

THE INTERSECTION OF AGENDA 2063 (GOAL 11) AND SUSTAINABLE DEVELOPMENT GOAL 6: EXPLORING THE ‘HARDER’ OBLIGATIONS FOR WETLAND MANAGEMENT STRATEGIES IN SELECTED AFRICAN COUNTRIES

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ABSTRACT

This paper aims to reflect upon what can be found at the intersection of SDG 6 and Agenda 2063 (Goal 11). Albeit both soft law mechanisms (i.e. SDG 6 and Agenda 2063, Goal 11) are non-binding in nature, they may offer opportunities for significant development in areas of African nations, specifically with the view to promoting the improved management of wetlands. This paper aims to fill the gap based on Royo et al. 2022 and the African Union webpage that published work on the intersections of SDGs and Agenda 2063. There is no concrete or documented evidence of the intersectionality between SDG 6 and Agenda 2063 (Goal 11). It is argued that the benefit of exploring intersectionality is significant, especially in promoting objects of improved wetland management strategies through the lens of the Ramsar Convention of 1971 for African nations. A qualitative method is utilised to achieve this aim, and the analysis techniques include doctrinal legal and documentary analysis techniques. The results demonstrate the binding obligation at this intersection and how African states may utilise their wetland management strategies to demonstrate to the regulatory bodies how they have accelerated or achieved sustainability by cross-cutting these two separate sustainability aspirations (SDGs and Agenda 2063).
Keywords: Agenda 2063, intersection, Ramsar Convention, rule of law, SDG 6, wetland management.

1 INTRODUCTION

Introducing soft- and hard-law mechanisms is critical for the successful implementation of strategies that can bolster wetland management strategies. Kunz et al. [1] define soft law as ‘those norms in the international legal order that lack legal bindingness’. Smallwood, quoting Bodansky (2011), posits that soft law can ‘guide or influence behaviour by providing reasons for action’ [2]. Examples of soft law include non-binding agreements, resolutions, and codes of conduct adopted by international organisations or states [1]. Hard laws are concerned with international legally binding law instruments derived from legal obligations [3]. Examples here include treaties and conventions, like the Ramsar Convention of 1971 (Ramsar Convention). Consideration for the distinction between these two forms of law is taken from the submission by Abbott and Snidal [4], that the one (hard) creates ‘precise, legally binding obligations with appropriate third-party delegation’, whilst the other (soft) informs ‘various combinations of reduced precision, less stringent obligation, and weaker delegation’.

This said, hard and soft laws may form the basis for the rule of law or the shaping of the law, as evidenced next. This is supported by Smallwood [2], who submits that soft law may achieve compliance where hard law cannot; this is further advanced by Pronto [3], who refers to soft law as filling the space of hard law that represents the ‘boundaries, ceilings, and floors’. Dugard et al. [5] describe the efficacy of soft law for states to achieve their intended conduct. This effort suggests how international hard and soft instruments may converge to buttress the promotion of wetland management strategies. This exercise is particularly



relevant to the Ramsar Convention, the United Nations Sustainable Development Goals (SDGs), and the African Agenda 2063: The Africa We Want (Agenda 2023). However, this contribution focuses on the intersectionality of SDG 6 and Agenda 2063 (Goal 11) and, to a lesser extent, Goal 7.

It must be emphasised that the linkages between the SDGs and Agenda 2063 add value. The value lies in the guidelines offered to states to trace their progress. This is especially valuable to African states. This may yield benefits for creating legal obligations and ‘filling the open space’ with soft law that can crystallise into ‘harder’ enabling local provisions. This contribution focuses on the intersections of SDG 6, ‘ensure availability and sustainable management of water and sanitation for all’ [6], and Agenda 2063, Goal 11 ‘democratic values, practices, universal principles of human rights, justice and the rule of law entrenched’ [7]. The latter changes the nature of the obligation from a softer to a harder (binding) obligation when considering the rule of law. Consequently, there can be no softness (i.e. it becomes obligatory instead of mere guidance or advisory) when the rule of law is coupled with legislative and related measures to ensure water availability and sustainable water management. This underlying right (related to sustainable water management) tethers to many other fundamental human rights aspects that are hard law mechanisms.

