

A review of the African Convention on Nature and Natural Resources

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1 Introduction

Although international environmental norms have been developing since the early 1900s, the first major breakthrough in environmental protection at the global level was the Stockholm Declaration (1972), which highlighted concerns such as the relationship between development and the environment, respect for environmental standards and the need for inter-state co-operation. Subsequent landmark developments at the global level include the creation of the United Nations Environmental Programme (UNEP), the formulation of Principle 21, the World Charter for Nature (1982), the Rio Summit (1992) and the Rio + 5 Conference (1997).

Regional efforts of the Organisation of African Unity (OAU), aimed at the protection of the environment, are abundant. These efforts consist of both 'soft' law and treaty law. Traditionally, 'soft' law has a non-binding nature, whereas treaty law is binding on parties to a convention.

An examination of 'soft' law on the continent reveals that an approximate figure of 45 resolutions pertaining to the environment were adopted by the Council of Ministers of the OAU between 1968 and 1986.¹ Assuming that the same rate of adoption persists within the Council, it is conceivable that approximately 90 environmental resolutions will be adopted by the year 2004. The African Common Position on Environment and Sustainable Development (1992)² and the African

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¹ OAU compendium on environmental resolutions 1968–1986.

² This Common Position was adopted in Côte d'Ivoire in 1992 in preparation for the Rio de Janeiro Earth Summit in June 1992.

Common Position on the Yokohama Conference on Natural Disasters Management and Reduction (IDNDR) (1994) may also be considered two of the most prominent OAU achievements amongst programmes of action and other environmental actions taken at a regional level.³

African regional treaties emerged in 1968 with the adoption of the African Convention on Nature and Natural Resources (African Convention) by the OAU in Algiers.⁴ The African Convention entered into force in 1969. Environmental awareness was further stimulated in 1988 after trade in toxic and hazardous waste was exposed on the continent. Two OAU documents followed in response to the then apparent threat. The first document dealing with the waste trade was the Anti Dumping Resolution.⁵ The second document, which took the form of a multi-lateral treaty, was the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movements and Managements of Toxic and Hazardous Waste in Africa (Bamako Convention).⁶ Although adopted in 1991, the Bamako Convention only entered into force in 1998.⁷ Of significance to the efforts made by the OAU in the protection of the environment was the contentious shift in approach from the regulatory nature of the other environmental treaties, to a rights based approach with the inclusion of the right to a satisfactory environment in the African Charter on Human and Peoples' Rights (African Charter) in 1986.⁸

A cursory evaluation of regional environmental norms prompts an impression of ineffectiveness. This view stems from the fact that it is apparent that the current normative approach to environmental protection has not produced viable results. However, closer scrutiny reveals the possibility of a contradictory notion.

This paper considers the review of the African Convention. This Convention has been in place for approximately 30 years, allowing for an evaluation as to its effectiveness in meeting the objectives as set out in articles II and VIII(1) of the African Convention. It also permits an evaluation of the effectiveness of enforcement mechanisms and the effective settlement of disputes under the African Convention. One can also evaluate the current need for the African Convention and determine whether it should be replaced. As indicated below, the values embodied in the African Convention have been questioned by the OAU and it is important to note that plans to revise the African Convention are

³ OAU publication *The OAU: 35 years in the service of Africa* (1997) 81.

⁴ 1001 UNTS 3.

⁵ CM/Res 1153/28 (1989) *International Legal Materials* 567.

⁶ (1991) 30 *International Legal Materials* 773.

⁷ It should be noted that only ten states were needed to ratify the African Convention for it to come into force.

⁸ Art 24.

currently underway. A review is further necessitated by the lack of academic scholarly work on the African Convention. Consideration will be given to the process behind the initial African Convention as well as the process in respect of the draft revised African Convention.⁹ This paper is premised on the progressive movement towards a rights based approach to environmental protection that started with the inclusion of the right to a satisfactory environment in the African Charter. This approach is further acknowledged in the Preamble of the Bamako Convention, and firmly entrenched in the draft revised African Convention. Acknowledging the right to a satisfactory environment as a fundamental right emphasises its connection to the realisation of other rights, such as the right to development, access to information and procedural fairness.

2 Historical context

Two international agreements on the environment preceded the African Convention and dealt specifically with the African continent. The first was the African Convention on the Preservation of Wild Animals, Birds and Fish in Africa (Convention on Wild Animals) of 1900.¹⁰ It was endorsed by those colonial powers present in Africa at the time. The Convention on Wild Animals aimed to regulate the uncontrolled killing of a diverse species of wild animals in Africa. According to Lyster, an underlying objective of the Convention on Wild Animals was to ensure a fair supply of game for trophy hunters, ivory and skin traders.¹¹ The second Convention was the African Convention Relative to the Preservation of Fauna and Flora in their Natural State (African Convention on Fauna) of 1933.¹² The provisions of the African Convention on Fauna were similar to those of its predecessor, emphasis being placed on the creation of protected areas. After Africa's independence from colonial rule, the necessity arose for the creation of an African convention reflecting values more relevant to modern Africa than those contained in the treaties created by colonial powers. The extent of environmental disasters (drought, deforestation, deterioration of water resources, land concentration and desertification)¹³ common to the region further necessitated the construction of a regional convention within the newly established OAU.

⁹ Research has revealed one article on the African Convention, it dates back to 1985. See S Lyster *International wildlife law* (1985) 112.

¹⁰ 94 BFSP 715.

¹¹ n 9 above.

¹² 172 LNTS 241.

¹³ GJ Naldi *The Organization of African Unity* (1999) 227. Also see Council of Ministers Resolutions CM/ Res 118(IX), 145(X), 169(XI), 316(XXI), 336(XXI), 450(XXVI), 465(XXVI), 540(XXVII) and 575(XXIX). This is not a comprehensive list and serves as a mere example of the environmental problems that faced the continent at the time.

Steps taken to bring to life a regional convention dealing with the environment may be traced back to 1964.¹⁴ By 1967, a preliminary draft of the African Convention was in place and member states of the OAU were encouraged to submit their views on the draft to the General Secretariat.¹⁵ A Committee of Experts was established to amend this draft. The amendment was once again sent to member states and additional observations and comments were invited. These had to reach the General Secretariat before 30 June 1968. In the event that no additional commentaries were received, the African Convention would be prepared for adoption on the 11th ordinary session of the Council of Ministers and approval by the 5th ordinary session of the Assembly of Heads of State and Government.¹⁶ Thereafter the African Convention would be open for signature and subsequent ratification and application by member states. The African Convention was finally adopted in Algiers in 1968. The African Convention came into force on 16 June 1969 after the ratification of the required four states.¹⁷

Before 1 January 1970, states that ratified the African Convention included Burkina Faso, Côte d'Ivoire, Ghana, Kenya and Swaziland. Another 21 states ratified the African Convention during the period from 1 January 1970 to 1 January 1980.¹⁸ The rapid rate of ratification should be seen as a clear indication of African governments' (63%)¹⁹ formal commitment and acceptance of the provisions contained in this Convention. As at 7 December 2001, 31 states had ratified the African Convention. A further nine countries have signed the African Convention, although scepticism is raised as to whether these countries would in fact ratify the African Convention, as most of the signatures date back to 1968.²⁰

3 Normative legal framework created by the African Convention

This section briefly explores the normative legal framework put in place by the African Convention. For reasons of clarity the provisions and the

¹⁴ Historical note on the *African Convention on Nature and Natural Resources* published by the General Secretariat of the OAU.

