

Implementation of Biological Diversity Conservation Treaties in China: Focus on the Convention on Biological Diversity and the Ramsar Convention

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ABSTRACT

Biological Diversity, among its very diverse advantages has been pointed out as key for achieving environmental sustainability. It has however been noted that biological diversity across the globe is being depleted. The international community responded by developing several international treaties for biological diversity conservation, including the Convention on Biological Diversity (CBD) and the Ramsar Convention. China is very rich in biological diversity and is party to the Conventions. In addition, China has in place several laws as well as protected areas to ensure the conservation of biological diversity. This notwithstanding, China still faces biological diversity depletion. This has been attributed to among other factors, over

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population and industrialization. This article therefore seeks to critically analyze the efficacy of the CBD and Ramsar Conventions in ensuring Biological Diversity Conservation. The paper further analyses the extent to which China has achieved its obligations under the conventions. The paper concludes that the treaties, whereas a very good development, have some weakness. In addition, whereas China has done well in meeting its obligations under the treaties, it still faces some challenges. The article among others recommends that China should embrace public participation in ensuring biological diversity conservation. In achieving its objectives, the article adopts the doctrinal method of research.

Keywords: *Biological diversity, Conservation, CBD, Ramsar Convention, Protected areas, China.*

1. Introduction

Biological diversity is defined as, “the variability among living organisms from all sources including, among others, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems” (Article 2, Convention on Biodiversity (CBD), 1760UNTS 79; 31 ILM 818 (1992)). Biodiversity and its conservation has very many advantages and is key in attaining the sustainable development goals. It contributes to poverty reduction and to sustaining human livelihoods and well-being through, for example, underpinning food security and human health, providing clean air and water, and supporting economic development (UNEP, 2007).

Protected areas have been employed as a worldwide strategy for biodiversity conservation in all aspects for example diverse ‘species, genes, and ecosystems.’ Countries across the globe, especially developing countries have made improvements in expanding protected areas since the 1960s. This has largely been through legal provisions. Today, there are over 200,000 protected areas ‘covering about 12.7% of the world land mass’. This is in comparison to about 1.5% in the 1960s. This notwithstanding, biodiversity is continuously being

depleted. Marine and coastal biodiversity have been noted to even be more threatened (Lausche & Burhenne-Guilmin, 2013).

Biodiversity, specifically protected areas have been noted to be very stressed out as a result of poor management, pollution, population growth, economic development e.g. mineral extraction, human activity like deforestation and climate change, among others (Lausche & Burhenne-Guilmin, 2013). The global vertebrate population was noted to have decreased by 52% between 1972 and 2010, tropical and temperature species reduced by 56 and 36% respectively and the fresh water ecosystem decreased by 76% (Gaodi, 2015). With the increasing biodiversity depletion, it might become extinct, if proper care is not taken (Lausche & Burhenne-Guilmin, 2013). Given the importance of biological diversity and evidence of its ongoing decline it is essential to chart progress in reducing and, as far as possible, reversing the rate of decline (Secretariat of the CBD, 2010b). This trend of events, coupled with the desire to achieve sustainable biological diversity and conservation has become an issue of international concern. This has attracted global concern, hence development of various International legal instruments on biological diversity conservation, including among many others, the Convention on Biological Diversity (CBD) (1992) and the Ramsar Convention on wetlands of International Importance (Ramsar Convention) (1972) (Secretariat of the CBD, 2010b).