2 RESEARCH METHODOLOGY

2.1 Data collection

The data was collected using Google Scholar, searching for ‘links between United Nations Sustainable Developmental Goals 2030 (SDGs) and the African Agenda 2063: the Africa We Want (Agenda 2063)’ and ‘intersection of SDGs and Agenda 2063’. Furthermore, the exact search was plotted using ConnectedPapers and Research Rabbit.

To advance the argument, based on the gap in the literature, it was critical to collect data around what SDGs and Agenda 2063 represent: soft law. Data was gathered via Google Scholar, ConnectedPapers, and the University of the Western Cape A–Z online database to understand soft law’s concepts and consequences. The same method was conducted for hard law to understand the difference. To narrow the scope of the search, data was collected online about SDG 6 and Agenda 2063, Goal 11 – this is to discern the expectation of each.

This contribution aims to contribute to wetlands management and advance the argument of wetland strategies for Africa. The authors selected Ghana, Tanzania, Uganda and Kenya as examples and gathered data on strategies for wetlands in these regions.

2.2 Data analysis

As a point of departure, the documents relating to SDG 6, Agenda 2063, soft law and hard law were analysed to understand their content: what they offer and the reasoning. After understanding the documents’ (conventions, declarations, journal articles, court decisions, strategies, textbooks and peer-reviewed journals) offering, themes were created to understand how these soft law mechanisms correlate with existing hard law, using the thematic analysis technique. The themes of SDG 6 and Agenda 2063 (Goal 11) were grouped separately.

Subsequently, following the doctrinal legal approach is required to provide interpretation and deeper analysis of the conventions, scholarly writing, case law, regulations, and declarations, which aids in understanding the central themes and the phenomena at the intersection [8]. This analysis allows for addressing the problem but demonstrates the effect of the law on the social system [9]. Consequently, this led to finding examples of what this



intersection can mean through examples in African states, as this intersection directly affects African states.

3 HARD, BUT NOT SO HARD; SOFT, BUT NOT SO SOFT

Agenda 2063 has been designed as a blueprint for turning Africa into a future powerhouse [10]. This blueprint makes provision for 20 goals that have also been linked to the SDGs [11], [12]. Arguably, at this juncture, and for purposes of this contribution, two soft law mechanisms aim to promote the objectives of improved wetland management. Agenda 2063 for the purposes of this contribution include Goal 7, 'Environmentally sustainable and climate resilient economies and communities' [7] and Goal 11 'Democratic values, practices, universal principles of human rights, justice and the rule of law entrenched' [7]. However, Goal 11 is the focus of the discussion. From an aerial perspective, this may lead to the exploration of African legal jurisprudence in light of giving effect to Goal 11. The objectives of the Revised African Convention on the Conservation of Nature and Natural Resources of 2003 require the Heads of State and Government of the Member States of the African Union to: 1. 'Enhance environmental protection; 2. to foster the conservation and sustainable use of natural resources; and to harmonise and coordinate policies in these fields' [13]. In this document, the parties concerned are instructed ('shall') to take measures to ensure the protection, sustainable use, conservation and rehabilitation of vegetation cover (wetlands) [13]. This obligation stretches its tentacles into the African Charter on Human and People's Rights of 1981 (principles of human rights) in terms of Article 24, which provides that '[a]ll peoples shall have the right to a general satisfactory environment favourable to their development' [14]. The interrelationship between wetlands health and upholding fundamental human rights and the peremptory obligations of the state (in this case, South Africa) has been explained [15]. In sum, therefore, this adds towards the framing of Goal 11.

SDG 6 aims to 'ensure availability and sustainable management of water and sanitation for all' [6]. This SDG has seven targets with its associated indicators. The selected target is 6.6, which aims to 'protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes' [6]. This directly affects wetland resources management through the lens of the Ramsar Convention, as espoused later. Target 6.5, which refers to integrated water resources management, is also applicable as a factor in promoting the wise use of wetlands [16]. At the intersection of SDG 6 (Target 6.6) and Agenda 2063 Goal 11, with a view on wetlands management, this contribution aims to provide an overview of what is available at these cross-cutting provisions for wetlands resources management.