¹⁵ OAU CM/Res 118 (IX).

¹⁶ OAU CM/Res 145 (X). This should be an indication that the Convention, given the political and socio-economic conditions prevalent at the time and the possible demands of such a comprehensive treaty on a state party, was accepted with relative ease in the African Community.

¹⁷ Art XXI. These four states were Côte d'Ivoire, Swaziland, Ghana and Kenya.

¹⁸ OAU Doc Ref CAB/LEG/24.1.

¹⁹ This percentage reflects the status of ratification as at December 2001.

²⁰ As above.

headings will be explored in the same order as found in the African Convention.

Recognition is given in the Preamble of the African Convention to the importance to humankind of resources such as soil, water, flora and fauna from an economic, nutritional, scientific, educational, cultural and aesthetic point of view. A duty is established to control the natural and human resources of the continent for the advancement of the African people. These resources are recognised as irreplaceable. The Preamble also envisages the concept of sustainable development and firmly establishes the belief that this instrument would advance the attainment of these ideals.²¹

3.1 Substantive provisions

3.1.1 *Fundamental principle*

The 'fundamental principle' as set out in article II of the African Convention expounds its purpose. This principle places an obligation on states to take the measures required to conserve, utilise and develop resources such as soil, water, fauna and flora. In addition it requires that conservation, utilisation, and development should meet scientific standards and be conducted in such a manner that it does not negatively affect the best interests of the people.²² Although these objectives attempt to address a large area of concern, no indication is given as to the specific criteria to be used in the determination of these 'scientific' standards, nor to the determination of the concept of the 'best interest of the people'.

3.1.2 *Definitions*

Article III, the definition clause of the African Convention, provides for 10 contextual definitions in the interpretation and application of the African Convention. Definitions pertain to natural resources,²³ specimens,²⁴ trophies²⁵ and conservation areas.²⁶ Three types of conservation areas are defined and they comprise strict nature reserves,²⁷ national parks²⁸ and special reserves.²⁹ These special reserves are further divided

²¹ Preamble.

²² Art II.

²³ Art III(1).

²⁴ Art III(2).

²⁵ Art III(3).

²⁶ Art III(4).

²⁷ Art III(4)(a).

²⁸ Art III(4)(b).

²⁹ Art III(4)(c).

into game reserves,³⁰ partial reserves,³¹ and soil, water and forest reserves.³²

3.1.3 *Soil, water, flora and fauna resources*

Soil, water, flora and fauna resources are dealt with in articles IV, V, VI and VII respectively. These articles in essence give life to the purpose of the African Convention as set out in article II.³³ These articles provide an indication of the measures to be adopted in the attainment of the purpose of the African Convention.

Soil is to be protected and improved through measures based on scientific principles and effective land use in order to combat erosion and the misuse of soil.³⁴ These measures are not to be limited to the agricultural sector only but should apply in other areas as well.³⁵

The African Convention places emphasis on the utilisation and development of ground water. In order to achieve this objective, policies must be developed and implemented.³⁶ Parties must further make an effort to supply suitable drinking water to their populations, having due regard to factors which impact negatively on the availability of water supplies. Development and administration of these issues must also be implemented and enforced by state parties.³⁷ In addition, the African Convention indirectly recognises the adverse effects of water pollution and obliges states to control and water pollution through the above-mentioned measures. The proactive stance taken on this issue is a welcome addition to environmental protection at the regional level.³⁸ The African Convention also provides for co-operation between contracting states when water sources, surface or underground, are shared by two or more contracting states.³⁹ The utilisation and conservation of these resources fall upon all concerned parties and there is an obligation created by the African Convention that research, studies and settlement in this regard be conducted by interstate commissions.⁴⁰ No guidelines are provided for the establishment or operation of these commissions and perhaps the assumption is that this falls within the discretion of the respective states.

³⁰ Art III(4)(c)(1).

³¹ Art III(4)(c)(2).

³² Art III(4)(c)(3).

³³ See 3.1.2 above.

³⁴ Art IV.

³⁵ Arts IV(a) and (b).

³⁶ Art V(1).

³⁷ Arts V(1)(1), (2) & (3).

³⁸ Art V(1)(4).

³⁹ Art V(2).

⁴⁰ As above.

Flora is to be protected. Any development and utilisation of flora should be done with due regard to its protection.⁴¹ These measures pertain to the conservation, utilisation and management of forests and rangelands,⁴² identifying areas of concern in this regard,⁴³ the creation of forest reserves and forestation programmes,⁴⁴ regeneration of forest areas through the minimisation of forest grazing,⁴⁵ and the necessity for the establishment of botanical gardens.⁴⁶ The African Convention further obliges states to conserve plant species and communities of plant species that are threatened, are of a special scientific interest, or possess aesthetic value.⁴⁷

Fauna resources are extensively covered in article VII of the African Convention. This article provides for the conservation, wise use and development of fauna resources within a specific framework of planning land use and economic and social development. It also provides for a set of principles, which must be considered by states when implementing the above.⁴⁸ Article VII places further obligations on states to adopt adequate legislation in respect of hunting, the capture of wildlife and fishing.⁴⁹ Subsections (2)(a) to (e) of article VII provide guidelines on the legislation to be enacted.

3.1.4 *Protected species*

Provisions dealing with protected species are contained in article VIII of the African Convention as well as an annex to the African Convention. Protected species as identified by the African Convention include both animal and plant species threatened with extinction. The African Convention covers species that may become extinct in future, although it does not specify the criteria to be considered for determining the future threat to a specific species.⁵⁰ The African Convention also accords similar protection to the habitat necessary for the survival of these species.

A distinction is made by the African Convention with regard to species that deserve special protection. Species are divided into Classes A and B in an annex to the African Convention, and Class A species are accorded a higher level of protection than Class B.⁵¹ Class A extends special

⁴¹ Art VI(1).

⁴² Art VI(1)(a).

⁴³ Art VI(1)(b).

⁴⁴ Art VI(1)(c).

⁴⁵ Art VI(1)(d).

⁴⁶ Art VI(1)(e).

⁴⁷ Art VI(2).

