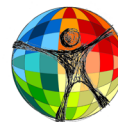


# Plastic Pollution as a Violation of the Right to a Healthy Environment in the African Charter of Human and People's Rights

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# ABSTRACT

The Gambian coastline and its roads are constantly filled with plastic debris. Not only is this less aesthetically pleasing, it is also extremely detrimental to the environment and to Gambians. While environmental consciousness is gaining momentum through African regional and local courts, the issue of plastic pollution is not being addressed properly. In Sub-Saharan Africa, over 80% of the plastic waste is not properly disposed of, adding to the pollution of oceans and rivers. The scale of plastic pollution on the African continent is too important to ignore. This paper argues that plastic pollution is a violation of the right to a healthy environment found in the African Charter of Human and People's Rights. Human rights are evolving regionally and globally to include environmental rights but much like climate change, only relying on the law will not produce substantive change quickly enough. Governments, courts, corporations and citizens must take initiative in order to find solutions to fight plastic pollution.

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## **My Experience in The Gambia**

Plastic was everywhere I looked while I was living in Banjul. New empty bottles were left on the roadside daily. On the beach, I had to pick my spot to sit so that I would not be sitting on a pile of plastic debris (and nearby vultures). I too contributed to the consumption of plastic bottles. You never realize how much water you drink until you can no longer drink tap water. I would go to the small grocery shop near my office every Monday morning and pick up a pack of 6 1-Litre water bottles to have water at work for the week. On my way home, I would stop by another store closer to my residence compound and walk home with another 6 pack of 1-Litre water bottles. I became hyper-conscious of my plastic consumption, but I did not want to sacrifice proper hydration simply because it was all sold in water bottles. I still felt awful at every 100 Dalasi bill I would give to buy my 6 pack of water. I would walk on the beach and see plastic washing up on the shore, ask my friend Manson about it, to which he would laugh and reply that this is normal, and that Gambia does not do anything about it. After my internship, I visited Senegal and spent 3 days in the beach town of Somone. One afternoon, I decided to go for run. From the moment I left the clean hotel beach area, I could not help but notice the sheer amount of plastic on the beach. It was, honestly, disgusting. Some pieces were big and easy to avoid but others were so tiny that if I was not careful, I would easily have cut my foot running on it. While I did not work on environment law during my internship at the Institute for Human Rights and Development in Africa (IHRDA), I wanted to learn about the problem of plastic pollution in Gambia and Africa in general and relate it to human rights law.

## **Introduction**

The environmental justice movement has gained tremendous momentum in recent years. With the Paris Agreement of 2015 and the publication of the United Nations Framework Convention on Climate Change (UNFCCC) report in October 2018, the alarm bell is ringing around the world. Amidst talks on climate change, the world witnessing a new form of environmental degradation caused by plastic pollution. It is difficult to imagine a world without plastic. We see it everywhere. The bottles, the straws, the cups, the bags... what did people do before it existed?

Plastic has become a commodity with which we cannot part. The real issue is not the mere existence of plastic; it is how easily we dispose of it. While plastic pollution represents a different environmental issue than climate change, its effects on the planet and on humans are no less detrimental.

We live in a world where the power of the state is declining and where money is power. The field of human rights is evolving and growing. At the same time, state accountability is becoming harder to enforce in a globalized world where private interests of multinational companies' reign. We must change whom we view as perpetrators and we must change how we find solutions.

This essay will argue that plastic pollution represents a violation of the African Charter's right to a healthy environment.<sup>1</sup> Although some countries have added articles relating to environment rights in their respective constitutions, human rights law must be coupled with a multitude of mechanisms, both global and local, to fight plastic pollution on the African continent. The right to a healthy environment is infringed by both State and non-State actors and, like climate change, is a very difficult, but not impossible, beast to tackle.

Recognition of the right to a healthy environment is growing despite there being no formal UN international human right on the environment. Despite efforts of the Stockholm Conference of 1972 and the Rio Conference of 1992 as well as countless other consultations and constitutional amendments made at national levels, there is no clear consensus on an exact definition. The rhetoric revolves around the term "healthy environment" but not every document uses this exact term to describe the right. The Rio Declaration states that humans are "entitled to a healthy and productive life in harmony with nature"<sup>2</sup> whereas the African Charter declares the right to a "satisfactory environment favorable to their development".<sup>3</sup>

The essay is divided into 3 parts. The first part examines the facts surrounding plastic pollution. The second addresses the

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<sup>1</sup> *African Charter on Human and People's Rights*, 27 June 1981 (entered into force 21 October 1986) [ACHPR 1981] at art 24.

<sup>2</sup> Rio Declaration on Environment and Development, 14 June 1992, UN Doc A/Conf 151/26 at 1.

<sup>3</sup> *Supra* note 1.

right to a healthy environment within the evolution of human rights, and how it has been promoted at the international, pan-African and domestic levels. This part also analyzes why plastic pollution is a violation of this right. Finally, the third part presents possible solutions, and explains why solutions cannot only be achieved through legal frameworks.

## The Problem of Plastic Pollution

Before going into depth about the right to a healthy environment and its link to plastic pollution, it is important to inform the reader about the sheer scale of plastic pollution.

Plastic was first produced in 1907 under the name Bakelite but it is only in the 1950s that its production began to grow. Plastic is, objectively, a fantastic product of human innovation; it is lighter than glass, versatile, cheap to produce and resistant.<sup>4</sup> It finally presented a lightweight solution for bottles and trays, a replacement for heavier metals, a disposable object that one only needs to use once. This allowed for progress in hygiene, medicine, and food supplies. While plastic allows for convenience, the problem is how we use it, and how we dispose it, to the detriment of the planet. Plastic is so cheap because "oil is cheap and it is easier to extract a natural resource out of the ground than it is to recycle plastic".<sup>5</sup> Globally, there are roughly 40% or 161 million tons of plastic produced that are used only for single-use packaging products.<sup>6</sup> Single-use plastic includes plastic straws, grocery bags, plastic cups and plastic bottles, which are among the biggest forms of single-use plastic. While packaging is not the only form of plastic produced, it represents half of the amount of total plastic waste globally.<sup>7</sup> The mass production of plastic is relatively recent. Half of the plastic currently manufactured was

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<sup>4</sup> Hannah Ritchie and Max Roser, "Plastic Pollution" (September 2018) online: *Our World In Data* <<https://ourworldindata.org/plastic-pollution>>.

