

Chapter Six

AN ECO-PHILOSOPHICAL DISCOURSE ON THE AFRICAN CHARTER'S RIGHT TO A GENERAL SATISFACTORY ENVIRONMENT AND SOCIO- ECONOMIC DEVELOPMENT

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Executive Summary

The African environment is plagued by myriads of socio-economic problems. These problems include environmental racism, extinction of endangered species, resource wars, poor leadership, corruption and embezzlement of public fund, desertification, deforestation, oil spillage, pollution of the atmosphere, climate change, etc. Though the African charter was proclaimed in 1981, more than 30 years ago, the environmental crisis has become intensified and so the message of the charter is more vital than ever. This paper argues that Africa's future is dependent on a safe and healthy environment. The paper uses the method of critical appraisal to examine the meaning of this right to a general satisfactory environment, as enunciated in article 24 of the African Charter. This examination is done in the light of the socio-economic developmental challenges facing the continent. The paper finds and concludes that this is an innovative right proposed by the African Charter, and that the right should not only be human centered but eco-centric. It concludes that this right is necessary for African's present and future generations.

Keywords: Africa, Environment, Rights, Charter, Development, Eco-Philosophy

Introduction

The African continent is plagued by myriads of socio-economic, political, and environment problems. Among the problems and ills that the continent faces are inept and corrupt leadership, youth restiveness, massive unemployment, wars and conflicts over natural resources, electoral fraud, ethnicism, desertification, deforestation, famine, drought, scarcity of healthy drinkable water, atmospheric pollution from extractive activities and gas flaring, and dumping of toxic waste in the oceans. Coupled with these is that the ravages and effects of colonialism, slavery, apartheid, tribal wars, human sacrifices, superstitious beliefs, and the misuse of magic by some are still present in the continent. All these have bedevilled and hampered Africa's social progress and economic development.

Africa is still massively underdeveloped in terms of social infrastructures and scientific-technological amenities needed to build a higher form of civilisation. This underdevelopment is not to be blamed on colonialism which ended many decades ago. Rather attention should be focused on how Africans have continued to underdevelop the continent through bad leadership, embezzlement of public fund, and wars and conflicts. The continent has also experienced underdevelopment through the practices of its own people who care little or nothing about the health and wellbeing of the geographical and ecosystemic environment. African rivers and oceans are inundated with domestic and industrial waste from individuals and factories. African wildlife are hunted and killed year in and year out and illegally exported to the western world. What western oil companies and other mining ventures will do and they will be brought to book in western countries, is perpetuated

by the same western companies in Africa and they get away with it. The recent oil spill in the Gulf of Mexico has caused BP millions of dollars in lawsuits. For all the oil spillage and gas flaring that has taken place in the African continent, very little has been paid in terms of damages and remediation efforts by western companies.

This paper argues that if Africa is to experience rapid and overwhelming socio-economic development it is imperative that its leaders and peoples build and sustain a healthy environment that will promote that development. There is no doubt that African leaders are aware of this and this is why they proclaimed the right to a general satisfactory environment in the African charter. In that charter the Organization of African Unity (OAU) which has transformed into the African Union proclaimed: "All peoples shall have the right to a general satisfactory environment favourable to their development" (art. 24). What is the meaning of this right? What is the significance of this right? What is the relationship of this right to development? These and many other questions this paper will tackle from an ecophilosophical perspective. The paper adopts the method of critical analysis in examining these issues. With this in mind, it is necessary to continue by making some conceptual clarifications and analysis. It is also important to note here that this is not a historical or sociological investigation, and so the background and history of the African Charter will not be examined. The concern here is to do a critical appraisal and analysis of article 24 of the Charter.

Conceptual Clarifications

The African Charter on Human and Peoples' Rights of the Organization of African Unity (OAU) is the human right instrument enunciated by African leaders to state the rights and duties of people of the African continent and the obligations of

states to ensure and fulfil these rights. It was adopted at Nairobi in Kenya on 26th June 1981 and came into force on 21st October 1986. It was proclaimed based on the values and authentic traditional principles rooted in African civilizations. It aims at eradicating all forms of colonialism, discriminations, and social ills from Africa and foster the freedoms and rights of African peoples.

