

Africa's ambitious new biodiversity laws come with teeth, will protect people too

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Africa is known for its rich biodiversity. On a continent where people depend on this biodiversity for their daily livelihood, the question of how animals and plants that live on it will be protected, remains crucial. A difficult question to a lofty ideal. Making leaders accountable for national endeavours affecting the environment is a good start.



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In 2016, the 2003 [Revised African Convention on the Conservation of Nature and Natural Resources](#), otherwise known as the Maputo Convention, came into force. This is a document exclusively adopted for the African continent.

Why has it taken 13 years to enter into force? The most obvious reason is that it contains strong provisions that could create accountability and also slow down social and economic development.

Much needed change

During colonial rule, Africa had two regional conventions geared towards conservation. The first was established in 1900 and was called the [Convention on the Preservation of Wild Animals, Birds, and Fish in Africa](#). This was practical and looked at controlling wildlife harvesting at the time. But signatories did not ratify it and it never came into force.

A second attempt was the [Convention Relative to the Preservation of Fauna and Flora in their Natural State](#). This Convention entered into force [in 1936](#). As the name indicates, plant based resources was included here. Akin to the first convention, the use of animals and plants by people was a primary concern.

After decolonisation and independence a new conservation document was needed, one that looks after the needs of the people. This resulted in the above 1936 Convention being revised with the help of [UNESCO and other bodies](#). It also resulted in the 1968 African Convention of the Conservation of Nature and Natural Resources, or [Algiers Convention](#). Even though this convention was lauded it did not have enough teeth to enforce what was [in the Convention](#).

As a result various attempts were made to revise it. Eventually, in 2003, the Maputo Convention was adopted. It is the first revision of Africa's environmental framework law in 48 years. This event provides a much needed injection of contemporary environmental norms into African environmental law.

The Maputo Convention contains a number of new provisions but importantly it also contains progressive content. The main difference between the Maputo Convention and its predecessors is its potential to enforce the convention. Complementing this is its recognition of sustainable development and the concept of sustainable use.

Also, the recognition of prevention and precaution as a fundamental obligation is in pace with the importance of nature as a finite resource. There is a clear move away from pure utilitarianism as contained in the 1900 and 1933 conventions.

New and progressive content

The Maputo Convention's strong provisions, ironically, could be its downfall. History shows that regional legal instruments containing strict enforceable provisions get [shunned by member states](#). Proof of this is found in the fact that it took 13 years for 16 member states to [ratify the Convention](#).

This may be due to potential accountability as well as a perceived idea that development will suffer setbacks. The Convention includes the right to a satisfactory environment, a right to development and the concept of sustainable development. These are guiding principles that includes modern environmental approaches.

Another progressive inclusion is the "fundamental obligation" where parties are obliged to follow preventative and precautionary approaches. They must take into account the interests of present and future generations.

The recognition of military and hostile activities as harmful to the environment is also new and progressive. This was not the case in the predecessors and the inclusion is welcomed since Africa suffers from many internal conflicts. According to the Convention, steps must be taken by states to ensure that the environment is not harmed in conflict. But when it is harmed, parties must restore and rehabilitate the damaged areas.

Acknowledging people and their rights

The Maputo Convention places a duty on states to adopt measures that are legislative and regulatory for the spreading of environmental information. There must be access to this information, public participation in matters with a potentially significant environmental impact, and access to justice.

A final right is given to people affected by trans-boundary issues as it is given to those where the conflict began. This means that people may have access to justice where their own judicial system may not be able to help them.

The Maputo Convention also recognises the importance of the people and aims to empower through education and training as well as the recognition of traditional rights of local communities and indigenous knowledge.

There is a dedicated section regulating the relationship between sustainable development and natural resources. In so

doing, a mandate is placed to ensure that development is sustainable.

Giving environmental law teeth

One of the biggest drawbacks of the Algiers Convention was that it had no power to enforce laws. By establishing both a Conference of Parties as well as a Secretariat for implementation and administration, the Maputo Convention can enforce its provisions.

According to this provision, signatories must develop and adopt rules, procedures and institutional mechanisms to deal with damage and compensation. It can however not be determined whether these bodies have been established yet. These provisions give it the teeth needed to potentially make it a successful and effective addition to environmental law in Africa.

Considering that the Algiers Convention remains in force for member states and not yet the Maputo Convention, the efficacy of it remains to be seen. This is especially true in light of the fact that only 30% of African states have ratified the [Maputo Convention to date](#). Some prominent countries who have ratified the Convention include: South Africa, Lesotho, Angola, Rwanda, Chad, Burkina Faso and Burundi. Countries with large and growing economies that have not yet ratified the Convention include: Botswana, Egypt, Equatorial Guinea, Nigeria, Libya and Gabon.

Despite the uncertainties of how effective it will be, the Maputo Convention is bound to have some influence on African states. It may even become a topic in the African judicial system which may greatly contribute to regional environmental jurisprudence.

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