The combination of SDG 6 and Goal 11 may demonstrate the power of soft law mechanisms to aid in areas where, arguably, harder legal obligations may be lacking. Smallwood [2] states that similar bodies promote soft law to give meaning to binding international instruments. As a result, considering the old age of the Ramsar Convention, it too requires updates through guidelines and other, maybe soft, mechanisms as decided upon by the administration as the need arises. It is necessary to demonstrate what is offered at the intersection of these two soft law mechanisms, especially with a view on wetland management. However, it is critical to gauge the rule of law to aid in the analysis.

The rule of law plays a key role in the practice of law, which legal systems worldwide must uphold through its various sources of law [17]. Sources of international law include conventions, customary international law, judicial precedent and text writing [5]. It is submitted that the sources of law connect with the rule by law [18], which aims to govern society and state structures [19]. The operation and application of the rule of law result in accountability, transparency, and equality before the law [20].



In a recent court decision of *Economic Freedom Fighters and Others v Speaker of the National Assembly and Others* (9873/21) [2024] ZAWCHC 160 (10 June 2024), Willie J., quoting Fuller, L. (1968) submits that the basic principles underpinning the rule of law include that law must be: ‘...clear; accessible; forward-looking; non-contradictory; not impossible to comply with...’ [21]. There is no distinction between the texture of the law: soft or hard. In application, what should be noted is that where soft law (SDGs and Agenda 2063) can contribute to clarity and accessibility and offers the ability to comply with the Ramsar Convention.

The Ramsar Convention is the primary legal international instrument which promotes wetland management. Other hard instruments incidental to wetlands management includes the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Biological Diversity of 1992 and the United Nations Framework Convention on Climate Change of 1992. However, due to their interconnectedness, these conventions are excluded from discussion but, by implication, included.

The Ramsar Convention was introduced to ensure that the progressive loss of wetlands is halted then and in the future [22]. The general purpose of the Convention is to stop the progressive encroachment and loss of wetlands [22]. This was to be achieved through the promulgated 12 Articles, which all 172 state parties [23], if any raised no reservations, should implement into their domestic law. No signatory submitted reservations in the latest published list by the Ramsar Secretariat in 2021 [23]. Consequently, the provisions of the Convention must be given effect within the jurisdiction.

The Ramsar Convention is concerned with implementing domestic laws and coordinating international action [20]. Through the incorporation process, the Convention is given effect in domestic laws. Gardner et al. [24] distinguish between the monist and dualistic approaches to incorporating this Convention. For purposes of coordinating international action, Article 5 creates obligations for transboundary wetlands management, whilst Article 4 encourages research and data exchange between states regarding wetland fauna and flora [22]. Articles 4 and 5, therefore, have the effect of enhancing diplomacy and partnership among states. Thus, the Convention’s purpose must be achieved by states through incorporation, partnerships, research, and knowledge exchange, which will advance the proposition of demonstrating what is at this intersection, which may be lessons taken forward specifically for African nations to mould into the Ramsar tapestry.

Considering the nature of the relationship between hard and soft law, this hard law tool (Ramsar Convention) can therefore be advanced to improve wetland management through softer tools, as discussed next. The idea is supported by the fact that wetlands contribute to all 17 SDGs (and 169 targets) as their ‘conservation, wise use, and restoration ‘represents a cost-effective investment’ [25]. In November 2022, at the Conference of the Parties 14, an agreement named the Wuhan Declaration was reached on incorporating soft law mechanisms (SDG) into national legislation to protect wetlands [26]. The consequence of the hard–soft law relationship may result in developing and implementing hard tools (legislation and policies) with associated soft mechanisms (SDG 4 and SDG 6). Therefore, the Ramsar Convention does not stand as the alpha and omega of stopping encroachment and loss of wetlands; when applied appropriately, the SDGs may contribute towards measures for halting wetland loss and degradation.

