

Status of Implementation of Multi-Lateral Environment Agreements in Africa

1. Introduction

Since environmental issues were introduced in modern international policy agenda with the 1972 Stockholm Conference, global, regional and national environmental politics and policies have developed rapidly with Multilateral Environmental Agreements (MEAs) as one of the key tools to drive this process.

The term "Multilateral Environmental Agreement" is a broad term that relates to international instruments through which three or more nations commit to achieving specific environmental goals. Environmental agreements can be binding when they are ratified or acceded to by States or can be non-binding referred to as "soft law instruments."

The purpose of MEAs is to guide global, regional and national actions on environmental related issues. The guidance from MEAs is transited into action depending on the purpose of the particular MEA.

For one to appreciate how African countries have implemented MEAs, one has to take a historical perspective to assess the trends. Africa was one of the first continents where multilateral action on transnational environmental issues was taken. The origin of ME A in Africa can be traced from the colonial period in the 1900s. The first attempt in shaping it was through the 'Convention on the Preservation of Wild Animals, Birds, and Fish in Africa' signed by European colonial powers in London on 19 May 1900. This Convention was not ratified by any signatory but assisted some of the colonial powers to enact legislation related to exploitation and protection of wild fauna in their colonial territories. Colonial efforts for a new convention culminated in the adoption of the 'Convention Relative to the Preservation of Fauna and Flora in the Natural State (London Convention)' on 8 November 1933.

Upon gaining independence in the 1960s, African countries recognized the necessity to shift from the colonial allocation and exploitation approach to long term management and sustainable use of the natural resources. This led to the adoption of the 1968 African Conservation Convention on the Conservation of Nature and Natural Resources. Consequently, in 1968 African Convention was revised in 2003 (2003 Maputo Convention on Environment and Natural Resources) and considered developments on the African environment, natural resources and economic realities, while bringing on board modern management approaches as provided for in global multilateral environmental agreements. The revised 2003 Maputo Convention brought a new lease of life to regional and national environmental law and policy development by providing a framework for sustainable use of natural resources, harmonisation and coordination of policies with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes (Article II). The Convention reflects the necessity for the parties to applying common solutions to common problems. The Convention did not come into force until 2017.

Generally, there is a co-relation between the drivers of environmental, socio-economic and political change and the implementation of MEAs in Africa. The shaping of common approaches, either to protect the natural capital endowment from internal and external forces, stem the environmental losses or enhance the sustainable productivity of the natural capital, has provided an opportunity for the MEAs to be useful in Africa.

2. Status and trends of implementation of MEAs in Africa

Over the years, African states have increasingly ratified numerous multilateral environmental agreements both global and regional. This an indication that African Countries are geared to ensuring environmental sustainability. Interestingly, ratification of a Multilateral Environmental agreement does not always signal implementation nor compliance as intended. However, African states have also taken gradual action to implement MEAs through, development of institutions, policies and laws, environmental action plans, programmes and initiatives.

Africa tends to use two approaches in implementing MEAs and other international environmental commitments, that is, regional and national level implementation. At the regional level, Africa uses model laws, charters, declarations, guidelines and other like instruments to have common approaches and to influence the development of national environmental actions. There are some cases in point to elaborate this trend. In the implementation of the Nagoya Protocol, African Union adopted the 2001 African Model Law for the Protection of the Rights of the Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources (“the African Model Law”). The African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa, is another instrument to implement MEAs.

The second approach that Africa has used is the national approach through the direct or indirect incorporation of MEAs in national laws, institutions, policies and programmes including constitutions. This national approach is formulated to focus on sustainable management, prevention and restoration.

Most of the modern environmental laws in Africa integrate MEAs in various forms including in sectoral laws such as land, air, water, energy, soil, waste, wildlife, genetic resources. MEAs have also been incorporated in subsidiary legislation such as in proclamations, rules, regulations, orders, resolutions, notices, bylaws or other instruments.

For purpose of this paper, MEAs will be clustered in five main sectors:

- (i) **Biodiversity related conventions:** CBD, Ramsar, UNCCD, CITES, CMS, Cultural Heritage, Maputo, Lusaka on illegal wildlife. The trend in implementing biodiversity MEAs in Laws and policies in Africa show the main approach is incorporating principles of sustainability. The 2005 Treaty Establishing the Central African Forests Commission and its convergence plan and the AU guidelines on biological resources mentioned above are good examples here.