<sup>5</sup> Jennifer Sutton, "Why is it cheaper to make new plastic bottles than to recycle old ones?" (15 December 2009), online: *MIT School of Engineering* <<https://engineering.mit.edu/engage/ask-an-engineer/why-is-it-cheaper-to-make-new-plastic-bottles-than-to-recycle-old-ones/>>.

<sup>6</sup> Laura Parker, "Fast Facts About Plastic Pollution" (16 May 2018), online: *National Geographic* <<https://news.nationalgeographic.com/2018/05/plastics-facts-infographics-ocean-pollution/>>.

<sup>7</sup> *Supra* note 4.



made from 2000 onwards.<sup>8</sup> In 1950, 2 million tons of plastic was produced; in 2015, that number increased to 381 million tons.<sup>9</sup> 20,000 bottles are purchased on the planet every second.<sup>10</sup> In short, the “global economy is reaching ecological limits”.<sup>11</sup>

The truth is, we do not need to be wasting as much as we do. Most plastic bottles are made from polyethylene terephthalate (PET), which is 100% recyclable.<sup>12</sup> Most of the countries that use a lot of plastic do not have proper waste management systems and as such, the plastic ends up in landfills or in the ocean.<sup>13</sup> Recycled waste has become a product in the global commodity market and is sold and traded across the world.<sup>14</sup> If it is not traded,<sup>15</sup> it is dumped in the ocean and washes up on the shores of Asian and African coastlines. In Sub-Saharan Africa, over 80% of plastic waste is not properly disposed of, adding to the pollution of oceans and rivers.<sup>16</sup>

The demand for plastic bottles is soaring. It is difficult to keep up with the demand<sup>17</sup> given increased purchasing power and a lack of safe drinking water. With the growth of the middle class around the world, purchasing plastic bottles has become more accessible to a greater number of people. While recycling systems have existed since the 1980s, they do not exist internationally, and not on a big enough scale. Only 7% of bottles collected are turned into new bottles yet we could use 100% recycled plastic to make new bottles. Additionally, high income earning countries export plastic waste to countries in Asia and

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<sup>8</sup> Parker, *supra* note 6.

<sup>9</sup> Ritchie, *supra* note 4.

<sup>10</sup> Sandra Laville and Matthew Taylor, “A million bottles a minute: world’s plastic binge “as dangerous as climate change” (28 June 2017), online: *The Guardian* <https://www.theguardian.com/environment/2017/jun/28/a-million-a-minute-worlds-plastic-bottle-binge-as-dangerous-as-climate-change>

<sup>11</sup> Carmen G Gonzalez, “Environmental Justice and International Environmental Law” in *Routledge Handbook of International Environmental Law* ed by Shawkat Alam, Jahid Hossain Bhuiyan, Tareq M.R. Chowdhury, Erika Techera (Seattle: Routledge, 2013) at 1.

<sup>12</sup> Laville, *supra* note 10.

<sup>13</sup> Ritchie, *supra* note 4.

<sup>14</sup> *Ibid.*

<sup>15</sup> Gonzalez, *supra* note 11 at 2.

<sup>16</sup> Ritchie, *supra* note 4.

<sup>17</sup> Laville, *supra* note 10.

Africa<sup>18</sup> which contributes to the mismanagement of waste on these continents even though it looks like Western countries are managing their waste properly. The consumption of plastic bottles has exceeded recycling efforts and will continue unless unprecedented action is taken to reduce plastic production.

From the above discussion, it does not come to a surprise that plastic also affects marine life. The Ellen MacArthur Foundation estimates that by 2050 there will be more plastic than fish in the ocean. Large whales have been found with thousands of pieces of plastic in their stomachs<sup>19</sup>, plastic is found in one-third of the fish caught in the UK alone<sup>20</sup>, which means that micro plastics will bring toxins to our dinner plates. While most of the micro plastics are absorbed in parts of the fish that humans rarely eat, such as the gut<sup>21</sup>, it is nevertheless a health threat because micro plastics are also found in table salt. While we can stop eating fish, our bodies need salt.<sup>22</sup> In countries on the West African coastline, such as The Gambia and Senegal, fish is the main source of protein for most people given its lower cost and accessibility. As such, the increasing rate of plastic found in marine life may be detrimental to the nourishment of the population. Micro plastics are able to absorb environmental contaminants but are ingested by humans through skin cosmetics and the air they breathe. Finally, while its direct effect on humans is still unclear,<sup>23</sup> the rapid increase of plastic on the planet indicates that its effect will likely be detrimental to human health.

Many of the world's current problems could be solved if humans adopted a more circular approach to the economy and to plastic. Reduce, reuse, and recycle.<sup>24</sup> This frequently heard saying helps consumers understand the best ways to fight plastic

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<sup>18</sup> Sybil Bullock, "Key Facts About Plastic Pollution" (8 June 2018), online: Greenpeace <<https://www.greenpeace.org/usa/key-facts-about-plastic-pollution/>>.

<sup>19</sup> Jack Guy, "Dead whale in Indonesia had swallowed 1000 pieces of plastic" (November 21 2018) online: CNN <<https://www.cnn.com/2018/11/20/asia/indonesia-whale-plastic-scli-intl/index.html>>.

<sup>20</sup> Laville, *supra* note 10.

<sup>21</sup> Ritchie, *supra* note 4.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> "Reduce, Reuse, Recycle", online: EPA United States Environmental Protection Agency <<https://www.epa.gov/recycle>>.

pollution. They can reduce the amount of non-recyclable plastic that they purchase, which greatly impacts plastic pollution. Instead of discarding what they no longer use or need, they should be re-using, purchasing less and making do with what already exists. Plastic that biodegrades in aquatic environments currently exists. It would make a tremendous difference if every piece of plastic was made from this material. Not only would this circular approach be good for the environment and for the consumer conscience, it would also save billions of dollars<sup>25</sup> and help break the link between plastic production and fossil fuel consumption.<sup>26</sup> While the above idea is notable, many global decisions are unfortunately made based on financial gain, rather than common sense and moral consciousness.

### Understanding the Right to a Healthy Environment

The following part addresses the right to a healthy environment at many different levels to better understand the evolution of this right and how we can include plastic pollution into the rhetoric of the right to a healthy environment. It does not offer in-depth analysis of one country or one document legislating on the right to a healthy environment but rather an overview of how many different actors have tried to legislate and open a discussion on the right to a healthy environment.

