

REPORT

Regional Meeting of the United Nations Environment Programme Montevideo Focal Points for Africa

United Nations Office in Nairobi, Nairobi, Kenya

4–6 June 2018

Background

Since the establishment of the United Nations Environment Programme (UN Environment), environmental law has constituted one of the key areas of its work. From 1982 to the present day, the environmental law activities of UN Environment have been organized and coordinated through a series of 10-year programmes adopted by the Governing Council of UN Environment and generally referred to as the Montevideo Programme for the Development and Periodic Review of Environmental Law. The Montevideo Programme has been instrumental in steering the efforts of the international community to develop environmental law, which will transform science-based policies into action-oriented rules and standards of conduct.

The current Programme – Montevideo Programme IV – was adopted by the Governing Council decision 25/11 as a broad strategy enabling the international law community and UN Environment to formulate activities in the field of environmental law for the decade beginning in 2010. Since its commencement in 2010, Montevideo Programme IV has formed an integral part of the UN Environment programmes of work and has provided UN Environment with the strategic guidance needed to respond to evolving needs in countries and the international community in the field of environmental law and undertake necessary action, consistent with each biennial programme of work, in collaboration with a range of partners at the national, regional and global levels.

In May 2016, the United Nations Environment Assembly adopted resolution 2/19 inviting Member States to designate national focal points to collaborate with and guide UN Environment in strengthening the application of the Montevideo Programme and to monitor and evaluate its implementation. Following the designation of national focal points, UN Environment lined up a series of regional consultations to evaluate implementation of the programme and to identify key elements for a future programme.

The first regional consultation of the African focal points for the Montevideo Programme took place from 4 to 6 June 2018 at the Headquarters of the United Nations Environment Programme (UN Environment), United Nations Office in Nairobi, Kenya. This was the first among the series of regional consultative meetings that are expected to take place to share experience and expertise and gather input on the assessment of Montevideo Programme IV and proposing elements for the next ten-year environmental programme (2020–2030).

The objectives of the meeting were to provide a forum for Montevideo IV Focal Points from Africa to:

- (a) Share and exchange information on latest developments, trends, and good practices in the development and enforcement of environmental law in their countries, as well as regionally and globally;
- (b) Contribute to UN Environment's preparation of the assessment of the Montevideo Programme IV, including through sharing information on the status of implementation of the Montevideo Programme IV in their countries; and
- (c) Identify priorities from the region and proposals for the work of UN Environment in environmental law for the fifth ten-year programme period commencing from 2020.

The meeting also provided an important platform to increase partnerships and networks in the region for Montevideo Focal Points and other stakeholders working on environmental law issues.

Opening Session

Welcome remarks were made from the UN Environment's Law Division by Mr. Arnold Kreilhuber, Deputy Director, who used this opportunity to inform participants of the Montevideo process that would culminate in a United Nations Environment Assembly (UNEA) resolution. Ms. Juliette Biao Koudenoukpo, Director and Regional Representative, Africa Office, UN Environment, in her opening remarks, focused on the priorities of the African region and encouraged participants to contribute to this process. Mr. Robert Wabunoha, Regional Coordinator – Environmental Law and Governance, Africa Office, UN Environment, also made a statement on environmental law priorities in the region and advised participants on what is expected.

Representation

The focal points who attended the meeting were representing the following countries: Algeria, Angola, Burkina Faso, Burundi, Chad, Cameroon, Côte d'Ivoire, Democratic Republic of the Congo, Ethiopia, Gabon, Guinea, Guinea-Bissau, Kenya, Madagascar, Mauritania, Sao Tomé and Príncipe, Senegal, Seychelles, Somalia, Togo, Uganda, and Zambia. The focal points from Swaziland, Sierra Leone, and Sudan were invited but did not attend.

Organization of Work

The Meeting of focal points was organized in four segments as follows:

- (a) The first part included a general presentation and discussions on priorities set out in the Sixth Global Environment Assessment (GEO 6) regional assessment for Africa and panel sessions focussing on various themes as well as sharing experiences, lessons and good practices from countries;

- (b) The second part focused on presentations from participants structured through panel discussions focussing on four thematic areas each with a moderator among participants.
- (c) The third part was on emerging issues focussing on environmental crime and human rights and environment;
- (d) The fourth part focused on the Montevideo Programme, covering both an assessment of Montevideo Programme IV and providing elements for the next ten-year programme.