- (ii) **Atmospheric related conventions:** UNFCCC, Kyoto, Ozone; MEA implementation has been in the form of climate change, energy, air quality policies and laws. To respond to the ever-growing problem of air quality, Africa has taken some steps by making regional “agreements” with the objective of regulating, preventing, controlling and abating air pollution to ensure clean and healthy air. These agreements are, however, not binding as none is yet to come into force. The key ones are the (i) 2008 SADC Regional Policy Framework on Air Pollution (Lusaka Agreement), (ii) 2008 Eastern Africa Regional Framework Agreement on Air Pollution (Nairobi Agreement-2008), (iii) West and Central Africa Regional Framework Agreement on Air Pollution (Abidjan Agreement-2009), and (iv) North African Framework Agreement on Air Pollution.
- (iii) **Chemical and hazardous waste conventions:** Basel, POPs, PIC, , Bamako. Global MEAs essentially provide for tracking and management of cross border movement of waste, whereas Africa’s problem is more related with domestic waste management. Implementation in Africa has taken the shape of policies, laws and actions on solid waste management. The 2008 Libreville Declaration, however, set the tone on Africa’s commitment to protect human health from environmental degradation. At regional level, many waste management instruments have been developed the call for stronger systems of management of waste. These instruments include the 2012 East Africa Community Development Strategy, 2001 SADC Regional Indicative Strategic Development Plan, 2012 ECOWAS E-Waste Strategy (2012), the 2015 ECOWAS Hazardous Waste Management and 2016 Plastic Waste Management Strategy. Almost every African country has put in place a legal framework dealing with solid waste management and established regulations and policies on how waste should be managed. African countries tend to make by-laws at local levels to manage the solid waste. However, development of policies and laws on e-waste management has not yet progressed being that it is a growing concern in Africa.
- (iv) **International freshwater conventions:** UNCLOS, (UN Water Convention, draft UN aquifers law), IMO, MARPOL, Nairobi and Abidjan, Mediterranean, and Jeddah conventions, Regional Fisheries Management Organizations, Large Marine Ecosystems institutions and the 1982 Indian Ocean Commission on marine and coastal environment as well as trans-boundary river basin agreements. The trend is to promote a coordinated regional approach to long-term conservation, protection, rehabilitation, enhancement and sustainable use. Given the multiplicity of these water MEAs there is bound to be duplicity in implementation. Africa has 34 international water agreements. The main trends in Africa fresh water agreements in the 20th century has centered on creativity in formulating treaties to meet unique hydrological, economic, political and cultural settings of individual basins. RECs have also developed coriparian cooperative arrangements, such as the 2003 Protocol for Sustainable Development of Lake Victoria, 2001 SADC Revised Protocol on Shared Watercourses , the Regional Water Strategy (2006) and a series of Regional Strategic Action Plans on collaborative actions for transboundary water management.

(v) **Mining conventions**

Extraction of minerals in Africa has attracted a number of Regional MEAs: the 2016 Southern African Development Community Protocol on Mining; 2009 Economic Community of West African States Directive on Harmonization of Guiding Principles, Policies on Mining; 2009 African Mining Vision. The Africa Mining Vision guides exploitation of mineral resources to underpin sustainable growth and socio-economic development of Africa, calls for ensuring the highest standards of environmental and material stewardship through entrenching the process of strategic environmental impact assessments. The African Mining Vision has found space in national policies, laws and regulations in terms of environmental safeguards in the mining sector. The trend is to provide for procedures of environmental control of the pollutants during exploration, production and processing

3. Incorporation of MEAs in social, economic and trade related instruments in Africa.

MEAs have also been incorporated in social, economic and trade related instruments in Africa. The 1991 African Economic Community Treaty (Abuja Treaty) on agricultural development and food production, energy and natural resources, dumping, control of hazardous waste, and environmental protection. The 2001 Convention of the African Energy Commission on managing energy resources across Africa. The 2018 Agreement Establishing the African Continental Free Trade Area in Africa recognizes the right of State Parties to regulate, in pursuit of national policy objectives, supply of services, without compromising environmental protection and overall inclusive growth and sustainable development, measures necessary to protect human, animal or plant life or health. The 2016 African Union Charter on Maritime Security, Safety and Development (Lomé Charter) recognizes that no state is capable of single-handedly securing itself against maritime threats. The 1999 Maritime Transport Charter recognized the interdependence between economic development and a sustainable policy for the protection and preservation of the marine environment. The 1996 African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba) established the African-nuclear-weapon-free-zone.