There is a need to highlight specific instances of states, their findings, and the strategies employed to enhance wetland management using SDGs. Jaramillo et al. [27] performed a network analysis. They found that the SDG targets on wetland management ‘ease the task of stakeholders and policymakers to adequately and efficiently implement them in their respective wetlands’ [27]. Elekwachi et al. [28] express the role of SDGs as a core of current



efforts to manage wetlands in the Niger Delta, and a study in Sweden on scientific literature and policy documents revealed that implemented wetland plans could positively interact with the appropriate SDGs [29]. Davidson et al. [30] submit that newer concepts (like SDGs) change these strategies and approaches. Thus, SDGs may inform improved management and how existing plans can affect SDGs. It is opined here, however, that states should be cautious against being throttled by ‘newness’ where the legal system has adequate (hard) tools to deliver the SDGs. States should instead demonstrate where existing wetland laws tap into the SDGs, and how these may be implemented through wetland-specific strategies.

In as much as soft tools can give effect to and develop hard laws, the opposite is also true [3]. It is crucial to submit here that non-regulatory tools (e.g. awareness and education) flowing from the Ramsar Convention’s wise use obligation have proven to help advances in wetland management in Canada [31] and Finland [32]. It would be short-sighted to ignore the potential of regulatory frameworks to aid in developing non-regulatory mechanisms, especially where their adoption is embedded in constitutional imperatives of certain jurisdictions, as is the case in South Africa (‘reasonable legislative and other measures’) for promoting strategy setting [33]. Considering the broadness of ‘other measures’ in the Constitution as interpreted in the *Grootboom* court decision may bolster the consideration of the wetland strategy.

In sum, the intersection situates this contribution within an African perspective only. Goal 11 of the Africa Agenda 2063 reminds African nations to reflect on their obligations to promote democracy, practices, human rights and justice and the rule of law entrenched. The SDG 6–Ramsar Convention interaction offers a platform for practical solutions to wetland policy and practice where the Convention might be silent, or the ‘floor’ or ‘ceiling’ as expressed by Pronto [3]. Following is an overview of what the result of SDG 6 (Target 6.6) and Agenda 2063, Goal 11 can offer, again, with a view on wetland management strategies to improve policy and practice – bearing in mind the concepts and mechanisms around the ‘rule of law’, ‘principles of human rights’, ‘democratic values’, ‘protecting and restoring wetlands’.

4 A FURTHER GLANCE INTO THE INTERSECTION: SOME AFRICAN WETLAND STRATEGIES

This section provides an overview of what is at the intersection of SDG 6 (specifically, Target 6.6) and Agenda 2063 (Goal 11) through the concepts and mechanisms highlighted earlier. Of the 54 states, 52 African countries have joined the Ramsar Convention [34]. At the same time, Wetlands International [35] reported that the Ethiopia delegation is interested in becoming a signatory to the convention. Somalia’s Ministry of Environment and Climate Change shared its dedication to joining the Convention on social media (tweeted). This shared vision through the Ramsar Convention is critical for achieving aspirations in Agenda 2063: The Africa We Want [36], especially how they can link with the SDGs and regional instruments to birth wetland strategies to address legal inadequacies.

The approaches and tools are gleaned from Ghana, Tanzania, Uganda and Kenya to demonstrate policy and practice through the SDG6–Goal 11 intersection. This, too, serves as a means of what lessons to adopt and what not to. The consequence is that other African states may glean from the four abovementioned states and, through this, demonstrate and track their progress for SDG 6 and Africa Agenda 2063, Goal 11.

The uncoordinated management of wetlands in Ghana has led to the need for coordinated solutions, which could be shaped by the country’s National Wetland Strategy of 1999 [37]. With wetlands constituting about 10% of Ghana’s land surface, the strategy aims to protect and promote their sustainable use [16]. Although the current legislation on wetlands is



scattered and outdated, it provides a starting point for formulating appropriate laws [37]. Donatus et al. [38] submit that the wetland policy and strategy have helped somewhat with wetland conservation and management, albeit not entirely.

Additionally, Ghana, as one of the few African state parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, shares the Volta River Basin with Togo, Mali, Burkina Faso, Côte d'Ivoire and Benin [39], it constitutes an additional hard legal obligation coupled with the (soft) principle of good neighbourliness which the latter is mainly about an inclusive and comprehensive manner of managing water resources [40]. Consequently, this demonstrates how provisions of a softer nature can inform or tacitly recruit members into enacting hard obligations without their signature and ratification.