The Asia Pacific region and specifically China, has great variety of biological diversity, including animals, plants, forests, water bodies, among others (Zheng & Cao, 2007). China has been hailed as being one of the most biologically diverse areas in the Asia Pacific region and in the world (Zheng & Cao, 2007). Among the 12 most biologically diverse countries of the world, China ranks the 8th (Gaodi et. al, 2015). China is rich in forest cover, grasslands, water bodies as well as plant and animal species. In addition, China boasts of over 30,000 higher plant species, and over 6,347 vertebrate species (Gaodi et. al, 2015). China's biodiversity is however fast being depleted. Foreexample reports and research have revealed that 'China's mammal population

dropped by 50% between 1979 and 2010. In addition, the forest ecosystem mammals have reduced by 78% between 1979 and 2010 (Gaodi et. al, 2015). Moreover, China is estimated to have lost 60-68% of its tree cover and 2, 883 square kilometres of wetlands between 1990 to 2010, most these being ponds/reservoirs and marshes. This has been attributed to several factors which include but are not limited to:

Over-population, economic growth, urbanization, industrialization hence pollution and land degradation (Zheng and Cao, 2007). This status quo is so, despite the fact that China has made effort, in ensuring that the challenge of biodiversity loss is curbed (Lausche, 2013). Among other efforts, China has enacted several laws and policies to ensure biodiversity conservation (Yu and Czarnezki, 2013). In addition, China has built protected areas, has put in place programmes and institutions to ensure and monitor biodiversity conservation and has domesticated international treaties and enacting laws and policies relevant to ensuring conservation of biodiversity (Chen & Zhao, 2019; Jianwei, n.d; Yu and Czarnezki, 2013).

China is a party to the Convention on Biodiversity (CBD) and the Ramsar Convention on wetlands of International Importance (Ramsar Convention). Against this background, this paper seeks to critically analyze the role of international treaties in biodiversity conservation, with specific focus on the CBD and the Ramsar Convention. The paper will specifically aim at analyzing how effectively China has domesticated and implemented the treaties at national level. In achieving these objectives, the paper will employ the doctrinal method of research where laws at the international and domestic levels as well as secondary literature on biodiversity conservation are analyzed. A conclusion is drawn and recommendations are made on how China's situation can best be improved.

2. Critical Analysis of International Legal Framework on Biological Diversity and its Efficacy in Biological Diversity Conservation

2.1. The Convention on Biological Diversity (CBD) (1992)

The Convention on Biological Diversity (CBD) (1760 UNTS 79, 31 ILM 818 (1992) was the first treaty to deal with the issues related to biological diversity in their entirety, at all levels (species, ecosystems and genetic diversity), on a global scale. The CBD has three main objectives which are; biodiversity conservation, sustainable use of its components (species, genetic resources, ecosystems), and fair and equitable sharing of benefits from the use of genetic resources (Article 1) (Puppim de Oliveira & Balaban, 2011). It is the main treaty that identifies protected areas as an important link for achieving its objectives (CBD, article 8 (i)). The recent adoption of the Strategic Plan for Biodiversity (2011–2020) including the Aichi Biodiversity Targets, and acceptance of the Nagoya Protocol on Access and Sharing is an opportunity to develop a concerted global approach to stop and reverse the decline of biological diversity (Armenteras & Finlayson, 2012; European Council, 2001). By adopting the 2010 targets, governments recognise the value of biodiversity. Governments have however largely, not met the Aichi targets (Global Biodiversity outlook 2, 2006).

The CBD recognises the ‘ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic’ importance of biological diversity and recognises that it is being reduced significantly compromised and reduced by human activity (CBD, preamble paragraphs 1 and 6). Recognising that biological diversity conservation is a common concern for human kind, the responsibility to of conserving biological diversity is placed upon states to ensure sustainable use biological resources (CBD, preamble paragraphs 2 and 5). Although preambular, these provisions offer an informative and persuasive element upon countries to ensure conservation. In addition, the CBD recognises and emphasises the need of involving special interest groups like indigenous people and women in conservation, because these groups have been noted to closely deal with the

environment in their day to day lives hence, they possess vital traditional knowledge on conservation (CBD, article 8 (j) and preamble paragraphs 12 and 13; Kabaseke, 2020). The CBD provisions are, however, subject to the domestic legislation of a State, implying that enforcing this provision is subject to State willingness. This makes this provision weak especially seeing as the need for community participation and involvement, especially the involvement of indigenous communities has been emphasised by research and literature (Kabaseke, 2020).