⁴⁸ Arts VII(1)(a) & (b).

⁴⁹ Art VII(2).

⁵⁰ Art VII(1).

⁵¹ Arts VIII(1)(1) & (2).

protection to mammals and birds. Species not excluded, but covered to a lesser degree include reptiles, fish, toads and plants. Class B deals mainly with mammals, of which seventy species are listed.⁵²

As noted earlier, no criteria are set to identify new species threatened by extinction. States are obviously not precluded from identifying species not included in the Annex, but this discretion lies entirely within the capacity of the state party concerned.⁵³ It can be said that the list contained in the Annex is not a true reflection on the current status of 'endangered' species and a revision would be appropriate.

3.1.5 *Traffic in specimens*

Trade is regulated by the African Convention and pertains specifically to those species not listed, thus species excluded by article VIII and as such not identified in the annex as Class A or Class B species. States are to regulate trade and transportation of such species and trophies. In addition to mere regulation, states are to control the application of these regulations in order to prevent illegal trade in these species and trophies.⁵⁴ Apart from these, additional measures are put in place when it comes to species covered by article VIII of the African Convention. These measures are more stringent and require special authorisation.⁵⁵ In respect of trade of species the African Convention has for all intents and purposes been superseded by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973. CITES as an international conservation treaty deals mainly with the trade in animal and plant species as well as wildlife products. CITES deals more comprehensively with the issue of trade in species. In the event that an African country is a party to the African Convention and not a party to CITES, the provisions of the African Convention are nevertheless still applicable. Tanzania is at present the only country to which such a situation would apply.⁵⁶

3.1.6 *Conservation areas*

As mentioned above, the African Convention places emphasis on the establishment of conservation areas. This is apparent through the elaborate definitions of the conservation areas contained in article III. The African Convention reinforces state responsibility in maintaining and extending existing conservation areas, whether land or marine.⁵⁷ Parties

⁵² Annex to the African Convention. See also Lyster (n 9 above) 119.

⁵³ Art VIII(2).

⁵⁴ Arts IX(1)(a) & (b).

⁵⁵ See Art IX(2).

⁵⁶ Tanzania ratified the African Convention on 7 September 1974. It has to date not ratified CITES; <<http://www.cites.org>> (accessed 31 January 2001).

⁵⁷ Art X(1).

shall further have due regard to land use programmes and assess the need for establishing supplementary conservation areas. These measures pertain specifically to ecosystems, which are, in any respect, atypical to their territories.⁵⁸ Obligations to maintain current and establish additional conservation areas are further extended to ensure that all species, particularly those that are listed (Class A and B), are afforded protection.⁵⁹

State parties are also obliged to establish 'buffer' zones around the borders of conservation areas in order to regulate activities that might be harmful to the natural resources protected.⁶⁰

3.1.7 *Customary rights*

Article XI of the African Convention obliges contracting states to ensure that customary rights are reconciled with the provisions of the African Convention. This is to be achieved through legislative measures, but should not be read to exclude other measures that could possibly be adopted in a complementary fashion. The African Convention, however, does not make provision for a definition of customary rights and the determination of such rights presumably falls within the discretion of state parties to the African Convention. These rights seemingly pertain to customs and values inherent to indigenous people and local communities.

3.1.8 *Research, conservation, education and development plans*

Research into conservation, utilisation and management of natural resources is to be promoted and encouraged. Factors to be considered in research cover ecological and sociological factors.⁶¹ Despite impediments such as lack of resources and limited technologies that can negatively impact on research, the inclusion of research in natural resources may be seen as a progressive element of the African Convention at the time of its adoption.

The African Convention further recognises the importance of conservation related education and the need for peoples to realise their dependence on natural resources. States are compelled to fulfil this through educational programmes at all levels and also by creating public awareness on matters pertaining to conservation.⁶²

Regional and national development plans must include issues such as the conservation and management of natural resources. Ecological,

⁵⁸ Art X(1)(1).

⁵⁹ Art X(1)(2).

⁶⁰ Art X(2).

⁶¹ Art XII.

⁶² Art XIII.

economic and social factors are to be considered in the formulation of development plans. In addition, the African Convention provides for consultation between states when the development plans of one state will have an impact on another state.⁶³

4 Administration, implementation and enforcement of the African Convention

The African Convention does not contain any provision establishing a formal treaty body for the administration of the African Convention. The main responsibility for the administration and regulation of its implementation lies with the OAU. Although the General Secretariat was initially burdened with it, the responsibility has shifted several times during restructuring. The responsibility was initially placed on the Environment and Conservation of Natural Resources Division. This division is a sub-division of the OAU Education, Science, Culture and Social Affairs (ESCAS) Unit at the OAU General Secretariat. Following recent restructuring at the OAU, the African Convention is now administered by the Industry, Science and Technology, Energy, Natural Resources and Environment Division.

As a regulatory mechanism contained in the African Convention, state parties are obliged to co-operate on an interstate level in order to achieve the aims of the African Convention. Additionally, state parties are to account to the OAU about laws, regulations or other measures taken to ensure that the provisions of the African Convention are implemented.⁶⁴

The implementation and enforcement of the African Convention largely depend on two factors. Firstly, the African Convention makes provision for the establishment of single national conservation agencies in the territories of state parties. These national agencies are empowered to deal with matters contained in the African Convention.⁶⁵ To date, approximately 30 years after the African Convention entered into force, none of the 31 states that have ratified the African Convention have informed the Secretariat as to whether they have established the agencies provided for by article XV of the African Convention.⁶⁶

Secondly, in accordance with article XVIII, any dispute arising from the interpretation or application of the African Convention which cannot be settled through negotiation, shall at the request of any party be submitted to the Commission on Mediation, Conciliation and Arbitration, a specialised agency of the OAU for consideration and settlement.

⁶³ Art XIV.

⁶⁴ Art XVI.

⁶⁵ Art XV.

⁶⁶ OAU Doc Ref CAB/LEG/24.1/63/Vol III.

According to Wolfers, this Commission was envisaged as an institution and mechanism to discharge an exclusively African role in the settlement of disputes at a relatively low cost.⁶⁷ As a non-judicial agency, any settlement by the Commission would rely on the good offices of parties to the dispute. Nevertheless, it has proved to be a great source of frustration because it has never been convened. This can partially be attributed to the appointment of *ad hoc* committees for dispute settlement and also lack of funding.⁶⁸ The Commission has therefore neither dealt with any complaints pertaining to the interpretation and application of this Convention nor any other dispute at a regional level. According to the OAU Legal Division, no complaints related to the African Convention have arisen.

Without countries reporting on their treaty obligations, it is virtually impossible to evaluate the effect of the African Convention. Lyster is of the view that a number of countries have either adopted legislation or amended legislation as a consequence of the African Convention.⁶⁹ On the other hand it can be argued that at the time of the African Convention's introduction, African countries had recently overcome the yoke of colonialism and that environmental legislation probably did not feature high on any particular country's list of priorities.