The African Charter is concerned with human rights of individuals and African peoples. The question then is- what is a right? Dowrick (8-9) defines human rights as: "those claims made by men, for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as human being, a member of humankind." For Eze (5) "human rights represents demand or claims which individuals or groups make on society, some of which are protected by law and have become part of *Lex Lata* while others remain aspirations to be attained in the future." Udu cites the Nigerian Supreme Court that defines human rights as:

Human right is a right which stands above the ordinary laws of the land and which is in fact antecedent of the political society itself. It is a primary condition to a civilized existence, and what has been done by our constitution since independence is to have these rights enshrined in the constitution so that the right could be 'immutable' to the extent of the non immutability' of the constitution itself (5).

A right is a fundamental entitlement or benefit that accrues to an individual or a group as a result of the humanity inherent in that person or in the corporate group. Human rights have developed and evolved but essentially they are not given by government. They are discovered and recognized by government and other legal authorities. The reality of the argument for environmental rights of the natural world in contemporary times can invalidate

the above definition. This will not be the place to enter into that debate but paper recognizes and is open to the expansion and progressive understanding of rights.

The African charter, speaks of a right to a general satisfactory environment. Asthana and Asthana (3) are on target to note that:

Everything which surrounds us may collectively be termed as environment. The air which we breathe, the soil on which we stand, water, living and non-living things around. The environment has shaped our lives since time immemorial. It is from the environment that we get food to eat, water to drink, air to breathe and all necessities of day to day life, environment around us constitutes a life support system.

A general satisfactory environment is one that supports life and enables life to flourish. Life here is not just human life but all elements in the ecosystems.

For the African Charter such an environment that is healthy and supports life, and is conducive to human flourishing is good for socio-economic development. A limitation of the African Charter is that its understanding of a general satisfactory environment is casted in the framework of development. Igwe (44) sees economic development as:

Improvement in the standard of living of a given society or country evident in improved literacy, high life expectancy, low poverty and unemployment rates among other indicators typifying especially good standard of living deriving especially from the way and manner goods and services are produced.

Development is a concept that is debated and discussed in all human disciplines including the humanities, social sciences and natural sciences. There is no one meaning of development, but it is proper to give a holistic meaning to the term development. Development can be in various facets of life such as human, economic, social, political, cultural, spiritual, religious, and psychological. The following viewpoint of Onunwa (24) is helpful in development, "which is a complex and multi-dimensional phenomenon, embraces more than mere institutional progress. Some people have for long used institutional progress as the empirical and objective standard of measuring growth, well being and success." Furthermore he writes that: It involves elevation of the entire social system. This implies that development incorporates a feature in which an entire community is involved including the ways they do their things and the environment in which they operate (Onunwa 24). In arguing and discussing what development should involve Onunwa avers in detail that:

It means on one hand, that such elevation in the social system is for the well being of man and the improvement of his environs. In many cases, development has been understood to be synonymous with industrialisation, urbanisation and modernisation as we see them today in many countries. These are quite good if they serve the physical, moral and intellectual as well as spiritual well being of humans in society, but would mean nothing if they create a situation where humanity is crushed in the wheel of individual or group manipulation and tyranny. Technological progress means nothing if it is turned into an industry for production of implements that would lead to mass destruction of life and property in a world where hunger and disease threaten a sizeable percentage of human population. But if it is used to produce implements that can improve life expectancy, food, shelter and health

care, then technology is a mark of human and social development. Thus development understood in this sense should not be turned into an instrument of destruction of the world and human life in it (24).

Regarding the issue of development, the debate has been on whether it should be at the expense of the beautiful natural environment. Is there no ethical limit to economic development and growth? As argued by Ukpak from the late 1960s humankind began to recognize that the reservoir of land, air, and water and other natural resources are not infinite for they could be imperilled by pollution and degradation (23). Various United Nations Conferences such as the one in Brundtland, Rio, and others have extensively discussed the relationship between development and the environment. Development should not be at the expense of the natural world. The dialogue on the relationship between the environment and development, especially the fact that development very often destroys the environment as noted in Rachel Carson's *Silent Spring*, the writings of Holmes Rolston III and many others precipitated the rise of environmental philosophy and ethics in the late 1960s. It is from this vantage point that this paper pursues an ecophilosophical perspective.

By ecophilosophical perspective this paper implies it is a philosophical work from an ecological ethical perspective. Srivastava is right to note that:

Environment ethics is the discipline that studies the moral relationship of human beings to, and also the value and moral status of, the environment and its non-human contents. It all depends on how do we think and act. Environmental ethics or environmental philosophy considers the relationship between human beings and the

natural environment. It exerts influence on a large range of disciplines including law, sociology, theology, economics and geography. There are many ethical decisions that human beings make with respect to the environment (263).