In addition, the CBD places upon States the obligation to develop national strategies, plans or programmes outlining the conservation measures in place, in accordance with the CBD. More so, States are required to incorporate biological diversity conservation and sustainable use into their different ‘cross-sectoral plans, programmes and policies’ (CBD, Article 6). States are further mandated to identify the biological diversity important for conservation and sustainable use especially those that require urgent conservation measures as well those that offer the greatest potential for sustainable use. States are then required to identify the activities which have adverse impact on the conservation and sustainable use of that biological diversity and then organise, monitor and maintain data and activities to ensure that sustainability and conservation is ensured (CBD, article 7).

The CBD further recommends in-situ conservation through the establishment of protected areas, where biological diversity is conserved within their natural habitats and where special measures like specific guidelines and legislation are employed to ensure conservation, especially of endangered species (CBD, article 8, preamble para. 10 and 11). Ex-situ conservation measures, where ‘conservation of components of biological diversity outside their natural habitats’ are recommended as a complement for in-situ measures (CBD, article 9, preamble para. 10 and 11).

States are further required to integrate biodiversity conservation and sustainable use into their national decision making and planning and adopt measures to minimise diverse impact on biological diversity (CBD, article 10). The participation of local populations into biological

diversity conservation is encouraged and where applicable, incentives for purposes of conservation are encouraged. Further, research and training as well as public training and awareness in respect of biological diversity is encouraged (CBD, article 12-13). In addition, States parties are mandated to ensure that Environmental Impact Assessments (EIA) of intended projects on biological diversity are conducted to ensure that biological diversity is not compromised. Further, adoption of the necessary technology for purposes of conservation and preservation of biological diversity is encouraged (CBD, article 16).

The CBD, while it has been noted to be well intentioned has been critiqued for not having been able to curb the significant biodiversity loss (Klein, 2016). CBD obligations have been critiqued for being too general. Implementing nations are still at too much liberty. The CBD uses words like, 'to promote' protection, rehabilitation or recovery, or to 'regulate' or 'manage' processes and activities, the wording gives no real indication of the strength or intended efficacy of the measures exhorted. The lack of direction pertaining to degree of obligation leaves the choice about the level of protection open to the implementer (Wallace, 2015).

Moreover, the CBD is limiting in the extent to which it utilises the principles of precaution, prevention, avoidance which influences the extent of obligation upon contracting parties (Wallace, 2015). Although noting the precautionary principle in its preamble, no binding articles drive precautionary action. As the CBD has developed, the precautionary principle has been applied in a range of additional decisions including marine and coastal biodiversity (CBD preamble para. 8).

Furthermore, the CBD, like many other international environmental instruments, lack implementation mechanisms. It provides that in case of arising disputes, they shall be resolved by negotiation or mediation and arbitration (article 27). Enforcement mechanisms need to be put in place. International Environmental Law (IEL) lacks proper enforcement mechanisms through which to its provisions hence making it ineffective (Kabaseke, 2020). When the law or norms under the law are breached, the sanctions under the law are

weak or nonexistent. As a result, IEL does not usually achieve its intended purpose.

Although alternative/new compliance mechanisms have been and are still being put in place, it has been noted that cooperation and negotiation between states has been encouraged more than following sanctions. Where sanctions and control mechanisms are lacking, laws or rules cannot be enforced (Kabaseke, 2020). This is true for biological diversity conservation under the CBD. The CBD could seek motivation from its Montreal Protocol which provides for sanctions of its non-compliant member for a liable to face penalties like trade sanctions (CBD, article 27). Therefore, whereas the CBD is indeed well intentioned and contains robust provisions for biological diversity conservation, it faces some challenges as outlined about hence poor implementation and hence continued biological diversity depletion.