The African Convention remains an umbrella environmental treaty covering a variety of environmental aspects at a regional level. The substantive provisions of the African Convention are definitely not in line with the Rio instruments and other contemporary multilateral treaties and developments pertaining to the environment. This has been recognised by the OAU and an inter-agency review of the African Convention is currently underway.⁷⁰ Such a review is in line with article XXIV of the African Convention pertaining to the revision of the Convention in order to bring the Convention in line with contemporary environmental developments.⁷¹

⁶⁷ M Wolfers *Politics in the Organization of African Unity* (1976) 107.

⁶⁸ OAU CM/924 (XXXI).

⁶⁹ Lyster (n 9 above); such countries include Ghana, Tanzania and Sierra Leone.

⁷⁰ OAU Doc Ref CAB/LEG/24.I. Agencies involved include the OAU, United Nations Environmental Programme (UNEP) and the International Union for Conservation of Nature and Natural Resources (IUCN).

⁷¹ Art XXIV reads:

'Revision:

- (1) After the expiry of a period of five years from the date of entry into force of this Convention, any Contracting State may at anytime make a request for the revision of part or this Convention by notification in writing addressed to the Administrative Secretary-General of the Organisation of African Unity.
- (2) In the event of such a request the appropriate organ of the Organisation of African Unity shall deal with the matter in accordance with the provision of section 3 of Article XVI of this Convention.

5 Attempt to revise the 1968 Convention

Bearing in mind that state parties to the African Convention could have considered a revision of the Convention after a period of five years, it is interesting to note that no serious attempts to revise the Convention were made until the early 1980s.

5.1 Attempts to revise the African Convention: 1968 to 1999

The first initiative to revise the African Convention was taken in 1983 by the General Secretariat of the OAU, having considered developments such as the Lagos Plan of Action on Economic Development of Africa, CITES, UN developments in respect of the Law of the Sea, and the World Charter for Nature.⁷² Member states responded positively⁷³ to the Secretariat's note and a Meeting of Experts was scheduled for 23 November 1984 in order to consider the revision.⁷⁴ This meeting consisted of experts drawn from 15 member states from the five OAU regions. The experts were from Algeria, Benin, Cameroon, Egypt, Ethiopia, Gabon, Kenya, Mozambique, Mauritius, Nigeria, Senegal, Tunisia, Zaire (DRC), Zambia and Zimbabwe.⁷⁵ International agencies that participated included the United Nations Scientific and Cultural Organisation (UNESCO), the Food and Agricultural Organisation of the UN (FAO), UNEP, ECA and IUCN. The first revision of the African Convention was produced during this meeting and forwarded to member states for their comments. The amended text did not include any additional articles to the African Convention and proposed amendments related to the

- 3(i) At the request of one or more Contracting States and notwithstanding the provisions of paragraphs (1) or (2) of this Article, the annex to this Convention may be revised or added to by the appropriate organ of the Organisation of African Unity.

- (ii) Such revision or addition shall come into force three months after the approval by the appropriate organ of the Organisation of African Unity.'

Art XVI reads:

'Interstate co-operation:

- (3) If so requested by a Contracting States, the Organisation of African Unity shall organize any meeting which may be necessary to dispose of any matters covered by this Convention. Requests for such meetings must be made by at least three of the Contracting States and be approved by two thirds of the States which it is proposed should participate in such meetings.'

⁷² OAU Note ESCAS/NR/1/359-83.

⁷³ States that responded included Algeria, Cameroon and Nigeria. See also OAU CM/1349 (XLIII) Add.I CNNR/2(I) ANNEX I.

⁷⁴ OAU CM/1477 (XLVII) Rev 1.

⁷⁵ OAU CM/1349 (XLI) Add.II CNNR/Rapt rpt Rev I.

Preamble and several articles.⁷⁶ No amendments were proposed in respect of the list of protected species (Class A and B).⁷⁷

In 1988, the Secretary-General released a report on the revision of the African Convention at the 47th ordinary session of the Council of Ministers of the OAU.⁷⁸ His report emphasised the need to revise the African Convention and the following documents were attached to the report:

- the text of the African Convention, incorporating amendments proposed by the Meeting of Experts;⁷⁹
- a background document on the African Convention as presented to the Meeting of Experts;⁸⁰
- the report of the Meeting of Experts for the Revision of this Convention.⁸¹

After this report, the revision of the African Convention seemingly subsided to a point where it was no longer on any agenda. The Secretary-General did, however, circulate the amended text to contracting parties for commentary, but the process was not completed and the African Convention was never updated.

5.2 Interagency review of the African Convention: 2000 and beyond

A renewed attempt to revise the African Convention was made in 1997 when the government of Burkina Faso requested a revision under article XXIV. This was the first time since the inception of the African Convention that a state party initiated a review under this article.

The African Convention had to be updated according to the request having regard to the following:⁸²

- the Treaty Establishing the African Economic Community (1991);
- the African Convention on Biological Diversity (1992);
- the four Conventions covering marine environment (adopted under the auspices of UNEP Regional Seas Development);
- the Rio Declaration (1992);
- the United Nations Convention to Combat Desertification in Countries Experiencing Drought and/or Desertification, particularly in Africa (1994); and

⁷⁶ Arts I, II, III, IV, VI, VII, VIII, IX, X, XIII, XIV, XV, XVII, XXI, XXIV & XXV African Convention.

⁷⁷ OAU CMM/1477 (XLVII).

⁷⁸ 22–27 February 1988, Addis Ababa, Ethiopia.

⁷⁹ OAU CM/1447 (XLVII) Annex I.

⁸⁰ OAU CNNR/2 (I).

⁸¹ OAU CNNR/Rapt Rev 1.

⁸² A proposal for the revision of the African Convention prepared by UNEP (ELIPAC and ROA) 2.

- any development in respect of environmental thought as may be recognised by contracting parties.

The original aim was to have these revised amendments adopted by September 1998 on the thirtieth anniversary of the African Convention.

5.3 First Inter-Agency Meeting

The First Inter-Agency Meeting on the Revision of the African Convention was held at the UNEP headquarters in Nairobi, Kenya on 27 and 28 July 2000. Agencies participating in this meeting included UNEP, the OAU and the IUCN. These agencies were to consult, advise and agree on the methodologies to be used in the revision of the African Convention.

