Africa recognise the linkage between poverty reduction and environmental protection as they were adopted within the context of promoting poverty reduction and overall socio-economic development in the region. Thus, it can be argued that Africa's attempt to protect the environment (including the provision of the human right to environment), is overtly anthropocentric as African leaders subscribe to the view that environmental conservation must not be inimical to, but should contribute to the overall socio-economic development of their citizens. This view while it may be criticised, is however consistent with traditional African notion of conservation which not only emphasise unity of nature and humanity, but also, conservation and utilisation of natural resources by man.¹²⁴ The fact that these legal interventions reflect this view means that their successful implementation can contribute effectively to the achievement of socio-economic developments objectives such as poverty reduction in Africa. This situates the enforcement and implementation of these environmental legal instruments within the quest to achieve the MDGs in Africa. The MDGs as earlier noted constitute a strategy for the reduction of poverty in developing countries by 2015.

However, while it is obvious that African leaders recognise the importance of the conservation and management of the environment to the achievement of socio-economic development objectives including poverty reduction for their citizens, their implementation of the various legal instruments for the protection of the environment is at best lukewarm. This is best illustrated by the non-ratification by most African countries of the Revised Nature Convention, a document which as earlier noted constitutes a roadmap for the management of Africa's natural resources. Such non-ratification has

119 See International Union for Conservation of Nature, note 24 above at 7-8.

120 See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Art. XVI.

121 See Shadrack C. Agbakwa, 'A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peacebuilding in Africa', 47 (1) *JAL* 58-62 (2003); and Dinah Shelton, Human Rights, Health and Environmental Protection: Linkages in Law and Practice (A Background Paper for the World Health Organization), available at http://www.who.int/hhr/information/en/series_1%20%20%20Human_Rights_Health_Environmental%20protection_Shelton.pdf.

122 See African Convention on the Conservation of Nature and Natural Resources (Revised Version), note 44 above, Art. XIII.

123 *Id.*, Art. XVII.

124 See Amechi, note 16 above at 62-63.

been a stumbling block towards the coming into force and subsequent implementation of the Convention.¹²⁵ Even for the conventions that are in force, they have not adequately implemented as most African nations have evidenced a lack of political will to domestically enforce the provisions of these conventions in their jurisdictions. Such lack of effective implementation has led to a situation where they have ended up as 'paper tigers'. The quest to promote economic growth and poverty reduction has been cited as some of the reasons for the non-enforcement of environmental regulations by African countries.¹²⁶ However, this is very ironic as most of poor Africans especially in the rural areas are dependent for their sustenance on the same degraded environment caused or exacerbated by non-implementation of environmental regulations.

Thus, in view of the heavy reliance of millions of poor Africans on the environment for their sustenance, there is a need for African countries to stop relying on these outdated excuses as basis for not implementing environmental regulations. In essence, it would be counterproductive to the achievement of poverty reduction initiatives like the MDGs in Africa if governments were to ignore the protection of the environment in order to promote economic growth and development. It is heartening to note that the Environmental Initiative of the New Partnership for Africa's Development (NEPAD), a policy document adopted by African leaders to enhance the achievement of the MDGs in the region,¹²⁷ recognises that a healthy and productive environment is a prerequisite for the success of NEPAD as it is vital to creating the social and ecological base upon which the partnership can thrive.¹²⁸ What is needed is the necessary political will towards the protection of the environment in

Africa by the effective implementation of these legal instruments.

125 As on 30 January 2009, only 8 nations have ratified the Convention.

126 See Emeka Polycarp Amechi, 'Poverty, Socio-Political Factors and Degradation of the Environment in Sub-Saharan Africa: The Need for a Holistic Approach to the Protection of the Environment and Realisation of the Right to Environment', 5 (2) *Law, Environment and Development Journal* 117-118 (2009).

127 See the New Partnership for Africa's Development (NEPAD): Framework, note 46 above, Para 68.

128 *Id.*, Para 138.

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