2.2. The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention) (1971)

The Ramsar Convention, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. It is concerned with the most threatened group of habitats, the wetlands (Matthews, 2006). The Ramsar Convention has played an important role in promoting awareness of wetlands and providing technical support to governments for conservation and management of these ecosystems on a sound ecological basis. Wetland conservation (maintenance and sustainable use) and restoration (recovery of degraded natural wetlands) have been high priorities for many countries (Zongming, 2012).

Article 1 defines "wetlands" as "areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine waters the depth of which at low tide does not exceed six metres" (Ramsar Convention, article 1 (1)). The convention takes an extremely broad approach in its definition. The definition embraces seemingly non

water or wetland resources like ‘mangrove swamps, peat bogs, tidal flats, water meadows, rice paddies, reservoirs, and flooded gravel pits’ (Bowman, 2002: 62). This on the initial look seems confusing. Their inclusion was arguably due to their waterfowl habitat importance, to ensure that other wetland values were not denied and to ensure that developing countries which might not consider waterfowl protection to be of high importance (Bowman, 2002).

In addition, the convention provides that wetlands covered “may incorporate riparian and coastal zones adjacent to the wetlands and islands or bodies of marine water deeper than six meters at low tide lying within the wetlands” (Ramsar Convention, article 2 (1)). As a result of these provisions, the coverage of the convention extends to a wide variety of habitat types including rivers, coastal areas, and even coral reefs (Navid, 1989). There is a general obligation, as noted above, for the contracting parties to include wetland conservation considerations within their national planning. The Convention’s protection, however, is hindered by a lack of strong obligation at the international level and a corresponding lack of rigour in implementation at the national level. The limits of site-based protection are also demonstrated as difficulties in obtaining integrated and consistent protection (Navid, 1989).

Article 3 requires States parties to formulate and implement their planning in order to protect their wetlands, and as far as possible, the wise use of their wetlands. Similarly, article 4 provides that States ‘shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening’ (Ramsar Convention, article 4). These provisions have been critiqued as being too general hence vague and weak (Bowman, 2002). This has led to the enactment of more principles and criteria aimed to conserve and promote the wide use of wetlands, leading to fragmentation. This could probably have been avoided with earlier more careful drafting. Article 5 requires that States parties consult each other regarding their obligations which concern wetlands that extend over the territories of more than contracting party. Some notable collaborations include the management

of the Wadden sea which is shared by Denmark, Germany and the Netherlands as well as the Lake Victoria shared by Uganda, Kenya and Tanzania (Bowman, 2002). The Lake Chad basin is another notable example. The need and guidelines for international cooperation was emphasised by the COP 7 held in 1999, in its resolution VII (19).

In addition, States can learn from each through cooperation. Although cooperation has picked up, not all countries have embraced it and this continues to place shared water courses in compromise. Article 6 establishes a Conference of Parties whose major purpose is to review and promote the implementation of the Convention (COP). The COP has been lauded for close to adequately enhancing the provisions of the Ramsar Convention which have been critiqued for having been very loosely, generally and inadequately drafted for wetland protection especially to protect wetlands in light of the current challenges especially in face of climate change (Bowman, 2002).

Moreover, the value of Ramsar to shift or lessen harmful influences is weakened by its failure to adopt active precautionary and preventive language, and by its employment of the term 'wise use' (Ramsar Resolution IX.1 Annex D, 2002). Balancing development with protection and promoting wise use 'as far as possible' is a potential contributing factor to the failure of some state parties to effectively limit wetland degradation, and failure to achieve this balance is exacerbated by the lack of clear guidance in the implementing legislation and associated policy. In addition, a persuasive 'as far as possible' approach driven by the notion of wise dilutes potency and renders aspects of implementation more fluid (Ramsar Resolution IX.1 Annex D, 2002). Moreover, the Ramsar Convention, just like its CBD counterpart lacks implementation mechanisms which make it much harder to have its provisions implanted especially in light of the State Sovereignty principle (Bowman, 2002).