The following progress was made during this meeting:⁸³

- Dates and guidelines were formulated for subsequent meetings.
- A need was identified to consult with NGOs, other agencies, and governments at a global level in order to incorporate the best possible views into the revised African Convention.
- Gaining support and political backing at a higher level (possibly the Council of Ministers) was considered to be of great importance.
- It was decided that the revision would include:
 - i considering current provisions and updating these provisions to be in line with contemporary environmental developments;⁸⁴
 - ii extending the jurisdictional scope of the African Convention;⁸⁵
 - iii including a provision pertaining to compliance into the African Convention;
 - iv in revising the African Convention consideration will be given to existing environmental treaties. These will serve as mere guidelines and the provisions of other treaties will not be copied into the African Convention. This departure point is a welcome addition to the methodological approach to this revision process.
- Consideration was given to the issue of human and financial resources in respect of the implementation of this Convention.
- The possibility of integrating current political and economic realities into the revised African Convention was also considered.

⁸³ Report of the First Inter-Agency Meeting on the Revision of the African Convention.

⁸⁴ For example the Preamble needed to reflect the spirit of existing Conventions and new arrangements such as the AMCEM.

⁸⁵ To take into account *inter alia* the management of non-renewable resources and to include the principle of equity into the African Convention. This was not the case in a comparative analysis between the Bamako (OAU) and Basel (UN) Conventions regulating the waste trade.

In comparing this attempt to the 1983/4 attempt to revise the African Convention, one can deduct that African governments, the OAU and other intergovernmental organisations are indeed sincere about the current revision process.

5.4 Second Inter-Agency Meeting

The second meeting on the revision of the African Convention was held at the OAU headquarters in Addis Ababa, Ethiopia on 23 and 24 November 2000. The objective of this meeting was to evaluate the first draft revision of the African Convention and bring it up to date with recent environmental laws whilst maintaining its original African characteristics.

The following issues were discussed during this meeting:⁸⁶

- The relationship between the revised African Convention and the 'Abuja Treaty' was questioned.⁸⁷ Although it was decided that the relational aspects would be decided at a later date, it was clear that these treaties should be linked. For such a linkage to be achieved the wording of the relevant articles of the 'Abuja Treaty' should be incorporated into the revised African Convention.⁸⁸ It remains a possibility that the revised African Convention can be adopted as the

⁸⁶ n 83 above.

⁸⁷ Treaty Establishing the African Economic Community.

⁸⁸ The relevant articles of the Abuja Treaty include:

Art 54, which reads:

'Energy and Natural Resources

1. Member states shall co-ordinate and harmonise their policies and programmes in the field of energy and natural resources.
2. To this end, they shall:
 - (a) ensure the effective development of the continent's energy and natural resources;
 - (b) establish appropriate cooperation mechanisms with a view to ensuring a regular supply of diversification of sources of energy;
 - (c) promote the development of a new and renewable energy in the framework of the policy of diversification of sources of energy. . . .'

Art 56, which reads:

'Natural Resources:

In order to promote cooperation in the area of natural resources and energy, member states shall:

- (a) exchange information on the prospection, mapping, production and processing of mineral resources, as well as on the prospection, exploitation and distribution of water resources;
- (b) coordinate their programmes for development and utilisation of mineral and water resources;
- (c) promote vertical and horizontal inter-industrial relationships which may be established among member states in the course of Developing such resources;
- (d) coordinate their positions in all international negotiations on raw materials;

Environment, Natural resources and Energy Protocol under the 'Abuja Treaty'.⁸⁹

- It was decided that the revised text requires an unmistakable assertion of the objectives and principles of the African Convention.⁹⁰
- It was decided that a Secretariat should be established as an independent body with a link to the OAU.

It was evident that a breakthrough was made in respect of the African Convention and that various aspects had to be considered before the final draft of the revised African Convention could be published. Nevertheless, a revised and modern African Convention seemed like a greater reality.

5.5 Seventy-third/eighth ordinary session of Council of Ministers of the African Economic Community (AEC)

During this session, held on 22 to 26 February 2001 in Tripoli (Libya), the Council of Ministers acknowledged attempts made in 1983 and noted that the process could not be concluded. The Council further

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- (e) develop a system of transfer of know-how and exchange of scientific, technical and economic data in remote sensing among member states; and
 - (f) prepare and implement joint training and further training programmes for cadres in order to develop human resources and the appropriate local technological capabilities required for exploration, exploitation and processing of mineral and water resources.'

Art 57, which reads:

'Protocol on Energy and Natural Resources:

For the purposes of Articles 54, 55 and 56 of this Treaty, member states shall in accordance with the provisions of the Protocol on Energy and Natural Resources.'

Art 58, which reads:

'Environment:

1. Member states undertake to promote a healthy environment. To this end, they shall adopt national, regional and continental policies, strategies and programmes and establish appropriate institutions for the protection and enhancement of the environment.
2. For purposes of paragraph 1 of this Article, member states shall take the necessary measures to accelerate the reform and innovation process leading to ecologically rational, economically sound and socially acceptable development policies and programmes.'

Art 59, which reads:

'Control of Hazardous Wastes:

Member states undertake, individually and collectively, to take appropriate steps [*sic*] to ban the importation and dumping of hazardous wastes in their respective territories. They further undertake to cooperate in the transboundary movement, management and processing of such wastes produced in Africa.'

Art 60, which reads:

'Protocol on the Environment:

For the purposes of Articles 58 and 59 of this Treaty, member states shall cooperate in accordance with the provisions on the Protocol on the Environment.'

⁸⁹ See 5.5 below.

⁹⁰ A new article was to be introduced and general principles were to be included under the Preambular statements.

accredited the current revision and the fact that the revised African Convention could possibly be considered as the Environmental Protocol to the 'Abuja Treaty'. By doing this, duplication of efforts could be avoided.⁹¹

The Council of Ministers made the following recommendations:⁹²

- that the Secretary-General should allocate sufficient funds to the revision process, particularly providing for the convening of experts meetings;
- that member states should support the revision process; and
- that member states should send experienced environmental experts to ensure the timely conclusion of the revision process.

These actions by the Council of Ministers gave the revision process the necessary political backing and ensured the continuation of this revision.

5.6 Fourth Inter-Agency and Experts Meetings

Research indicates that two meetings were held during the year 2001. The first meeting was an inter-agency meeting held between May/June and the second a meeting of experts held in August/October of 2001.

A substantial document (revised draft) was produced in August 2001 and was to be considered at the next inter-agency Meeting of Experts. After various communications between the agencies involved, it was decided that the next meeting was to commence on Monday 13 January 2002.⁹³

6 The revised African Convention as discussed at the Fifth Inter-Agency Meeting (January 2002)

6.1 The draft revised African Convention on Nature and Natural Resources

Brief consideration is given to the revised draft that was to be discussed during the meeting held in Nairobi, Kenya in January 2002. A discussion is of importance in that it is expected that the draft as it stands now will, with the exception of minor amendments, become the new African Convention.