The paper argues that in reflecting on the right to development, it is important to keep the wellbeing of other life forms in mind. Here it is important to look at two ways of looking at the environment-ecocentrism and anthropocentrism. In discussing the issue of the human right to socio-economic development, the wellbeing of other life forms ought not to be neglected.

Interpreting the Right to a General Satisfactory Environment

It is unique and innovative that the African Charter names forthrightly a general satisfactory environment as a human right. What could a general satisfactory environment mean? The Charter never defines what a general satisfactory environment could mean. Even though the charter never defines what this right could mean, it could be affirmed that the meaning of this right is implied in the rest of the Charter. The insights from this section are paraphrased from that Charter. As should be realized, the term environment does not only mean the natural world or nature, it includes the built environment, the social environment, the economic environment, and the geo-cultural environment. You can also speak of the business environment, the educational environment and many other forms of environment. It is all that surrounds the human person who is the center of development that is implied in this article, all that affects human wellbeing and the issues of development. It is important to note that the Charter speaks of a general satisfactory environment. The word general is significant in defining this right. It could imply that on the whole the environment enhances human development or all aspects of the

environment are at stake here, not simply the natural environment or social environment.

This being the case, a general satisfactory environment includes one in which people enjoy their rights and freedoms without discrimination either on the basis of colour, sex, language, political, national, social or other affiliations. An environment in which you are deprived of the exercise of your human rights and freedoms is not a general satisfactory environment. In a general satisfactory environment, individuals are equal before the law and equal protection before the law. They have a right to private property and the right to work and equitable remuneration. They are entitled to access to physical and mental health. In such an environment, there is a right to education and participation in the cultural life of their community. It is important here to state that the African Charter is Afrocentric as it highlights the "promotion and protection of morals and traditional values" of African societies. By implication a general satisfactory environment is one in which African moral values are preserved and transmitted to future generations.

The environment that the African Charter envisions is one in which the family the custodian of morals and traditional values is assisted by the state to perform her duties of transmission of moral values. In such families and in society in general, discrimination against women is to be eradicated. In a general satisfactory environment people have a right to existence and a right to break out of oppression. Peoples have a right to use and dispose of their wealth and natural resources as they desire. The Charter furthermore speaks of the fact that "all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" (art.22). It is

interesting to note that the African union defines the right to a general satisfactory environment in the light of development. It does not define the right to a general satisfactory environment on its own ground. It is to enhance and support development that this right is given and enunciated. In this sense the right is not ecocentric but humano-centric. Infact, the situations and circumstances in which people are able to freely exercise their right to economic, social, and cultural progress is what a general satisfactory environment is. In such an environment people have a right to national, international peace and security.

While a general satisfactory environment includes a healthy natural environment that enhances social and economic, and development, the Charter fails to foreground and bring to the front the natural environment as a priority in itself. A general satisfactory environment should be sought not simply for the sake of human persons but for the entire ecosystems. The African Charter defines and conditions the right to a general satisfactory environment as one favourable to development of peoples. The concern of the Charter is peoples not the environment in itself. This is not to deny that the framers of the Charter have no place for the natural environment. Precisely the article by speaking of a general satisfactory environment included the natural environment. A general satisfactory environment includes one in which the natural environment is a healthy and peaceful one. The natural environment is free from pollution and waste. The environment is protected against deforestation, desertification, soil erosion, and biodiversity endangerment.

The framers of the Charter did not only see a general satisfactory environment as that in which peoples are entitled to their freedoms and rights. In a general satisfactory environment, peoples and states have duties. Individuals have duties to themselves, their families, society, state, communities and the

international community. Individuals have duties to enhance collective security, morality and common interests. The framers of the Charter insist individuals have a duty to regard others with mutual respect and tolerance. Individuals are to work for harmonious development and are to use their talents and abilities at the service of the human community. They are to use the exact words of the framers:

To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity" (art. 29).

Amechi (60) has argued that some commentators see article 24 as giving preference to economic development over environmental wellbeing. The implications are that the right to a healthy environment can only be invoked if it does not infringe on economic development. Amechi notes further that:

However, the right as provided under the Banjul charter is linked to development. Such linkage has been interpreted by some commentators as giving economic developmental measures in the event of conflict between two and thus, the provision of article 24 of the charter can only be invoked where it will not infringe the requirements of socio-economic development (60).