The Convention has further been critiqued for not containing a requirement for States to furnish reports on their progress and although the need for reporting was agreed upon at the first COP of the Convention, not many States comply (Bowman, 2002). Moreover, implementation of the Ramsar Convention at the national level has been opted to still be a challenge for most governments. The Ramsar

provisions have been described as soft and hence promotion of the need to continually coax governments to adopt the Ramsar provisions and mechanisms outlined therein (Bowman, 2002). It has further been observed that the highest Ramsar priority has been for the State parties to have laws or policies domesticating the Ramsar provisions. It has, however, been observed that less emphasis is placed on how these provisions translate into practice at the domestic level. States parties are also required to continually add to their lists of wetlands. It is however observed that the Ramsar institutions only rely on the information provided by the reports and not much follow up is done hence some countries do not list all their wetlands which continues to compromise wetland protection (Bowman, 2002). Effective institutions and management plans for wetlands at national level have been observed to be lacking in many states. Moreover, there is continued lack of political will and technical capacity on most governments to take care of their wetlands in light of their obligations. It has further been noted that Non-Governmental Organisations take the lead in advancing natural resources protection, which effort may not be enough without government support (Bowman, 2002).

3. Implementation of the CBD and the Ramsar Conventions in China

China is one of the most largely diverse countries with over 30,000 species of higher plants and 6347 species of vertebrates, including numerous endemic species and relict species. China began to manifest an awareness of environmental problems in the early 1970's, during the latter stages of the cultural revolution. China is a monist state and although no express provision exists under the Constitution, in practice, international law takes precedence over domestic law (Keyuan, 2010). Provisions of the international treaties that China has acceded to take precedence over the civil provisions of China's law, if the two provisions are different (Article 142 of the General Principles of the Civil Law of the People's Republic of China, 1989) China signed the CBD at the United Nations Conference on the Environment on June 11, 1992. The CBD was approved on 7th November, 1992; China ratified

the CBD by signing the instrument of ratification on 5th January, 1993. China ratified the Ramsar Convention in 1992 and is also party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which it signed in 1980.

China has been recognised for putting great effort towards implementation on the CBD (Chen and Zhao, 2019). In a bid to implement the CBD, China has established nature reserves (Zheng and Cao, 2007). There are over 500 nature reserves in existence in China (Guangren, n.d). China also practices in situ and ex situ conservation on biodiversity through establishment of botanical gardens. China also has in place an information system on biodiversity and continues to conduct sensitisations and trainings on biodiversity (Chen and Zhao, 2019; Zheng and Cao, 2007). In addition, in a bid to fulfill the requirements of the UN Environment, China has in place the China Biodiversity Conservation Strategy and Action Plan (2011 to 2030) whose major aim is to ensure implementation of the CBD and to strengthen the conservation of biodiversity in China. Further, the plan is to minimise as well ensure ability to face the challenges that come with biodiversity conservations (China Biodiversity Conservation Strategy and Action Plan (2011 to 2030). Further in 2014, China filed its fifth report on the implementation of the Biodiversity Convention in accordance with article 26 of the CBD and in a bid to update the CBD secretariat on the status on biodiversity conservation in China (China's Fifth National Report on the Implementation of the Convention on Biological Diversity (2014).

China has also made tremendous effort in a bid to implement the Ramsar Convention as well. China has the world's fourth largest wetland areas (Zongming et. al., 2012). China's wetlands occupy 65.9 million hectares and account for 10% of the world's wetland areas. China boasts of 41 different types of wetlands outlined under the Ramsar with over 2,276 species of water plants, 1700 wild vertebrae and 271 waterfowl species (Guangren, n.d). China boasts of more than 250 wetland parks, 41 wetlands of international importance, over 18 million hectares of natural wetlands. China has however been estimated to have lost 9.33% of its wetlands between 2004 and 2013 (Government of China, 2014). China has in place several bodies that oversee the

implementation of the Ramsar Convention. They include: The State Forestry Administration which is charge of implementing the Ramsar Convention, the Convention on Wetlands Management Office of P.R. China, the China National Committee for Implementation of the Ramsar, the National Wetland Scientific and Technical Review Panel and the National Review Panel for National Wetland Park among others. China also has in place the Wetland Conservation Subsidy Program and the China National Wetlands Conservation Action Plan 2009 and 2000 respectively among other programs.