#### *The Right to a Healthy Environment as Part of the Evolution of Human Rights*

Since the end of the Second World War, the field of human rights has constantly evolved. With time, both activism and the human rights agenda<sup>27</sup> have become a massive global movement encompassing various types of human rights. Organizations all over the world now fight for civil and political rights as well as economic, social and cultural rights, as well as the prosecution of perpetrators of human rights violations. There have recently been many efforts to defend environmental human rights.

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<sup>25</sup> Laville, *supra* note 10.

<sup>26</sup> 8% of the world's oil production is used to plastic and this number is estimated to rise to 20% by 2050.

<sup>27</sup> Kenneth Cmiel, "The Recent History of Human Rights" (2004) *American Historical Review* at 118.

The environmental justice movement began as an offshoot to the civil rights movement in the United States in the 1970s as a grassroots response to the pollution of poorer neighborhoods occupied by marginalized members of society.<sup>28</sup> The movement linked social and environmental discrimination in a way that had not been previously accomplished in the field of human rights. While it started small, it rapidly spread across the world. The environmental justice movement gained tremendous momentum in South Africa, a country similar to the United States, where marginalized populations often live on damaged, fragile and polluted lands.<sup>29</sup>

In the present-day, countries are beginning to ascribe to the movement, given their concern about the Earth's future. Fortunately, the environmental justice movement is able to "connect local struggles, generalize them and forge global alliances in a process of globalization from below"<sup>30</sup>, which is especially relevant in a world where corporate power is concentrated at the top. Additionally, the environmental justice movement works to combat pollution, which has a negative effect on the enjoyment of basic human rights<sup>31</sup>, including the right to a healthy environment.

Scholars such as Cmiel and Posner wonder if human rights work is actually changing anything given, for example, that torture is just as prevalent today as when Amnesty International began condemning the practice in 1973<sup>32</sup>. Awareness is a major feature of the 21<sup>st</sup> century given the predominance of technology. While individuals do not address every issue or conflict with the same importance, many are aware of atrocities that are taking

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<sup>28</sup> Jason Byrne, "A healthy environment shouldn't just be for the rich" (25 November 2012), online: *The Conversation* < <https://theconversation.com/a-healthy-environment-shouldnt-just-be-for-the-rich-10439> >.

<sup>29</sup> Jacklyn Cock, "How the environmental justice movement is gathering momentum in South Africa" (1 November 2015), online: *The Conversation* < <https://theconversation.com/how-the-environmental-justice-movement-is-gathering-momentum-in-south-africa-49819> >.

<sup>30</sup> *Ibid.*

<sup>31</sup> Abdulkadir Bolaji, "The Right to a Healthful Environment in Nigeria: a Review of Alternative Pathways to Environmental Justice in Nigeria" (2014) 3:1 Afe Babalola University: Journal of Sustainable Development Law and Policy at 131.

<sup>32</sup> Cmiel, *supra* note 27 at 134.

place in the world, which is in itself, an important step to taking action.

The human rights field suffers from a lack of clarity and definition at a number of levels, which could result in scholars like Cmiel being so critical. While there has been an increase of human rights organizations and NGOs, there has been little consensus on basic definitions or practices.<sup>33</sup> For instance, NGOs litigate cases in courts around the world, but do not provide much international reflection on the results of the litigation. With little communication in regard to practice and definitions, there is little clarity on the desired outcomes for denouncing and persecuting human rights violations. This indicates that much more needs to be accomplished.

With the emergence of a multitude of human rights to defend comes a divide between the protection of civil and political rights on the one hand and the protection of economic, social and cultural rights on the other hand.<sup>34</sup> The field of human rights makes a distinction between natural rights and subjective rights that have evolved with time and society.<sup>35</sup> Economic, social and cultural rights represent a more recent strand of human rights and were first codified in the 1966 International Covenant of Economic, Social and Cultural Rights. Article 1 states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>36</sup>

Economic, social and cultural rights encompass the right to food, to housing, to water and sanitation amongst others.<sup>37</sup> They represent the right that citizens have to a quality of life and are often viewed as rights that can be realized slowly with less

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<sup>33</sup> Catherine Corey Barber, "Tackling the evaluation challenge in human rights: assessing the impact of strategic litigation organisations" (2012) 16:3 The Int J of Human Rights at 430.

<sup>34</sup> Cmiel, *supra* note 27 at 122.

<sup>35</sup> Cmiel, *supra* note 27 at 121.

<sup>36</sup> International Covenant on Economic, Social and Cultural Rights, GA Res 2200A (XXI), OHCHROR (1966) at 1.

<sup>37</sup> *Ibid* at 11.

pressure for governments to meet obligations.<sup>38</sup> Civil and political rights tend to take precedence and are implemented more quickly;<sup>39</sup> they represent the rights of individuals to participate in the civil and political life of society in the absence of discrimination.

It is important to note that economic, social and cultural rights were neglected for a long time.<sup>40</sup> They were deemed more difficult to protect and required more work, whereas civil and political rights could be "fixed" by preventing states and government to interfere with individual freedoms.<sup>41</sup> Ultimately, both streams of rights were seen as inherently intertwined until a superficial separation emerged during the Cold War when both the East and the West granted different levels of importance to different human rights.<sup>42</sup>

The African Charter of Human and People's Rights of 1981 was an important document for acknowledging the legitimacy of economic, social and cultural rights. The charter recognized both civil and political rights as well as economic, social and cultural rights and subjected them to the same enforcement mechanisms.<sup>43</sup> The African Commission's decision in *Centre for Minority Rights Development v Kenya* highlights the linking of both sets of rights as well as environmental rights by referring to Kenyan Indigenous communities' "social, political and economic marginalization"<sup>44</sup> which later led to the infringement of their economic, social and cultural rights. Environmental degradation is referred to as a

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<sup>38</sup> David Takacs, "South Africa and the Human Right to Water: Equity, Ecology and the Public Trust Doctrine" (2016) 34:2 Berkeley J of Int L at 64.

<sup>39</sup> *Ibid.*

<sup>40</sup> The protection of economic, social and cultural rights in Africa: international, regional and national perspectives, ed by Danwood Mzikenge Chirwa & Lilian Chenwi (Cambridge, UK: Cambridge University Press, 2016) at 4.

<sup>41</sup> "Key concepts on ESCRs- Are economic, social and cultural rights fundamentally different from civil and political rights?" online: United Nations Human Rights Office of the High Commissioner <https://www.ohchr.org/en/issues/escr/pages/areescrfundamentallydifferentfromcivilandpoliticalrights.aspx>.