The revised draft Convention included a revision of the existing provisions, the inclusion of 28 new articles and two additional annexes.⁹⁴

⁹¹ If this was to be achieved the revision process should be considered with emphasis on a general environmental context and a broader statement of the purpose of the African Convention. This is necessitated by the fact that Energy and Natural resources are covered by certain provisions of the 'Abuja Treaty' and Environment and Hazardous Wastes by others. See arts 54 & 56-60 of the 'Abuja Treaty'. See also n 90 above.

⁹² OAU CM/2193 (LXXIII) g.

⁹³ This revised draft is on file with the author.

⁹⁴ On file with the author.

These additional articles relate to the African Convention's scope and objectives, fundamental obligations under the African Convention, processes and activities affecting natural resources, sustainable development and natural resources, military and hostile activities, compliance and liability, the Secretariat, financial resources, reports and information, the right to vote, procedural rights, the relationship between the contracting parties to the 1968 African Convention and revised African Convention, and the African Convention's relationship with other international agreements.

6.2 Updating existing provisions of the African Convention

The existing articles of the African Convention are updated and current environmental views are reflected throughout the revised draft Convention. This section will attempt to highlight the most important revisions in respect of the African Convention.

The revised Preamble clearly considers a broader notion of the natural environment, its resources and its importance to Africa. This position is exemplified by the words:⁹⁵

Affirming that the conservation of the global environment is a common concern of all mankind as a whole, and the conservation of the African environment a common concern of all Africans.

The revised Preamble further contains specific reference to the concept of sustainable development and recognises the importance as well as the need for the implementation of a number of international instruments, declarations and principles.

Of note is the reference to Organisation of African Unity (OAU)/African Union (AU). This presumably confirms the sincerity of the revision process and the fact that cognisance is given to the current restructuring process within the organisation.

Article I, now entitled Scope of the African Convention, recognises the national jurisdiction of contracting parties in the regulation of matters covered in the African Convention. This provision is also in line with the jurisdictional scope as exemplified by article 4 of the 1992 Convention on Biological Diversity.⁹⁶

⁹⁵ This notion and the emphasis on sustainable development was according to the Meeting of Experts greatly inspired by the African Convention on Biological Diversity (1992). See also the Preamble of this Convention in respect of 'concern of mankind'.

⁹⁶ As above.

Article IV⁹⁷ is entitled Fundamental Obligation and places emphasis on the preventative⁹⁸ and precautionary⁹⁹ measures in respect of environmental protection and the concept of sustainable development.¹⁰⁰ These measures are consistent with measures taken in the 1992 UN Convention on Climate Change.

Article V,¹⁰¹ dealing with definitions, has been streamlined in that the elaborate definitions contained in the African Convention pertaining to conservation areas have been moved to Annex 1. Other minor adjustments have been made to the text of this article.

Article VI,¹⁰² on land and soil, focuses on the prevention of land degradation and the sustainable development, management and rehabilitation of land resources. Reference is made to non-agricultural land use.¹⁰³ Although largely inspired by the CCD, one can foresee that actions taken in terms of rehabilitation and sound management should be consistent with the integrated approach¹⁰⁴ as encountered in Agenda 21.¹⁰⁵

Article VII¹⁰⁶ stresses the importance of the management and maintenance of water resources to ensure the highest possible quantitative and qualitative levels. Additional inclusions pertain to pollution control measures, conservation of catchment areas, underground water resources and equitable utilisation of this resource (water).

Article VIII,¹⁰⁷ relating to vegetation cover, includes minor amendments to the old text in order to reflect modern views.¹⁰⁸

Article IX,¹⁰⁹ the title of which has been changed from 'Fauna resources' (1968 Convention) to 'Species and genetic diversity', gives particular attention to economically valuable, threatened, vulnerable and endangered species and policies to be adopted in respect of their conservation and utilisation. Emphasis is also placed on measures to

⁹⁷ Previously art II.

⁹⁸ This requires the prevention/minimisation of environmental degradation.

⁹⁹ This principle entails the application of protective measures in situations of scientific uncertainty where a specific course of action may cause damage to the environment.

¹⁰⁰ The 1984 amendments contributed to the revision of this article.

¹⁰¹ Previously art III.

¹⁰² Previously art IV.

¹⁰³ Amendments in this article was inspired by the 1984 draft and the UN Convention to Combat Desertification (1994).

¹⁰⁴ In essence this approach should consider economic, trade, energy, agricultural and other dimensions in environmental policy making.

¹⁰⁵ Agenda 21 was adopted by the UN General Conference on Environment in Rio de Janeiro, 4 to 14 June 1992.

¹⁰⁶ Previously art V.

¹⁰⁷ Previously art VI.

¹⁰⁸ Note that sub-sec 2 has been deleted.

¹⁰⁹ Previously art VII.

ensure sound management and monitoring of such species within a framework of land-use planning and sustainable development. Existing provisions on hunting, capture and fishing have been replaced with new regulatory measures.

Article X,¹¹⁰ dealing with protected species, sees the inclusion of a new sub-section (2) regulating the protection of species through legislation and developing concerted protection measures throughout the continent. Sub-sections 1(a) and (b) have been deleted.

Article XI,¹¹¹ covering the issue of trade in specimens, places an obligation on countries to consider international agreements such as CITES and to co-operate on this issue through bilateral or sub-regional agreements. This concept is established in current environmental treaties whereby cognisance is taken of other appropriate instruments. This presumably extends the ambit of protection of a particular convention and avoids unnecessary duplication of efforts.

Article XIII¹¹² attempts to establish an equilibrium between the rights of local communities and the objectives of the African Convention. Emphasis is placed on achieving an appropriate level of participation at a community level through the creation of incentives pertaining to participation in conservation and suitable use of these resources.¹¹³ This provision is in line with Principle 22 of the Rio Declaration on Environment and Development, which recognises the vital role of local communities in environmental management.¹¹⁴

Article XV¹¹⁵ elaborates on existing research methodologies.

Article XVII,¹¹⁶ the title of which has been changed from 'Conservation' to 'Capacity building, education and training', places an obligation on state parties to promote environmental education, training and awareness. This article contains measures to be taken in order to ensure that these objectives are implemented.

Article XVIII.¹¹⁷ The title of this article now reads 'Sustainable development and natural resources'. Specific reference is made to the concept of sustainable development and contracting parties must:

¹¹⁰ Previously art VIII.

¹¹¹ Previously art IX.

¹¹² Previously art XI.

¹¹³ Examples where such strategies have been used to the benefit of local communities include the CAMPFIRE project (Zimbabwe), and projects in Wakkerstroom and Kwambonambi (South Africa). See also M van der Linde 'Globalisation and the right to a healthy environment: The South African experience' (2000) 6 *East African Journal of Peace and Human Rights* 258.

¹¹⁴ The Rio Declaration on Environment and Development was adopted by the UN Conference on Environment and Development in Rio de Janeiro, 3 to 14 June 1992.

¹¹⁵ Previously art XII.