The inclusion of Tanzania serves as an example of the importance of a comprehensive legislative system to protect wetlands from potential harm caused by other strategies that could lead to degradation or destruction. Materu et al. [41] submit that failing to promulgate comprehensive and sound legislation focusing on wetlands in Tanzania will result in other increasing strategies (agribusinesses and other developmental projects). Mkonda [42] adds value to strategy development for wetlands in Tanzania by demonstrating how crucial it is to design specific strategies. The above reveals the impact of strategies in general on the one hand and how to narrow them down to country-specific needs as they aim to address improving wetland management on the other hand. The lessons from neighbouring states may assist in improving the status quo for some states.

Uganda has been praised for its efforts in wetlands management because it was the first African country to have adopted a wetlands policy in 1994 and for including wetland efforts in its constitution [43]. The precursor to the wetland policy was the 1989 National Wetlands Conservation and Management Programme [44]. This programme aimed to develop appropriate policies and strategies for the sustainable management of wetlands in Uganda [44]. The case study of the Nabugabo wetlands is exemplary of a strategy to protect a Ramsar site (wetland of international importance) [45]. The example included the willingness of the local council to invest their budget, but more so, 50% of the respondents of this case study were willing to contribute small amounts to conserve the Nabugabo wetlands [45]. In sum, 'sustainable management of wetlands', as interpreted in one state, may differ in terms of the legal hierarchy within that system.

Kenya is facing regulatory issues in wetland management, as evidenced next. The country's National Wetlands Conservation Management Policy document 2014 reveals various pieces of legislation regulating wetlands, stating that sustainable management of the wetlands has not been achieved [46]. However, there is hope for improvement through coordination, harmonisation, mainstreaming, and strategies to fulfil the wise use obligation [46]. To address this, the policy sets out the following objective, amongst others, 'to develop strategies for implementing Conservation and Management at county and national levels' [46]. These strategies are believed to be dynamic and adaptable to societal change, resulting in better wetland management, closing gaps, and reducing inefficiencies. Therefore, new insights into strategy design are critical to solving these regulatory issues and, through implementation, improving wetland management nationally and lessons for African nations grappling with similar issues.

From handpicking African countries, it is deemed important to showcase the result of the intersection at a smaller scale through the Southern African Development Community (SADC). SADC is a key instrument for ensuring inter- and intra-country wetland management. The Revised Protocol on Shared Watercourses in the SADC aims to bolster the cooperation among SADC Member States for the region's management, protection, and use



of shared watercourses [47]. Article 3 establishes River Basin Management Institutions (RBMs) for Shared Watercourse Systems in the SADC Region, and Article 4 sets out its objectives ('(a) to develop a monitoring policy for shared watercourse systems; (b) to promote the equitable utilisation of shared watercourse systems; (c) to formulate strategies for the development of shared watercourse systems; (d) to monitor the execution of IWRM development plans in shared watercourse systems'). Considering Everard's [16] interpretation of IRBM as a factor for promoting IRBM further enforces the need to implement this obligation. It is opined here that although the SADC Protocol refers to formulating strategies inter-country, individual states can use lessons from these to promote improved watercourse management within their jurisdiction. This idea is advanced by the fact that shared responsibility by the SADC Protocol tacitly incorporates Article 5 of the Ramsar Convention by placing an obligation on the states to coordinate their planning and policies to conserve wetlands, fauna, and flora. However, states must be cognisant of neighbouring countries when developing individual strategies, mainly where existing agreements underpin shared wetlands [48].

5 CONCLUSION

The intersection between SDG 6 and Africa Agenda 2063 (Goal 11) is clear. How this gives rise to matters relating to wetland strategies through the lens of the law is undeniable. The appropriate enforcement body may utilise these examples to measure how states contribute to the SDG and Agenda 2063 in this context. The fact that previous research does not demonstrate intersectionality is why this contribution does so through a specific lens: wetland management strategies. This intersection requires states to prioritise their efforts in wetland management, which not only bolsters wetland restoration and protection through the rule of law and thereby promotes justice and principles of human rights but also their legal obligations as contained in the Ramsar Convention.

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