<sup>42</sup> *Ibid.*

<sup>43</sup> Mzikenge Chirwa, *supra* note 40 at 6.

<sup>44</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council)/ Kenya [2009] 276/03 ACHPR, 46<sup>TH</sup> Sess at 245.

human rights issue<sup>45</sup> and not a specific economic, social and cultural right, yet it is still included within these rights. The grey matter of environmental rights persists.

The right to a healthy environment is not clearly in either category of human rights because it is not a clear individual right. The right to a healthy environment is the right that “all peoples shall have”<sup>46</sup> towards a healthy environment. It is part of collective economic, social and cultural rights more so than individual rights.<sup>47</sup> While the right to food and housing are clearly stated, there is no precise environmental right tied to economic, social and cultural rights.

Human rights are effectively promoted when they are present and incorporated at national, regional and international levels. This allows for further awareness and greater enforcement mechanisms. Human rights have grown into a global movement in a world that is more interrelated than ever. The right to a healthy environment embodies the challenges of relying only on national mechanisms to bring global justice. Respecting human rights is no longer only a domestic concern.

#### *The Right to a Healthy Environment on an International Level*

To this day there is no consensus on the right to a healthy environment on a global scale. Some documents use the word “healthy”, while others do not. The framework around which it is defined stems from many different declarations and consultations, however it is absent from legally binding legislation on the international level.

The United Nations is the single most important international body able to promote and raise awareness to human rights on a global scale since its creation in 1945. The Universal Declaration of Human Rights of 1948<sup>48</sup> marked the beginning of a generation of codified human rights that states had a duty to respect. Article 3 declares the right to “life, liberty and security of the person”.<sup>49</sup> There are many ways to interpret what this entails.

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<sup>45</sup> *Ibid.*

<sup>46</sup> African Charter, *supra* note 1.

<sup>47</sup> Mzikenge Chirwa, *supra* note 40 at 93.

<sup>48</sup> The Universal Declaration of Human Rights, 10 December 1948 at art 1.

<sup>49</sup> *Ibid* at 3.

One can argue that a polluted environment infringes this right, however, this would be difficult as there is no clear link between the two.

The right to a healthy environment has been labeled as a "collective economic, social and cultural right"<sup>50</sup> but it is not codified directly in this category of rights given that economic, social and cultural rights refer more generally to rights relating to work, social security family, cultural life as well as access to food, housing, water, health care and education.<sup>51</sup> The right to food is closely linked to the right to a healthy environment. To recognize the need for sustainable food sources is a step to recognizing the right to a better environment and to frame the human right to environment through the UN's Sustainable Development Goals. The International Covenant on Economic, Social and Cultural of 1966<sup>52</sup> presented a step towards recognizing human rights that were not only civil and political. Such rights take more time to achieve long term than the right to free speech for example, a civil right (with the right government in place, granted).

The rise of the environmental justice movement allowed for the international recognition of the right to a healthy environment. The first declaration clearly stating the need to address environmental issues came in 1972 with the Declaration of the United Nations Conference on the Human Environment in Stockholm. While not legally binding,<sup>53</sup> it was the first time that environmental degradation was denounced on an international stage. It recognized international environmental rights and sustainable development. It included a resolution on institutional arrangement; a declaration with 26 principles and an action plan with 109 recommendations. The Stockholm Conference set a precedence for sustainable development:

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<sup>50</sup> Mzikenge Chirwa, *supra* note 40 at 93.

<sup>51</sup> "Frequently Asked Questions on Economic, Social and Cultural Rights Fact Sheet No. 33", online: Office of the United Nations High Commissioner for Human Rights <<https://www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf>>, at 1.

<sup>52</sup> ICESCR, *supra* note 36.

<sup>53</sup> David R Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (Vancouver: UBC Press, 2012) at 13.



Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself.<sup>54</sup>

Within this declaration, the detrimental effect of environmental degradation on human rights was clearly stated. Its principles listed duties for citizens, states, enterprises and science to help promote a sustainable world. The solutions were there as it was the skeleton upon which future declarations could base themselves off. Although in the immediate years following the conference very few tangible steps were taken, the message was clear: there was awareness and acknowledgment of the threat humans were causing to the environment. The Stockholm Conference led to the creation of the United Nations Environment Program in 1972 whose main goal is to "support governments, civil society and the private sector to protect the planet".<sup>55</sup> The creation of a UN body solely dedicated to environmental issues represented a positive turning point for the international recognition of environmental issues.

The Rio Declaration of 1992 emphasized the importance of adopting a holistic approach to address environmental issues by adopting the Agenda 21 program for sustainable development. Essentially, it advocated that for human rights to be respected, they need to be seen as part of a global movement, rather than as the product of the work of an individual.<sup>56</sup> It was not a treaty, and presented obligations for states towards the

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<sup>54</sup> Declaration of the United Nations Conference on the Human Environment, 16 June 1972, A CONF.48/14/Rev.1 [UN] at 3.

<sup>55</sup> "About Us" (29 October 2018), online: UN Environment <https://www.unenvironment.org/news-and-stories/video/about-un-environment>.

<sup>56</sup> Mzikenge Chirwa, *supra* note 40 at 119.

environment. The Rio Conference drew an unprecedented amount of attention towards environmental rights with the participation of thousands of non-governmental organizations<sup>57</sup> despite sharp differences of the industrial North and the underdeveloped South<sup>58</sup> during discussions and negotiations. While there was no formal recognition of the human right to a healthy environment, Principle 1 of the Declaration inspired future drafting of this right:

PRINCIPLE 1: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.<sup>59</sup>

The movement continued to grow despite no formal human right to a healthy environment ever being created. Countries adopted the UNFCCC, which led to the creation of the UNFCCC secretariat in Bonn, Germany.<sup>60</sup> Its role in assisting countries in adopting both the Kyoto Protocol in 1997 and the Paris Agreement in 2015 is proof that the environmental justice movement reached unprecedented international attention and concern. The recent publication of its first annual report led to an urgent call to reduce global emissions.<sup>61</sup> From the Johannesburg Declaration on Sustainable Development of 2002, to the Resolution of 2017 entitled "Our Ocean, Our Future: Call for Action" and the Regional Consultation on the Relationship Between Human Rights and Obligations and Environmental Protection with a Focus on Constitutional Environmental Rights of 2014, the discussions on the matter have only continued. This section does not seek to ignore the many countries or efforts that have failed to acknowledge both environmental degradation and the right to a healthy environment, but instead recognizes the

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<sup>57</sup> "Module 15: The Right to a Healthy Environment", online: *Circle of Rights Economic, Social and Cultural Rights Activism: A Training Resource* <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module15.htm>.