Whereas Africa's major economic regional integration groupings aim at promoting economic integration, many of them have developed protocols and other legal instruments on the environment. Therefore, the trends tends to incorporate environment matters in community affairs.

4. Challenges in implementation of MEAs in Africa

Implementation of MEAs in Africa has been gradual. Below are some of the factors that have been impeding the effective implementation of these MEAs.

a) Weak political will

African states usually sign global and regional environment agreements but are slow at ratifying or acceding and implementing the instruments. Economic and political instruments are easily ratified and implemented by the Africa countries compared to environmental agreements. This leads to

the fact that Africa countries have not fully realized the importance of MEAs in the development agenda

b) Limited financial resources:

MEA Implementation can be explicitly contingent on financial resources which are not always available for African States. The situation does not get better as with the increase of MEAs, the financial obligations keep growing.

c) common but differentiated responsibilities.

African States although willing to cooperate with the global community on international environmental problems that stem primarily from northern development, may believe that they should not be required to impose limits on their economic development or infringe their sovereign right to exploit their resources.

d) Weak coordination and synthesis in implementation.

The environment, by nature, is multi-sectoral. As a result, crosscutting strategies are necessary to implement MEAs since the agreements touch upon economic, agricultural, energy, and various issues. Parallel government structures, as well as personnel, are necessary to coordinate effective implementation. Existing bureaucratic arrangements can bring about an opposite result. It has been noted that various regional and national groups compete with each other for the same markets in order to realize local and short-range goals, but these do not translate to common goals and a united front in international fora.

e) Poor developing country representation in multilateral negotiations.

In number, African countries form a large portion of negotiating parties. However, their influence is largely minimal in relation to their numbers. Developed countries are significant players due to their economic and leadership strengths. In addition, comprehensive negotiating teams often made up of personnel from a variety of government ministries represent their positions. This creates a gross imbalance against African countries some of whom have only one person at international negotiations without sufficient knowledge about the issues being discussed. The language of a negotiated text can be highly technical or legal. Without active developing country input, it becomes essentially “unimplementable” in their own countries.

f) Inadequate use of local scientific/traditional knowledge in policy making

The Importance of expert contribution in policy making is vital. Government laws and policies should not be developed in isolation, the input of other stakeholders is crucial.

Similarly, holders of local knowledge of fauna and flora should be fully engaged in government decision-making.

5. Innovative Solutions for effective MEA implementation in Africa- (Points of Discussion)

Policy development and Harmonization

African States should establish the necessary institutions and mechanisms to ensure that implementation is a continuing focus. Policy is an effective tool to ensure this. The development of actionable policies that are harmonized across sectors can provide the mechanisms to ease implementation. The Linkage between environmental sustainability and economic development should be apparent in policies to stress that the latter can be achieved while effectively maintaining the former.

Regional centered approach

African Countries must leverage on the strong role that environmental leadership at the regional level can play in ensuring MEAs implementation. Regional bodies, RECS may be used to encourage joint efforts in implementation and compliance. It is, however, important to note even in such regional approaches, a firm institutional structure is key to success. The African Ministerial Conference on the Environment is a one such body that can be the catalyst needed for such leadership.

Common African Position in Negotiations

An African Common Position during negotiations has become not only necessary but essential. This provides the Africa group leveraging ground to influence the kind of provisions found in MEAs that they deem fit and are implementable in their developing context. This coordination for negotiation should be structured before countries commit to MEAs. An innovative way is to strengthen environmental diplomacy in Africa.

Capacity building:

Monitoring implementation, often pursuant to a MEA national reporting requirement, will necessitate on-site monitoring through inspections, performance evaluation and the use of compliance mechanisms. Technical expertise is therefore important and is often not present in African countries. Sustainable programmes to improve local technical capacity building and the skills are welcome.

Financing Implementation

An alternative to national budgets is partnerships with NGOs who can be valuable partners in monitoring and enforcement especially where fiscal restraints limit the government's role. Private-Sector partnership is also an avenue to raise the funds needed for implementation. The idea is to sell environmental sustainability as a path to a green economy where less resources are used to get more returns.

Conclusion

It is now more important than ever for Africa to implement MEAs by establishing more stable and functional regional and domestic legal and regulatory frameworks, effective institutions and action plans for achieving sustainable development. To ensure MEAs implementation remains high on the national and regional agenda, the above challenges must be dealt with and the solutions taken on board.