Part 1: Discussing GEO 6 Priorities and Sharing Experience and Lessons on Various Thematic Areas on Environment

This session provided an overview of environmental challenges in Africa, mainly touching on land, air quality, water quality and biodiversity loss. These challenges were identified and opportunities to mitigate the challenges were also provided in a presentation made by an environmental law expert from the region who is following up on the GEO process.

On air quality, the main opportunities presented were:

- Reduction of dependence on solid fuels by harnessing solar and wind energy;
- Encouraging data collection, air quality monitoring (installation of air quality monitoring stations and the maintenance of national emission inventories) and modelling;
- Capacity building for the improvement of policies, legislation, institutions, and management systems, and for increased public awareness and networking.

On land management, the main opportunities identified were:

- Increase yields per unit area by embracing the Comprehensive Africa Agriculture Development Programme (CAADP) and its associated technologies for irrigation and fertilizer use;
- Institute appropriate legislative and administrative reforms and develop best practice guidance regarding land tenure arrangements and processes and secure the access rights of women and other vulnerable groups;
- Improve infrastructure, e.g. in transport and electricity;
- Take environmental degradation into account when computing national income estimates (green accounting).

On water management, the main opportunities identified were:

- Carry out research to ascertain extent and availability of groundwater;

- River basin management to protect catchments, foster intra-basin cooperation in equitable use of limited water resources;
- Tap potential for hydropower generation in order to reduce deforestation;
- Scale up use of rooftop water catchment and floodwater harvesting technologies.

On biodiversity, the main opportunities presented were:

- Encourage establishment of more private, community-based and co-managed protected areas;
- Train legislative drafters; lobby green caucuses in parliaments to review and pass strict laws that recognize illegal trade in wild fauna and flora as a serious, transnational crime; train prosecutors, judges, and government officials;
- Operational and technical support to law enforcement agencies to recognize and track illegally traded wild fauna and flora;
- Undervaluation of biodiversity in national accounting systems;
- Improve access to information on stockpiles of confiscated wildlife trophies;
- International collaboration in investigation and prosecution of wildlife offenses;
- Use trade blocs to come up with uniform deterrent laws that provide for stiff penalties & sentences.

The participants were keen on the presentation and provided their comments summarised as follows:

- Legislation on freshwater resources management in some parts of Africa is still inadequate, with water users in some parts left unregulated and river basins not managed adequately;
- On wildlife, some countries need to strengthen their laws by increasing sentences so that they can be deterrent, and country to country networks should be strengthened to tackle environmental crime;
- Demographic consideration in Africa are important because they can cause population pressure over environmental resources;
- Marine and coastal resources in some parts of Africa are not adequately governed;
- The capacity of the judiciary to adjudicate environmental cases should be greatly enhanced;
- The criminalization of acts that destroy the environment in pieces of legislation should be seriously considered;
- Programmes to sensitize the local communities on environmental regulations and the benefits of conservation and sustainable consumption and production should be developed and implemented.

Part 2: Regional and National Developments and Trends

This part was structured in four panel sessions. Session 1 focussed on Land Degradation; session 2 focused on Air Quality; session 3 focused on Water Quality; and session 4 focused on Biodiversity Loss. Moderators of each panel later presented the outcomes of their discussions in the plenary.

Panel Session I: Land Degradation: Approaches, Challenges and Solutions in Addressing Land Degradation through Legislative, Policy and Institutional Measures

The Panel members were focal points from Burkina Faso, Guinea Bissau, Mauritania, Togo, Uganda, and Zambia.

Outcome of consultations in the Panel discussion

1. Current challenges in land management

The current challenges in land management in many parts of Africa include the lack of adequate legislation to regulate and enforce land-related legislation. This is mainly in areas related to land use, land tenure and land rights. Agriculture, which is referred to as the backbone for the economy by most African countries, has its share of environment and land use concerns. There is also low awareness on the existing laws by the public. Additionally, there is a unique challenge in war and conflict zones where arable land is negatively impacted.