<sup>58</sup> Marlise Simons, "North-South Divide is Marring Environment Talks" (March 17 1992), online: *The New York Times* <https://www.nytimes.com/1992/03/17/world/north-south-divide-is-marring-environment-talks.html>.

<sup>59</sup> *Rio Declaration on Environment and Development*, 14 June 1992, UN Doc A/Conf 151/26 at principle 1.

<sup>60</sup> "About the Secretariat", online: *United Nations Climate Change* <https://unfccc.int/about-us/about-the-secretariat>.

<sup>61</sup> "UN Climate Change Annual Report 2017", online: *United Nations Climate Change*, <https://unfccc.int/resource/annualreport/>.

progress that has been achieved for a right that is still not formally acknowledged as an international human right.

*The Right to a Healthy Environment in the African Charter*

With post-colonial independence of African countries came the promise of accelerated development. Environmental protection was seen as an impediment to the capitalist perception of economic development<sup>62</sup> and was put on the back burner for many years. The 1968 African Convention on Conservation of Nature and Natural Resources highlighted the importance of preserving the conversation of the environment but did not take a direct approach to relate it to human rights.<sup>63</sup> The African Charter on Human and People's Rights, through its inception in 1981, broke the apathetic stance that African nations had taken towards human rights. It is trailblazing in international human rights law because the protection of civil and political rights, economic, social and cultural rights and group rights was brought together in one legal instrument.<sup>64</sup> It is also the only international Charter that formally recognizes the right to a healthy environment as well as group rights.

There are articles in the African Charter that are very long and detailed. Article 24 is not one of them.

All peoples shall have the right to a general satisfactory environment favorable to their development.<sup>65</sup>

The meaning of this article is unclear. It does not define a satisfactory environment, what infringes the environment to make it unsatisfactory and what is meant by development. Vague legislation on the international level is often written as to not infringe on local practices or national sovereignty that need to work to implement these international concepts to promote

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<sup>62</sup> Mzikenge Chirwa, *supra* note 40 at 4.

<sup>63</sup> African Convention on Conservation of Nature and Natural Resources, 15 September 1968, CAB LEG 24.1 (entered into force June 16 1969) [ACHPR] at 2.

<sup>64</sup> Mzikenge Chirwa, *supra* note 40 at 91.

<sup>65</sup> African Charter, *supra* note 1.

"connected activism"<sup>66</sup> but the complete lack of structure in this article cannot be ignored. However, it may mean that its vagueness leaves room to include elements that may not have been thought of at the time of the drafting, like the example of plastic pollution that we will examine shortly.

The African Commission on Human and People's Rights, established in 1987 and based in Banjul, is responsible for interpreting the Charter and rendering recommendations on cases of human rights violations. The Commission is limited by its reliance on the African Charter<sup>67</sup> and has no power to enforce its recommendations. That does not mean it is useless. On the contrary, given the short and vague nature of Article 24, it is a crucial body to help clarify the Charter. Reading jurisprudence on guidelines of the Commission gives a better understanding of Article 24. A "satisfactory environment" refers to an environment that is "clean enough for a safe and secure life and development of individuals and people".<sup>68</sup>

*SERAC v Nigeria* provides clarity as to what Article 24 entails, stating that "These rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual".<sup>69</sup> The decision refers to Article 12 of the International Covenant on Economic, Social and Cultural Rights<sup>70</sup> to emphasize the need for states to take steps to protect the environment and its citizens. With oil companies contaminating food supplies, both the right to food and the right to a healthy environment are threatened. The case states that governments have a duty to protect its citizens from "damaging acts that may be perpetrated by private parties."<sup>71</sup> Combining civil and political rights with economic, social and cultural rights is necessary.

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<sup>66</sup> Brooke Ackerly, "Human Rights Enjoyment in Theory and Activism" (2011) 12:2 Human Rights Rev 222 at 227.

<sup>67</sup> Mzikenge Chirwa, *supra* note 40 at 119.

<sup>68</sup> State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries and the Environment, ACHPR, 62<sup>ND</sup> Sess (2018) at 44.

<sup>69</sup> *Serac v Nigeria* [2001] 155/96 ACHPR, 30<sup>TH</sup> Sess at 51.

<sup>70</sup> ICESC, *supra* note 36 at 12.

<sup>71</sup> *Serac v Nigeria*, *supra* note 68 at 57.

Through the African Commission, many resolutions promoting human rights that are intrinsically linked with the right to a healthy environment such as the *Resolution on the Right to Water Obligations* are written with an aim to protect water resources and ecosystems across the continent.<sup>72</sup>

There are limits to international law despite the importance of its existence. International law is the first but not certainly the last step to protect human rights. “It is now up to states, national human rights institutions, activists, lawyers, universities and civil society to support the Commission’s work and jurisprudence [...] and to explore new ways and means by which these rights may be realised and implemented for the betterment of the lives of African peoples”.<sup>73</sup>

### *The Right to a Healthy Environment at the Domestic Level*

International recognition of human rights is most effective when coupled with domestic efforts to enforce or recognize said right. There are many ways this can be accomplished. Constitutional protection is a powerful domestic tool<sup>74</sup> because a constitution is an effective mechanism used to portray the norms and “most cherished values”<sup>75</sup> shared by citizens of that given country. With the wave of independence movements around the globe, came the rewriting of constitutions. In fact, more than half of the constitutions of the world have been written since the mid 1970s,<sup>76</sup> coinciding with the emergence of environmental justice and awareness.

There are many African constitutions that could be discussed in this section. Kenya’s features an extensive provision in its constitution<sup>77</sup> and Angola’s even explicitly declares the “right to live in a healthy environment”.<sup>78</sup> South Africa’s constitution includes economic, social and cultural rights and environmental

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<sup>72</sup> Resolution on the Right to Water Obligations, ACHPR Res 300. 17<sup>th</sup> Sess (2015).

<http://www.achpr.org/sessions/17th-eo/resolutions/300/> at 1.

<sup>73</sup> Mzikenge Chirwa, *supra* note 40 at 119.

<sup>74</sup> Boyd, *supra* note 53 at 3.

<sup>75</sup> *Ibid* at 8.

<sup>76</sup> *Ibid* at 4.

<sup>77</sup> *Ibid* at 18.