¹¹⁶ Previously art XIII.

¹¹⁷ Previously art XIV.

- monitor the state of these resources and to conduct environmental impact studies in respect of developmental activities;
- conduct environmental monitoring and audits in respect of such activities; and
- ensure that these activities are based on sound environmental policies and minimise any adverse effects of such activities.

This article reflects modern environmental measures in respect of environmental protection.¹¹⁸

Article XX¹¹⁹ contains minor amendments to the text of the existing provision.

Article XXI¹²⁰ places greater emphasis on interstate co-operation and measures of co-operation. Cognisance is given to measures under other international conventions and the harmonisation of policies and laws at a regional level. This is in line with the principles contained in the Rio Declaration, Agenda 21 and other treaties such as the CBD and CCD. Sub-section (1) includes sections (a) to (d). A new sub-section (2) containing a further seven subsections has been included. Sub-sections (3) and (4) have been deleted.

Article XXV,¹²¹ dealing with exceptions, contains a new sub-section (3), which places an obligation on states to inform the Conference of Parties without delay of the nature and circumstances of such measures.

Article XXXV¹²² institutes a new organ in respect of the settlement of disputes. If no amicable settlement¹²³ is reached within a period of 12 months, the matter must be referred to the Court of the African Economic Community/African Union. The decision of the court is final and cannot be taken on appeal.

Article XXXVI¹²⁴ provides for the possibility of signature and ratification under the OAU.

Article XXXVII¹²⁵ prohibits states to accede to the African Convention after the adoption of this Convention. Minor amendments have been made to the existing text of this article.

Articles XXI and XXIII to XXV of the African Convention have not been discussed. One should note that article XXIV of the African Convention dealing with the revision will probably not be contained in the revised African Convention.

¹¹⁸ Principles 3, 4 and 17 of the Rio Declaration are per example reflected through this article.

¹¹⁹ Previously art XV.

¹²⁰ Previously art XVI.

¹²¹ Previously art XVII.

¹²² Previously art XVIII.

¹²³ In line with Principle 26 of the Rio Declaration.

¹²⁴ Previously art XIX.

¹²⁵ Previously art XXII.

6.3 New provisions included into the draft revised African Convention

The proposed revised African Convention contains 28 new articles and two additional annexes. These new articles will briefly be explored in order to consider whether the revised African Convention will meet modern environmental standards. These new articles deal with the following aspects:

In respect of the principles,¹²⁶ as contained in article III, inspiration was drawn from the African Charter. Recognition is given to article 24 dealing with the right to a satisfactory environment. A duty is further placed on states to ensure the right to development. The right to development, according to this Convention, entails the obligation to meet developmental and environmental needs in a sustainable and equitable manner in the interest of present and future generations. This article thus effectively links the traditional regulatory approach to environmental protection to the rights based approach as contained in the African Charter. It additionally links the right to a satisfactory environment to the issue of development through this article. Maluwa illustrates the relationship between the environment and development as a controversial relationship in that it is both causative and corrective — causative in the sense that environmental degradation is often caused by aspects relating to development itself. Measures employed to remedy environmental degradation are also often related to development processes.¹²⁷ The right as provided for by this principle and the African Charter potentially runs the risk of being negatively balanced by the right to development. Nevertheless, the right should not be utilised arbitrarily nor should it impose an unjustifiable restriction on international trade.¹²⁸ The relationship should strive to be a symbiotic relationship as proposed by Agenda 21. Ultimately, the decision lies with the Court.

Processes and activities affecting the environment and natural resources are covered in article XIV of the revised draft African Convention. An obligation is placed on states to mitigate, control and prevent activities that might adversely affect these resources. Once again reference is made to other conventions. Measures are also considered in order to attain this objective. Inspiration in respect of strengthening national standards and policies was drawn from the Berne Convention (1979).

The development and transfer of technology are considered under article XVI, with a view to accelerate the transition to sustainable development. Contracting parties are to cooperate and strengthen

¹²⁶ Art III.

¹²⁷ For a full discussion on the linkage between the environment and development see ch 12: 'Environment and development in Africa in the 1990s: Some legal issues' in T Maluwa *International law in post-colonial Africa* (1999) 307.

¹²⁸ Principle 12 Rio Declaration.

access to and transfer of, environmentally sound technologies. These measures would effectively place sound environmental management policies, techniques and processes within the reach of less developed countries, which will undoubtedly enhance such a country's capacity to fulfil and respect all the principles of the Rio Declaration.¹²⁹ These measures extend to the utilisation of this aspiration on a grassroots level.¹³⁰

Military and hostile activities and their impact during armed conflicts are recognised. An obligation is placed on parties to refrain from methods of warfare that can possibly cause widespread, long-term or severe damage to the environment. Parties must also undertake to rehabilitate damaged areas at the end of conflict situations. By including this provision, revisers acknowledged the grave impact of armed conflicts on the African environment and presumably considered the provisions of the Geneva Conventions, their Additional Protocols and Principle 24 of the Rio Declaration.

Procedural rights in respect of environmental protection are guaranteed. Legislation and regulatory measures are to be adopted at a national level to ensure the dissemination of environmental information, access of the public to such information, public participation in environmental decision-making and access to justice in this regard.¹³¹

The Conference of Parties is to establish institutional mechanisms to investigate and address non-compliance in respect of the African Convention.

Liability covered in article XXIV pertains to measures to be adopted at a national level concerning liability and compensation for environmental damage arising from breaches of the provisions covered in the African Convention.

A Conference of Parties (COP) is established by article XXVI as a decision-making body under the African Convention. The COP can establish subsidiary bodies at their discretion and must adopt rules governing the Secretariat. It is also mandated to *inter alia* promote and review the effective implementation of the African Convention. The African Convention also makes provision for the attendance of other inter-governmental organisations, sub-regional institutions and observers to participate in the sessions of the COP.

The Secretariat is established under article XXVII and is responsible for the general administration of the African Convention.

Financial resources and the importance of its availability are acknowledged. Contributions will mainly be received from the contracting states

¹²⁹ See the provisions of both the Rio Declaration and Agenda 21.

¹³⁰ Art XVI.

¹³¹ Art XXII.

and OAU and to a lesser extent from other institutions such as non-governmental organisations.¹³²

The relationship between contracting parties to the revised African Convention and the African Convention grants preference to the application of the revised African Convention. The relationship between a party to the 1968 African Convention and a party to the revised African Convention are governed by the 1968 African Convention.

In considering these new provisions it is obvious that not only are attempts being made to reflect contemporary environmental views into the African Convention, but also to ensure the effective implementation and administration of the provisions to be contained in the revised African Convention.