2. Current trends in addressing the challenges

Currently, the action taken in most countries is to effect environmental impact assessment (EIA) laws and regulations And establish environmental police units that are specialized and have authority to investigate environmental degradation. Countries have also set up community land management acts that have enabled them to protect the use of land. Mauritania has criminalized environmental crimes in their penal code. Zambia has notably started an Environmental Protection Fund for mining companies to assist in restoration and remediation of the impacts. Burkina Faso has also set up a fund for land degradation neutrality.

3. Recommendations and solutions

- Need for strengthening environmental impact assessment laws to effectively address land degradation;
- Need to examine the land rights and ownership issues in Africa;
- Need for environmental law to ensure that agricultural practices respect environmental protection;
- Need for ministries to develop an environmental governance strategy;
- Need to establish dedicated an environmental protection fund for mining;
- Need for capacity to be built for law enforcement officials;

- Need for countries to adopt community-based land management to achieve better public efforts in land conservation.

Panel Session 2: Air Quality including Climate Change and Ozone Layer Protection: Approaches, Challenges and Solutions in Addressing Indoor and Outdoor Air Pollution and Sandstorms in Africa through Legislative, Policy and Institutional Measures

The Panel members were focal points from Algeria, Cameroon, Côte d'Ivoire, Democratic Republic of the Congo, Sierra Leone, and Somalia.

1) Current challenges in air quality

Air quality management in some countries in Africa is affected by weak implementation and compliance regime. Financial constraints and lack of awareness in the populace are hurdles that have been dominant in the past. Emerging issues such as rapidly changing demographics, ineffective and unsustainable waste management, and charcoal trade and usage have worsened the situation. Respiratory infections are at high rate ever and the continent has witnessed a sharp increase in second hand car imports which are dominantly diesel fuelled. Several countries are not able to determine their air quality, due to the cost of the equipment required. In addition, those that can identify perpetrators of air pollution are not able to prosecute due to poor training on evidence collection. Inadequate understanding of climate change among judicial officials was also listed as an issue that needs attention.

2) Current trends in addressing the challenges

Awareness raising and sectoral collaboration with the finance sector are emerging areas that African countries are gearing towards. Countries such as Uganda are revising their air quality law to include current approaches.

Recommendations and solutions

Countries highlighted key areas that the next environmental law programme could cover. These are:

- To further develop the law on the area of technology transfer and global finance;
- To develop linkages between outdoor pollution and climate change;
- To incorporate energy efficiency as an area of concern;
- To promote stakeholder involvement (especially indigenous people and civil society);
- To promote climate smart agriculture;
- To review and update regulation on ozone depleting substances;
- To further develop regulations for mobile sources of pollutants; and
- To develop legislation that deals with the importation of second hand vehicles.

Panel Session 3: Water Quality: Approaches, Challenges and Solutions in Addressing Freshwater and Marine Pollution in Africa through Legislative, Policy and Institutional Measures.

The Panel members were focal points from Angola, Burundi, Madagascar, Sao Tomé and Príncipe, and Seychelles.

1) Current challenges in Water Quality

Water quality presents several complex issues for the continent and an example of such is Lake Tanganyika. Quality of the water of the lake is not good. It is a source of drinking water for 90% of the city population around the shores.

2) Current trends in addressing the challenges

Countries have incorporated civil responsibility for environmental damages and the polluter pays principle in their legislative frameworks. Awareness raising has also taken off and several countries are heading towards developing regulations of single use plastics.

3) Recommendations and solution

- Need to control the single use plastics;
- Need to address the increasing pressure for water uses and conservation of water in housing and tourism;
- Need to strengthen fines and suggest co-operation with the police for patrolling the coastal lines;
- An alternative to approach to controlling water quality was shared by Seychelles based on their experience to demarcate the use of water for their activities, for example, fishing areas, recreational areas.

Panel Session 4: Biodiversity Loss: Approaches, Challenges and Solutions in Addressing Biodiversity Loss in Africa through Legislative, Policy and Institutional measures on Biodiversity Loss.

The Panel members were focal points from Chat, Ethiopia, Gabon, Kenya, and Senegal.