<sup>78</sup> Constitution of the Republic of Angola, 2010 at art 39.

rights in one document. Its right to a healthy environment clearly stipulates what constitutes a healthy environment and how to protect it.<sup>79</sup> The country has groundbreaking court decisions on constitutional rights, making it a positive example to portray in this paper. This is especially important given its heaving mining industry history and the common belief that South Africa will never change. The judgment in *Mineral Development, Gauteng Region and Another v Save the Vaal Environment* clearly portrays the importance that courts give to environmental rights:

Our Constitution, by including environmental rights as fundamental, justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative processes in our country. Together with the change in the ideological climate must also come a change in our legal and administrative approach to environmental concerns.<sup>80</sup>

Here we see a court decision that highlights both the importance of value-spreading through constitutions and the need for legal adjustments to enforce environmental rights. An equally important case is that of *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* for the advancement of environmental rights. It discusses the importance of respecting sustainable development and local authorities.<sup>81</sup> Sustainable development is linked to the right to a healthy environment, but the case is not as grounded upon a constitutional right to a healthy environment. Acknowledging the importance of sustainable development is nevertheless a step to acknowledge people's right to a healthy environment.

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<sup>79</sup> Constitution of the Republic of South Africa, 1996, No 108 of 1996 at art 24.

<sup>80</sup> *Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Others* ZAF [1999] 133/98 ZASCA 9, [1999] 2 All SA 381 (A) at 20.

<sup>81</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* ZAF [2007] ZACC 13, [2007] S Afr Const Ct 67/06 at 27.

The law on state responsibility cannot replace the need for stronger environmental protection.<sup>82</sup> The problem must be attacked from all angles. While some scholars argue that constitutional protection is more effective for environmental law, others believe that its effectiveness is too small and that it represents nothing but false hope.<sup>83</sup> The slowness of change does not solely stem from poor implementation of constitutional protection but is linked to other factors such as a lack of awareness on the part of the population and to a lack of education on environmental law in law schools.<sup>84</sup> The environment cannot be protected if individuals do not understand the issues that affect it. Constitutional protection must be coupled with other mechanisms on all levels of governance to be truly effective.

*Plastic Pollution and the Right to a Healthy Environment: Is There Even a Link?*

A healthy environment is impacted by climate change and greenhouse gas emissions. A healthy environment should also include going to the beach and walking on the street, without having to wade through plastic to find a place to sit or walk. There is no clear global definition of the right to a healthy environment despite the fact that over 90 countries have included the right to a healthy environment in their respective constitutions.<sup>85</sup> Global plastic pollution is said to be “as serious as climate change”<sup>86</sup> yet it is not automatically linked to the right to a healthy environment. The link between plastic pollution and an unhealthy environment may not be as obvious as the link between air pollution and an unhealthy environment, as air pollution *directly* affects an individual’s ability to breathe. Plastic pollution is no longer an avoidable burden. When plastic goes into the ocean, it breaks into micro plastics and there are now over 50 trillion micro plastics

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<sup>82</sup> Voigt, Christina, “State Responsibility for Climate Change Damages” (2008) 77: 1-2 *Nordic J of Intl L* at 22.

<sup>83</sup> Boyd, *supra* note 53 at 14.

<sup>84</sup> Johannesburg Declaration on Sustainable Development, 4 September 2002, A/CONF.199/20 [UN], at 10.

<sup>85</sup> Human Rights and the Environment: Regional Consultation on the Relationship Between Human Rights and Obligations and Environmental Protection, with a Focus on Constitutional Environmental Rights, UNEP/HR (2014).

<sup>86</sup> Laville, *supra* note 10.

in the ocean, which is more than the stars in our galaxy.<sup>87</sup> Micro plastics carry more synthetic toxins than the surrounding seawater<sup>88</sup> and are integrated into the food we eat.

For many individuals living in Africa, plastic pollution is a growing concern especially in regard to the right to a healthy environment. The right to a healthy environment can be linked closely to the rights to food and water, both of which are threatened by the growing amount of plastic found in the environment. After all, "all rights are indivisible, interdependent and interrelated".<sup>89</sup> In this paper, I argue that plastic pollution violates Article 24 of the African Charter, which stipulates a healthy environment as a human right.

Plastic pollution is a human rights issue because it enhances inequality. The effects of climate change on human beings can be demonstrated through the consequences of plastic pollution. Climate change goes beyond borders; decisions made in the Global North to exploit fossil fuel have an effect on the climate of the Global South.<sup>90</sup> Scholars have labeled it as "ecological segregation"<sup>91</sup> because the Global North is not the region that will be the most severely affected by the effects of climate change (at least for now) and when we are affected, we have the capacity to rebuild. This is not the case in the Global South. The same can be said for plastic pollution. In the Global North, there is proper waste management, potable tap water and initiatives that work to clean up coastlines. Individuals can also make the choice not to eat fish or seafood if they do not want to consume micro plastics.

The African continent does not benefit from the same amenities. Most citizens do not have proper drinking water, recycling and waste management is ineffective and many cannot specifically choose what they can or cannot eat, as there is less variety in food choices. If the average Senegalese or Gambian

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<sup>87</sup> "Turn the tide on plastic urges UN, as microplastics in the seas now outnumber stars in our galaxy" (23 February 2017), online: UN News, <https://news.un.org/en/story/2017/02/552052-turn-tide-plastic-urges-un-microplastics-seas-now-outnumber-stars-our-galaxy#.WLA81BLyBJ>

<sup>88</sup> "Plastic is a Human Rights Issue" (May 3 2016) at 3:52s, online (video): Youtube <<https://www.youtube.com/watch?v=TGRjnBOHd0>>.

<sup>89</sup> Mzikenge Chirwa, *supra* note 40 at 190.

<sup>90</sup> Gonzalez, *supra* note 11 at p 5.

<sup>91</sup> *Ibid* at 3.



decides to stop eating fish, they do not have any viable option other than rice to nourish themselves. The right to a healthy environment is violated in West Africa, as citizens cannot benefit from an environment without plastic. Just like climate change, marginalized groups are more impacted by the effects of plastic pollution.<sup>92</sup> Additionally, what I witnessed during the summer is only a fraction of how plastic waste adversely affects the environment.

