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Presentations on other issues related to sustainable development in Africa: enhancing implementation of environmental law in Africa

Enhancing the implementation and effectiveness of environmental law in Africa

Note by the secretariat

I. Introduction

1. The present note provides information on recent developments related to how environmental law has contributed to efforts to achieve sustainable development in Africa, taking into account recent developments, including the outcome of the United Nations Conference on Sustainable Development (Rio+20), held in Rio de Janeiro, Brazil, in June 2012, and other related processes. The note makes general recommendations on strategic areas that can enhance the use of environmental law in its contribution to the wider efforts of improving environmental governance in the region.

II. Background

2. Environmental law is a key component of environmental management. It provides rules and institutional mechanisms whereby action on the environment can be taken, and it supports countries in their efforts to achieve environmental objectives, both in response to national priorities and needs and to address environmental issues of international concern. It provides the foundation for governmental policies and actions to conserve and manage the environment and it can ensure, by establishing the relevant boundaries and social safeguards, that the use of natural resources is both equitable and sustainable.

3. Remarkable progress has been made in the past 20 years in the development of environmental law in Africa. Major developments show, for instance, that most countries currently have some form of environmental legislation in place: there are over 25 African countries with constitutional provisions on the environment, while 43 countries have framework environmental laws. Most countries have also developed sets of tools and strategies and make tremendous investments in terms of financial and human resources to ensure that the laws are implemented.

4. Although local, national and regional efforts have been accomplished, as illustrated by, for example, the implementation of the Partnership for the Development of Environmental Law and Institutions in Africa under the auspices of the United Nations Environment Programme (UNEP), reports continue to point to the disturbing persistence of environmental degradation, which is due in part to low levels of implementation and the ineffectiveness of environmental laws.

5. Low implementation levels, weak enforcement and the ineffectiveness of laws have been identified as having political, administrative, socioeconomic and legal causes. Serious concerns are

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still being raised about low capacity in the areas of planning and financial, human and technical resources. Institutions are also reported to be weak. Other challenges also need to be addressed. Legal frameworks need to evolve to support the changing realities and scientific discoveries and to become more coherent and effective in addressing pressing and emerging issues.

III. Current efforts to enhance the implementation and effectiveness of environmental law in Africa

6. Paragraphs 7 to 12 below highlight a few cases where efforts have been made to ensure that environmental law is implemented and effective. There are many other current efforts that have not been included.

A. International symposium on environmental law in Africa

7. An international symposium on environmental law in Africa focusing on institutional and financial mechanisms in the context of sustainable development was held in Abidjan, Côte d'Ivoire, from 29 to 31 October 2013. The symposium was attended by many countries from West, Central and East Africa. The symposium was organized under the auspices of the International Union for Conservation of Nature and Natural Resources, the Institut de la Francophonie pour le Développement Durable and their partners, the Agence universitaire de la Francophonie, UNEP, the African Union and the Economic Community of West African States.

8. The symposium identified two sets of recommendations that require strategic action: (a) the development and application of an African strategy for the implementation of environmental law and (b) the preparation of an African regional programme for the implementation of environmental law.

9. The outcome of the meeting was the adoption of a set of recommendations for strengthening environmental law in Africa. It was also agreed that a regional partnership to support the enhancement and implementation of environmental law and policies in Africa would be developed. The aim of such a partnership is to strengthen the legal and institutional capacities, at national and regional levels, in order to enhance the effectiveness of environmental law within the context of sustainable development.

B. Africa-Asia collaboration on enforcement of environmental law

10. Interregional collaboration between Asian and African countries is currently gaining momentum, especially in the area of exchanging experiences on environmental enforcement and compliance under the overall framework of South-South cooperation. Regular meetings have been held between the two regions under the auspices of UNEP and the China-ASEAN Environmental Cooperation Centre to facilitate technical cooperation and exchange of experiences and expertise in the field of enforcement of environmental law.

11. One such effort was a meeting held in Beijing from 19 to 23 May 2014 where African and Asian experts agreed on a set of tools and best practices to enforce environmental law in criminal, civil and judicial matters. The impact will be seen as selected countries apply the best practices to develop their capacity in enforcement and develop national institutional guides on enforcement. Similar exchanges of good practices will be organized to enhance the capacities of the two regions.

C. European Commission: Africa, Caribbean and Pacific multilateral environmental agreements programme

12. Many African, Caribbean and Pacific countries face formidable challenges and obstacles to implementing multilateral environmental agreements. The capacity of States to implement their environmental obligations has been enhanced by means of targeted capacity-building training and awareness-raising programmes at the national and regional levels in Africa through the European Commission programme on capacity-building related to multilateral environmental agreements in African, Caribbean and Pacific countries, which is funded by the European Union and executed by UNEP. The programme supports 48 African countries in the development of multi-stakeholder collaboration strategies on multilateral environmental agreements. The programme's African hub, which is in its second phase, is hosted at the African Union Commission in Addis Ababa.

D. The rule of law in environmental matters

13. The rule of law in the field of the environment can make a significant contribution towards the realization of sustainable development founded on open, transparent, accountable, just and dependable legal orders and governance systems. The Rio+20 outcome document, entitled "The future we want", acknowledged that good governance and the rule of law are essential for sustainable development,

including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger (paras. 10 and 252). The outcome document highlighted the essential role accorded to law, governance and, implicitly, the pursuit of just societies in the implementation of the Rio+20 outcomes and the pursuit of sustainable development.

14. This is an opportunity for Africa to advance the use of the rule of law in environmental matters so as to contribute to the effectiveness of environmental law in achieving sustainable development. This calls for the development of national and regional strategies and forums for the exchange of experiences in rule of law, respecting due process and access to information and ensuring public participation so as to promote sustainable development.

E. Other efforts

15. United Nations agencies and other global and regional partners, institutions and organizations are rendering support to Africa in the area of environmental law. Their focus is usually on specific areas such as crime, illegal trade in wildlife, pollution and waste management, water, biodiversity and many others.

16. What is lacking in most efforts, however, is the comprehensive and region-wide development and implementation of environmental law mechanisms as a means of supporting sustainable development and harnessing Africa's natural capital.

IV. A strategic approach to the implementation and effectiveness of environmental law

17. Given the broad and diverse nature of environmental law needs and opportunities in Africa, a varied approach is needed to address these issues. Some of the issues are specific, such as water, forests and air, while others are more general or cross-cutting, such as capacity-building and institutional strengthening, compliance and enforcement.

18. Broad areas in which the implementation and effectiveness of environmental law in Africa can be strengthened include:

- (a) Strengthening or creating partnerships between civil society, Governments and development partners to mobilize resources for the implementation of environmental law;
- (b) Harnessing the opportunities resulting from the post-2015 development agenda processes to promote the use of environmental law and institutions for sustainable development;
- (c) Developing and implementing a regional implementation strategy and partnership programme on environmental law and institutions;
- (d) Strengthening the role of existing regional and subregional integration institutions, including the African Union structures and regional economic communities.

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