1) Current challenges in biodiversity loss

Deforestation, draining of wetlands to cater for changing demographics and urbanization, unsustainable agricultural practises and desertification are key threats to biodiversity loss. The situation is worsened by climate change and failure to prosecute poachers due to uneven

implementation of legislation across countries. Industrial pollution is on the rise and several countries lack the technical capacity to manage the situation.

2) Current trends in addressing the challenges

Countries are responding by carrying out reforestation programs and commemorating a national tree planting week by planting a lot of trees. A major area of development is the replacement of coal with gas stoves. However, there was consensus that there is a need to regulate innovations related to gas stoves to ensure that they are indeed energy efficient.

3) Recommendations and solutions

- Need for transboundary cooperation to criminalize illegal logging and the trade in illegal logs;
- Need to promote eco villages that would not only curb the issues of biodiversity loss but would also alleviate poverty and promote community based natural resources management;
- Most countries recognize that there is the need to place responsibility on people who produce plastic, who should put in place a system of collecting the plastic items that are also affecting biodiversity.

The moderators of the four panels at the end of the programme summarized their discussions and mentioned the key points as follows:

Panel session 1: Land Degradation

- Demographic factors play a key role in land use and land management. No specific measure can be put in place because recreation is a voluntary process.
- Key challenges for Africa in relation to land degradation are deforestation, charcoal trade and lack of waste management.
- Solutions include: reform in land tenure system; research to get away from the business as usual approach and transition to gas stoves from charcoal; recognizing the role of communities in forest management; engaging in dialogue at a continental level to criminalize charcoal usage and trade; investing in monitoring tools to quantify results and pave way for further solutions; investments in technology related to water leakages, wastage and infrastructure development; and recognizing that wars and terrorist activities have an implication on land degradation.

Panel session 2: Air quality

- It is important to recognize the correlation between energy efficiency and climate change.
- Training and research of different environmental practises is still patchy.

- To effectively deal with climate change, it should be mainstreamed with other sectors.

Panel session 3: Water quality

- Despite the existence of laws, policies and institutional arrangements, water quality is at a steady decline, accompanied by compliance and implementation issues.
- There is the need to redefine the roles of taxes and fines in water governance.

Panel session 4: Biodiversity loss

- Common challenges include the following: land degradation and deforestation; demographic changes; over exploitation and marine pollution.
- There is the need to harmonize laws considering the nature of environmental crimes related to biodiversity.
- Protection needs to be extended to microorganisms.
- Capacity building needs to be improved.
- Legislation is patchy.
- Technological capacity to improve monitoring of biodiversity loss and implementation of the law has to be built.

Part 3: Emerging Issues

This session was facilitated by Legal Officers from the Law Division of UN Environment, who gave a short introduction on environmental crimes and on human rights and environment before the participants were divided into two groups. The modalities of the group discussion and the necessary guidance were provided before the plenary broke into two groups (meeting simultaneously) to consider the assigned topics.

- Group 1 identified and discussed approaches, challenges and solutions to dealing with environmental crime including trans-boundary environmental crime.
- Group 2 discussed and identified approaches, challenges and solutions to developing and promoting rights-based approaches to environmental protection.

Environmental crimes

- Several countries take a sectoral approach to environmental crimes. However, a country like Brazil has a specific legislation entirely dealing with environmental crimes;
- Environmental crime is defined differently in each countries' statutes. What may amount to a crime in one country, may not be a crime in another. This has implications on the enforcement of the laws considering that environmental crimes are transboundary in nature. There is therefore a need to harmonize legislative action among countries if there

is political will. For example, Kenya banned plastic bags, but neighbouring countries such as Tanzania and Uganda have not considered banning these plastic bags because they produce them in their industries. As a result of porous borders, the plastic bags from neighbouring countries have found their way in Kenya.

- While developing a framework law on environmental crime, it would be important to consider the role of non-state actors.

Human rights and environment

- Environmental rights should go beyond constitutional affirmation of environmental rights and the debate should surround the progressive realization of environmental rights and the justiciability of environmental rights;
- Countries should also consider expanding the locus standi in environmental related cases;
- The burden of proof that provides the threshold to prove the violation of an environmental right should be interpreted flexibly (for example, the mere fact that nature has been damaged is enough, or one should prove personal damage or damage to property).