The biggest perpetrators are non-state actors. There is no easy mechanism available to sanction them.<sup>93</sup> This is a global problem given that it is difficult to hold countries responsible for plastic pollution as the pollution on its beaches may not be necessarily produced by them, due to oceanic tides and the volatile nature of plastic making it so easy to move through the ocean.<sup>94</sup> The international aspect of this problem makes it important to see it as a collective issue. Article 16 of the African Charter states that “every individual shall have the right to enjoy the best attainable state of physical and mental health”.<sup>95</sup> Many factors can influence physical and mental health and a healthy environment, from the air to the ocean, is necessary to such health.

## Beyond the Legal Framework

### *The Limits to the African Charter and Constitutional Rights*

Plastic pollution is a violation to the right to a healthy environment under the African Charter. This is noteworthy, as national legislation on the right to a healthy environment does not refer to plastic pollution. The current legal framework is not enough given contemporary environmental challenges, which are increasing, and which go beyond borders.<sup>96</sup> The African Charter spreads Pan-African norms of human rights across the continent but this is not enough to produce an attitudinal shift. Laws and

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<sup>92</sup> Byrne, *supra* note 28.

<sup>93</sup> Boyd, *supra* note 53 at 9.

<sup>94</sup> Ritchie, *supra* note 4.

<sup>95</sup> *African Charter on Human and People's Rights*, 27 June 1981 (entered into force 21 October 1986) [ACHPR 1981], art 16.

<sup>96</sup> Willem Daniel Lubbe, “We need a new convention to protect Africa’s environment”, online: *The Conversation* <https://theconversation.com/we-need-a-new-convention-to-protect-africas-environment-40648>.

constitutions shape the values of a society, but the law moves slowly, and citizens can no longer be idle. The current legal framework cannot sustain the environmental challenges of today and neither can the concept of state sovereignty, which dates back to colonial times in Africa.<sup>97</sup>

If the right to a healthy environment is impacted by plastic pollution, it cannot only be resolved through constitutional and charter rights. The violation of the right to a healthy environment is not an easy problem to solve. It is tricky to prosecute. There is no clear culprit. Human rights violations usually represent atrocities committed during a specific period of time, allowing for complaints to be brought to court, for example following the Rwandan genocide or during the Nuremberg trials. Harming the environment does not stop at a specific moment in time, like when it is brought to court. There is more than one perpetrator, many of whom are non-state actors.<sup>98</sup> A violation of the human right to a healthy environment cannot only be solved through the courts.

#### *Government Initiatives*

Government action beyond the constitution is an effective way for society to notice change. Each country varies in its consumption of plastic and each country takes different steps to reduce its plastic consumption. In recent years, there has been a wave of government initiatives taken to reduce the use of plastic bags. The average Dane uses four plastic bags a year and the average American uses roughly one per day<sup>99</sup>: this proves policies differ. African countries have acted on this issue. South Africa, Tanzania, Morocco, Ghana and Eritrea have implemented partial or complete bans on single-use plastic bags.<sup>100</sup> Kenya has been credited with the "world's most drastic plastic bag ban"<sup>101</sup> "with fines of 41 000\$ brought to anyone who produces, sells, or

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<sup>97</sup> *Ibid.*

<sup>98</sup> Johannesburg, *supra* note 84 at 10.

<sup>99</sup> Laura Parker, *supra* note 6.

<sup>100</sup> "Africa is on the right path to eradicate plastics" (30 July 2018), online: UN Environment <https://www.unenvironment.org/news-and-stories/story/africa-right-path-eradicate-plastics>.

<sup>101</sup> Jonathan Watts, "Eight months on, is the world's most drastic plastic bag ban working?" (25 April 2018), online The Guardian <https://www.theguardian.com/world/2018/apr/25/nairobi-clean-up-highs-lows-kenyas-plastic-bag-ban>.

carries a plastic bag. In June 2018, Benin, Côte d'Ivoire and Nigeria signed a pledge to eliminate plastic from their ecosystems.<sup>102</sup> As the President of the UN General Assembly stated, "be it a tax on plastic bags or a ban on micro beads in cosmetics, each country can do their bit to maintain the integrity of life in the ocean".<sup>103</sup>

The banning of plastic bags is indeed a positive step forward, but there must be a greater focus on waste management on the African continent.<sup>104</sup> Countries that have passed bills to ban plastic bags need to further align themselves with the Sustainable Development Goals (SDG) of the United Nations. Taking action towards achieving the SDG Goal 6 to Clean Water and Sanitation<sup>105</sup>, would directly impact the reduction of plastic water bottles use. Not only would this reduce plastic pollution, it would also promote both the right to a healthy environment and the right to water.

#### *Companies Need to Act*

The 1970s condemnation of environmental degradation was a response to the inadequacy of state responses to ensuring a healthy environment.<sup>106</sup> The world must now deal with the inadequacy and the lack of response of non-state actors who are the biggest culprits in plastic production. It may be difficult to hold them accountable in a court of law, but these actors must do their part to help solve the problem.

It is far too easy to blame the consumers. The real blame goes to the companies with power and money who make it so accessible for consumers to purchase plastic in large quantities. The major brands that contribute to plastic bottle pollution, Coca-Cola, Pepsi and Nestle, have to stop over-packaging their products.<sup>107</sup> Dasani, the water bottle branch of Coca-Cola

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<sup>102</sup> *Supra* note 100.

<sup>103</sup> UN News, *supra* note 87.

<sup>104</sup> Watts, *supra* note 101.

<sup>105</sup> "Sustainable Development Goal 6 : Ensure availability and sustainable management of water and sanitation for all", online : <https://sustainabledevelopment.un.org/sdg6>.

<sup>106</sup> Boyd, *supra* note 53 at 3.

<sup>107</sup> Laura Parker, "Beach Study Clean-up Study Show Global Scope of Plastic Pollution" (10 October 2018), online: *National Geographic*

produces 1280 billion bottles of soft drinks a year alone.<sup>108</sup> So why do they not make their bottles from recycled plastic? Bottles made of recycled plastic are not as clear and shiny<sup>109</sup>, making them less aesthetically pleasing to the consumer. In a globalized world where companies have as much if not more power than countries, it is difficult to hold these perpetrators accountable.

The six wealthiest plastic producing companies only use 6.6.% of recycled PET in their products<sup>110</sup> even though making bottles out of recycled plastic would use 75% less energy according to the British Plastics Federation. The industry is trying to resist taxes on single use plastic to reduce the demand for plastic bottles because they do not want to impact profit. It is important to figure out how to hold them accountable. It is still very difficult to do. Despite the growing field of business and human rights law,<sup>111</sup> and corporate accountability, companies still cannot be held accountable in the same way as states.