8 Conclusion

At first glance, the African Convention if evaluated in contemporary times can be described as a failure, particularly when it comes to its implementation, effectiveness and contributions. Lyster, in 1985, described the African Convention as the 'most comprehensive multi-lateral treaty for the conservation of nature yet negotiated'.¹³³ The African Convention covers a wide range of topics such as wildlife, conservation of natural resources, protected areas, trade and conservation education, research and development. These topics are, however, not covered in great detail. Comparing environmental treaties reveals that they can be divided into approximately 18 categories.¹³⁴ The African Convention covers roughly five of these. They are biological diversity (fauna and flora), forest resources, marine/coastal resources, and the environment and water resources management.¹³⁵ Thus, the African Convention might have been the 'most comprehensive' environmental treaty at its introduction in 1968, but one can hardly refer to it as such in contemporary times.

¹³² Art XXX.

¹³³ Lyster (n 9 above) 115. See also FJ Viljoen *The realisation of human rights in Africa through intergovernmental institutions* (1997) unpublished LLD thesis, University of Pretoria, 1997 345.

¹³⁴ Those dealing with Antarctica, Atmospheric Pollution, Biological diversity (Fauna), Biological Diversity (Flora), Cultural Heritage, Energy, Fisheries, Forest Resources, Marine Environment, Marine Pollution, Marine/Coastal Resources and the Environment, Ozone Layer Protection, Peace and the Environment, Pests and Diseases, Toxic and Hazardous Substances, Water Resources Management, and the Working Environment.

¹³⁵ See REC Beyond Boundaries: Appendix III for a comprehensive listing of environmental treaties both global and regional within these identified categories. Available on the internet: <<http://www.rec.org/REC/Publications/BndBound/app3.html>> (accessed 6 January 2002).

Considering what has been stated, one must agree that although environmental degradation and human rights violations that adversely impact on the environment, appear to have grown in magnitude over recent years, environmental concerns remain high on Africa's agenda. African environmental law is a reality. There is no shortage of environmental norm setting at a regional level and countries are formally committed to these norms, their effective implementation and administration.¹³⁶

The African Convention presumably marked the way for subsequent international environmental developments. It can be said that after its adoption in 1968, it played a role in ensuing legislation and environmental management in African countries, even if only to a lesser degree.¹³⁷ The African Convention is vulnerable to criticism in respect of both its effectiveness and on its reflection of contemporary environmental norms. It can also be argued that no convention that has been in force for over 30 years would reflect contemporary norms and developments. The OAU has acknowledged this and an active revision process has been in progress since 1997 with a view of producing a convention that is in line with modern environmental standards.¹³⁸

The revision process, as discussed above, reveals the following:

- This process is indeed an earnest attempt and a new African Convention is in the process of being established.
- The experts have both updated existing articles and included new articles to reflect modern environmental values.
- Although the African Convention will contain stronger enforcement mechanisms, a number of uncertainties remain.

The process started in 1983/4 and was resumed in 1997. This inter-agency review showed a renewed enthusiasm, which has seen the revision process continuing into 2002. The sincerity of this revision process further stems from the fact that this process operated according to well-structured methodologies and guidelines in order to reach the zero draft that was presented to the Council of Ministers in 2001. In addition to these methodologies, inspiration was drawn from the 1984 draft and international agreements in order to bring the African Convention in line with current environmental developments.¹³⁹

¹³⁶ This should be evident from the Introduction and the historical context as discussed above.

¹³⁷ Lyster (n 9 above).

¹³⁸ n 74 & 83 above.

¹³⁹ These Conventions include but are not limited to the: Convention on Biological Diversity, UN Convention to Combat Desertification, Basel Convention, Bamako Convention, Bern Convention, Abuja Treaty, the IUCN Guidelines for Protected Area Management Categories, the Constitutive Act of the African Union and African Charter on Human and Peoples' Rights.

It is interesting to note that when comparing the African Convention to its draft revised version that instead of creating a new convention in its entirety, the structure of the African Convention was retained, updated with new articles pertaining to contemporary environmental values. In the event that an article was of no significance, it was either replaced or deleted. The Preamble contains specific reference to sustainable development and reflects a stronger African spirit. It also acknowledges the importance of other international instruments regardless of the comprehensive nature of the revised product. The second significant step is the effective merger between the rights based approach and the traditional regulatory approach to environmental protection.¹⁴⁰

The rights based approach to environmental protection has various progressive qualities. Firstly, it creates a wider scope for environmental protection beyond the specific regulation of certain concerns as contained in both the African Convention and the Bamako Convention. Secondly, the African Commission on Human and Peoples' Rights (African Commission) could apply the provisions of both the Charter and the revised African Convention.¹⁴¹ In order for the right to a satisfactory environment as contained in the Charter to be meaningful, the African Commission must adopt a progressive analysis of this right in communications. This can be done by interpreting this right broadly in line with the revised draft Convention with specific emphasis on the substantive and procedural aspects as contained in the revised African Convention. This would breathe some life into the provisions of the Charter and assist in the realisation of its intended purpose.

The revised African Convention also emphasises the issue of armed conflict and its potential impact on the environment.¹⁴²

In comparing the African Convention to the draft revised African Convention, it is evident that the revisers came to the realisation that the African Convention was without any 'teeth'. This issue was addressed through the establishment of a COP and an independent secretariat to the African Convention. In this regard consideration was also given to financial resources needed for these bodies to function successfully.¹⁴³ Another striking addition was in respect of dispute settlement in the referral of disputes to the Court of Justice of the African Economic Community of the African Union.¹⁴⁴

¹⁴⁰ Arts III & XVI (revised).

¹⁴¹ This can be done directly through the application of arts 60 and 61 of the Charter, which allows for the consideration of such instruments in the interpretation of the Charter and communications before the Commission.

¹⁴² Art VX (revised).

¹⁴³ Arts XX, VXXVI & XXVII.

¹⁴⁴ The possibility exist that the African Court on Human and Peoples Rights may also consider the provisions of this Convention.

In conclusion, it seems a reality that Africa will have a modern environmental treaty in place within a period of two years. Uncertainties remain as to African parties' acceptance of this stronger revised African Convention with its serious obligations and the time frame in which it will gain prominence in the regional arena. The Bamako Convention serves as an example of a convention that took years to enter into force and remains with few ratifications, presumably due to its strong provisions. For the African Convention to be effective, the OAU must advocate for an accelerated rate of ratification of the revised African Convention. Another potential problem lies with the establishment of the COP and Secretariat, which could be hampered due to a lack of financial resources. This was the case with the Bamako Convention and to date none of the organs envisaged under the African Convention have been established.

It is time that the importance of the environment and its maintenance is realised by all Africans, individuals and governments alike. Cognisance must be taken of the fact that factors that impact adversely on the environment, will generally negatively impact on a wider scope of Africans' basic fundamental human rights. It is time that we take a stance in aid of our environment and support this potentially powerful environmental treaty that would be to the benefit of all Africans.