Part 4: Montevideo Programme Assessment and Priorities

This session highlighted the concrete needs of African focal points for every phase of the domestic environmental law-making process in relation to each pillar of Montevideo IV. The following results of the group exercise that was conducted during this session are summarized below for each of the four pillars of the Programme.

Pillar 1 (Effectiveness of Environmental Law)

Although most countries had developed a broad base of environmental law, implementation is still underdeveloped. In particular, there is a need to equip countries with support for environmental policy makers, enforcement officers, the judiciary, as well as civil society. There is also the need to provide for the exchange of best practices on model laws and regulatory frameworks. Capacity building is also needed for data collection and monitoring, surveillance, and enforcement. Similarly, support is needed for the development of environmental damage compensation schemes; this needs to be complemented by support for the assessment of environmental damage, awareness about environmental rights, as well as environmental impact assessment regulations and environmental audit processes. Institutional authorities in most countries need to be strengthened, and where they have not already been established, the creation of national environmental agencies is critical. At the same time, whilst public interest litigation is developing in many countries, there is an ongoing need for support in the development of dispute settlement systems, especially in the context of transboundary environmental disputes. All countries highlighted the need to improve harmonization, coordination and synergies between environmental law making and law making in other policy domains. In this context, support from UN Environment was indicated as essential. Public participation was also highlighted as a

common concern, with most countries acknowledging the need to support more participatory forms of law and policy making. Finally, governance challenges were highlighted as another priority, with a need to create, strengthen and/or reform institutional arrangements for environmental law and policymaking.

Pillar 2 (Conservation, management and sustainable use of natural resources)

As regards fresh, coastal and marine water and ecosystems, focal points highlighted the need for technical and institutional support for the development of protected areas, for governance and implementation capacity and for the creation of new water regulations and, policy. At the same time, there is a need for the training of enforcement officers to improve compliance with existing laws.

As regards soils, countries identified the need for technical support for the implementation of the UN Convention to Combat Desertification. As regards forests, several countries emphasized that whilst forestry codes had been adopted, there was a significant need for support to ensure that the codes were duly implemented and that secondary regulations were enacted. Capacity building for awareness raising about the overall importance of forests was also highlighted.

As regards biodiversity, many countries have adopted national biodiversity strategies, but once again, implementation continues to be a challenge. Not only is there a need for technical support for enforcement officers, but as well technical support is needed for data collection, especially in light of the importance of biodiversity baseline inventories

Pillar 3 (Environmental challenges)

As regards climate change, many countries have developed national laws, projects and programmes and strategies. However, support for implementation is a continuing priority, especially in highly vulnerable countries. As regards poverty, most countries highlighted the need to deepen understanding of the inextricable link between poverty and environmental degradation and to develop policy and legal tools that capture those linkages more effectively. As regards access to drinking water, infrastructure has been established in several countries, whilst those recently emerging from conflict lack both the physical infrastructure and the technical expertise to ensure water and sanitation access. As regards ecosystem conservation, where specific laws have been established, their implementation rests on the capacity of enforcement officers. In many cases lack of capacity is exacerbated by limited understanding, resources scarcity and in some cases, corruption. As regards pollution prevention and control, many countries cited a wide range of pollution prevention laws in place. But once again, implementation capacity is seriously under-developed.

Pillar 4 (Relationship with other fields)

As regards human rights and the environment, a growing number of countries have enshrined environmental rights into their national constitutions. Where that is the case, there is a need to continuously train judges, prosecutors and environmental lawyers in the rapidly evolving jurisprudence to equip them in order to ensure that litigation processes produce rulings that can help guide law and policy making. As regards trade and the environment, many countries have put in place institutional and legislative arrangements to ensure that trade and investment policy upholds environmental standards. There is still a need to deepen the mainstreaming of environmental issues into trade and investment policy, with a corollary need to deepen awareness about the mutually reinforcing linkages. As regards environment and military activities, many countries emphasized the need to learn about best practices in this area. Many have not yet developed law and policy to address the environmental consequences of military activities, whilst only a few countries have put in place legislative frameworks to ensure the mitigation of environmental harm stemming from military activities.

CLOSING REMARKS

A round table discussion was used to evaluate this meeting, input collated included areas which they found useful and areas the programme needs to improve.

The Meeting was closed at 5.00 pm by Law Division officials from UN Environment.