International organizations such as Greenpeace have launched campaigns to reduce plastic consumption such as *Break Free From Plastic*. Some major brands such as Coca-Cola have even partnered with conservancy groups to organize annual beach cleanups<sup>112</sup> to fulfill their corporate social responsibilities. DELL computers have pledged to use recovered ocean plastic in their product packaging<sup>113</sup> and have helped to launch Next Wave, a movement to raise awareness and reduce plastic pollution with other large companies such as Hewlett-Packard, Herman Miller and General Motors.<sup>114</sup> Despite these actions, acting in favor of sustainability and the environment in a purely capitalist framework is not the most desired course of action. In a perfect world, companies would act out of good will to help make the world a better place. While this may not yet have been achieved and while there exists a great deal of criticism around

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<https://www.nationalgeographic.com/environment/2018/10/greenpeace-beach-cleanup-report-highlights-ocean-plastic-problem/>.

<sup>108</sup> *Ibid.*

<sup>109</sup> Laville, *supra* note 10.

<sup>110</sup> *Ibid.*

<sup>111</sup> Johannesburg, *supra* note 84 at 10.

<sup>112</sup> Parker, *supra* note 106.

<sup>113</sup> UN News, *supra* note 87.

<sup>114</sup> "Keeping Plastics in the Economy and Out Of Our Ocean", online: Next Wave <<https://www.nextwaveplastics.org>>.

such initiatives, the progress thus far must nevertheless be recognized.

### *The Power of Innovation*

Plastic pollution is a huge problem, but it is an easier problem to solve than climate change.<sup>115</sup> While many may not be acting on this problem, many know it exists, and that solutions also exist.<sup>116</sup> Movements across the world are encouraging individuals to deal with the root cause, which is to use less single use plastic and nurture a more sustainable way of life.<sup>117</sup> While individuals may not stop buying plastic completely, it is important to use creativity and innovation in order to encourage them to use less plastic.

In the small village of Yalwa in Nigeria, locals have embraced bottle brick technology<sup>118</sup> where plastic bottles are packed with sand and bound together with mud to build houses. To build one house requires 7800 plastic bottles. Not only is the technology cost-effective and eco-friendly. In fact, the houses are about 20 times stronger and more durable than houses constructed of regular bricks in the region because the compacted sand insulates from the sun and makes the houses bullet proof.<sup>119</sup> A similar initiative was started in Tanzania where young people made mattresses from collected plastic bags.<sup>120</sup>

In Cape Town, efforts are made to reduce plastic pollution with Petco, a company that uses plastic bottles to turn plastic into fiberfill duvet, trays, geotextiles and new bottles.<sup>121</sup> They give workshops and training courses on plastic reduction and have recycled over 90 000 tones of plastic bottles since its opening. By only recycling bottles without educating the population, chances

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<sup>115</sup> Laura Parker, "We Made Plastic. We Depend on It. Now We're Drowning In It", online: *National Geographic* <<https://www.nationalgeographic.com/magazine/2018/06/plastic-planet-waste-pollution-trash-crisis/>>.

<sup>116</sup> *Ibid.*

<sup>117</sup> Bullock, *supra* note 18.

<sup>118</sup> Sam Olukoya, "Nigeria's plastic bottle house" (9 November 2011), online: *BBC* <<https://www.bbc.com/news/world-africa-14722179>>.

<sup>119</sup> *Ibid.*

<sup>120</sup> UN Environment, *supra* note 100.

<sup>121</sup> "Petco: PET Plastic Recycling South Africa", online: *PETCO* <http://petco.co.za>.

are there would not be as much progress as there has been. With education comes awareness and further action. Even if people do not act, they are aware of the issue. The seeds of change are planted through innovation and education.

The existence of local cleanup projects on beaches across the globe has come with a great amount of criticism<sup>122</sup> because cleanups do not address the issue of micro plastics.<sup>123</sup> Criticisms include that cleanups are not feasible given the sheer volume of plastic in the ocean. However, cleanups are not a waste of time. Individuals will spend a day cleaning up their favorite beaches and will begin to understand the extent to which plastic pollution impacts the world. More cleanup initiatives mean more individuals will understand the impacts of plastic on the environment, allowing them to feel empowered by knowing they are taking small steps to make their home cleaner and more hospitable.

These initiatives may seem too small scale for the size of the problem but that is not the right way to look at it. Change happens over time and it starts with one step, one person, one organization, one country and it grows. More can always be achieved, but it is wasted time to only focus on what is not being accomplished Plastic pollution in Africa is not a problem going away any time soon but that does not mean the world must sit back and remain idle.

## Conclusion

Plastic pollution is a human rights violation in areas where marginalized groups are targeted the most. Plastic pollution needs to be seen as a violation to the African Charter's human right to a healthy environment if the issue will be taken seriously. If we fail to see corporations as perpetrators of human rights violation, we will remain stuck in our countries doing what we can to fight while knowing that we cannot fight what goes beyond borders. We live in a world where we believe that optimism is choice and pessimism is a norm and that is probably why substantive change is not happening as quickly as we would like it to. To believe in the existence of solutions is not naïve; it is forward-looking. Law moves

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<sup>122</sup> Parker, *supra* note 106.

<sup>123</sup> Bullock, *supra* note 18.

slowly as does changes in habit and production but that not does not mean change is impossible. The fact that a right to a healthy environment is flourishing in constitutions all over the continent is proof that a change in the law reflects a change in values. Are there enough enforcement mechanisms? No. Do a lot of countries and people still do not realize the problem exists? Yes. Does that mean we must give up? Of course not. Right or not right to healthy environment, plastic pollution is a global problem and a global problem needs a global response. Acknowledging plastic pollution as infringing the right to a healthy environment means we are acknowledging the problem, and now we must take more steps to try and fix it. Solutions lie in education, better waste management, better use of recycled material and holding companies accountable for their harmful actions.

Accepting plastic pollution as a problem does not equal defeat. In the same way that the world is trying to adapt to the effects of climate change, looking forward with optimism and hope is the only way to solve such complex problems. Mitigation and adaptation are not mutually exclusive<sup>124</sup>; they work better together.

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<sup>124</sup> Laura Parker, "Bill Gates Launches Effort to Help the World Adapt to Climate Change" (16 October 2018), online: *National Geographic* < <https://www.nationalgeographic.com/environment/2018/10/bill-gates-world-bank-launch-climate-change-adaptation-fund/> >.

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