The imprecision of the term, 'general satisfactory environment,' according to Amechi (64) leaves to supervisory institutions and courts in each state to give a concrete meaning to this human right. Amechi cites directly Dinah Shelton who avers that:

Establishing the content of a right through reference to independent and variable standards is used in human rights, especially with regard to economic entitlements. Rights to an adequate standard of living and to social security are implemented in varying measures by individual states based on general treaty provisions, according to changing economic indicators, needs, and resources. No precise standard exists, nor can such a standard be established in human rights treaties. Instead, the conventions state rights to 'adequate' living conditions for health and well-being and to social security without defining the term further. The 'framework' treaty allows national and local regulations to elaborate on these rights, since norms are easier to define and amend on the local level and are more responsive to the needs of the community. A similar approach should be utilized to give meaning to a right to environment (64).

Amechi further argues that the interpretation of the right is left to supervisory institutions and courts as revealed in the decision of the African Commission in the SEREC communication. He states that this communication came from an issue brought against the Federal Republic of Nigeria which was accused it of violating article 24. It became an opportunity for the African Commission to state the implications of the right. Amechi cites the African Commission thus:

[R]equires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and secure an ecologically sustainable development and use of natural resources.... Government compliance with the spirit of Article 24... must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact

studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous material and activities, and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities (65).

By this is the full meaning of the right closed or defined? Amechi (65) is of the opinion that the decision of the African Commission gave clarity to the right, but it “did not entirely exhaust the question of the substantive content of the right as the African Commission failed to pronounce itself on the core content and minimum obligation of Article 24 of the Charter .”

The Charter privileges national constitutions interpretation of this right. This is a fundamental weakness of this article. States can interpret it as they will thereby limiting the import and impact of the right on totally ending all pollutions and other wastes that degrade the environment. It is the view of this paper that development is privileged over naturalistic environmental wellbeing which does not augur well for total environmental flourishing.

The Imperative of the Right to Socio-economic Development

The African Charter speaks of a right to socio-economic development. Article 22 the Charter propounds that: “All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.” As stated already, the general satisfactory environment that article 24 speaks of being aimed at development. Here again development is not defined. But it could be inferred that all the

human rights and freedoms enunciated in the Charter are all aspects of development. When peoples' lives and existence are guaranteed, they make use of their wealth and natural resources, they enjoy peace and security, they live by the moral and authentic traditional values of their communities; they are to a certain degree experiencing development.

The United Nations General Assembly Declaration on the Right to Development helps to further understand what is involved in the term development. Development involves ending all forms of discrimination, violations of human rights and the elimination of wars. It involves the right to self-determination, sovereignty of peoples over their natural wealth and resources. The Declaration states that:

All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development (art. 2).

The right to development is framed in the paradigm of rights. But it is clear that human wellbeing and improvement and complete fulfilment of the human person is at the heart of development. Complete fulfilment and wellbeing could be variously defined based on cultures and communities. Yet it is important to state that the minimum is what is required in international human rights instruments.

Conclusion

From the African Charter and other human rights instruments, it is clear that there is a right to a healthy environment and a right

to socio-economic development. It is also a fact that in many quarters the right to development is trumped over the right to a healthy environment. Maathai (239) rightly notes that:

Achieving each of the eight MDGs depends heavily on healthy ecosystems; but this fact is often overlooked, and the seventh MDG has not received as much attention as the others. In my view, it is the most important, and all of the other goals should be organized around it. What happens to the ecosystems affects everything else.

Maathai (240-243) relates that mountains' ecosystems that are degraded in Kenya affects lives in Kenya, agriculture that is watered by rain is affected by deforestation, and deforestation exacerbates the struggles of people for survival. On the question of the relationship between environment and development, she writes that: "I am often asked whether a trade-off is required between the environment and development. I always say no. We need and must have both; what is important is a good balance between the two. Africa is still rich in natural resources that can be used sustainably and equitably for the benefits of her peoples."

Ecocentrists have argued that the environment ought to be preserved not simply for the sake of human persons or their development but for the entire ecological systems. A foremost representative is Rolston Holmes III, the father of environmental ethics as an academic discipline. This paper agrees with Holmes that not only the human interest should be taken into consideration in determining ethics, issues of development, and business decisions. To condition the right to a general satisfactory environment to development is problematic. Human development whether in terms of social, cultural, and economic development should be placed within ethical restraints and

limits. There are limits to economic growth. Economic growth that damages the environment even on a minimal level could have serious implications for today and future generations.

In the light of the environmental challenges that are besetting the African continent, perhaps it is time to redefine the African Charter especially the right to a general satisfactory environment in ecocentric paradigm. If this can be done, it will greatly help to build a better future and protect the rights of future generations to a healthy and peaceful environment.

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