While the Chinese government has increasingly recognised the importance of wetland protection, particularly after joining the Ramsar Convention in 1992, natural wetlands in China have suffered great loss and degradation. To address this problem, China has implemented the National Wetland Conservation Program (NWCP), one of the largest of its kind in the world, with ambitious goals, massive investments, and potentially enormous impacts (Boer, 2002). China's wetlands face several challenges including but not limited to pollution, over exploitation, wetland conversion and climate change (Guangren, n.d).

One China's strongest strategies to ensure biodiversity conservation has been through the formation of protected areas. China has been noted to have over 2000 different nature reserves at national, provincial, municipal and county (Yu and Czarnezki, 2013). In a bid to achieve the aims of the protected areas, different tools have been put in place to ensure that the purpose of the nature reserves in met. These tools include, regulations, classification of the reserves at the different levels, ensuring financial support as well as ensuring that the exploitation of natural resources, for example forests is limited.

In addition, China has put in place various other programmes to ensure natural resource conservation. These include but are not limited to; the Sand Control Program, the Forest Industrial Base Development Program, the Nature Reserve Development Program which has greatly contributed to biodiversity conservation, the Forest Conservation Program and the Green for Grain Program whose major objective is to regulate logging and deforestation and promotes afforestation as well promote 'grassland vegetation' as well promote water and soil conservation (Zheng and Cao, 2015).

These programmes have been at the helm of China's environmental conservation efforts and China has been noted to have invested over 600 million RMB in forestry conservation projects. In addition, over 4 billion RMB was spent on the Wetland Conservation Project for the period 2005 to 2010 (Zheng and Cao, 2015). Whereas China's efforts to implement the biological conservation treaties are significant, China has been noted to face numerous challenges. China is a very big country with a very large population (Chen and Zhao, 2019). The largest percentage of this population has been noted to live in the rural areas of China where biological diversity is concentrated, economic development is low and poverty rates are very high (Chen and Zhao, 2019). This means that people are forced to heavily rely on the natural resources like water bodies and forests for their survival. In addition, sensitisation on biodiversity conservation is concentrated in the urban areas as compared to the rural areas (Chen and Zhao, 2019).

In a bid to full fill its international obligations, China has enacted various laws concerning conservation of natural resources and ecological environment. China's biological diversity protection and conservation laws are scattered across different legislation. The Chinese Constitution in Article 9 of the provides that the State ensures rational utilisation of natural resources, conserves rare and endangered species, and prohibits damage to natural resources by any organisations or individuals. Article 26 provides that the State protects and improves the environment, controls pollution, organises and encourages afforestation.

The Criminal Law, revised in 1997, adopted for the first time the provision of damage crime to the environment and resources protection. The Law of the People's Republic of China on the Protection of Wildlife (1989) in article 10 authorises wildlife protection departments to order the stoppage of wild life habitat destruction by individuals. The Regulations on Wild Plants Protection of 1997, in article 11 aims to protect the various species of wild plants from destruction and provides for construction of nature protection reserves.

The Forestry Law of the People's Republic of China of 1985 in article 8 provides for forest conservation and puts in place logging quotas and encourages afforestation by encouraging alternative use of

other forms of fuels. The law also provides for tax levies from coal and paper industries and provides loans to encourage tree planting.

The Grassland Law of the People's Republic of China of 1985 (as amended) (Order of the President of the People's Republic of China No. 82) prohibits reclamation and un-regulated construction in a bid to protect vegetation and rare plant species in grasslands. The Water Law of the People's Republic of China of 2002 (Order of the President of the People's Republic of China No. 82, revised in 2002), in articles 32 and 33 aims to conserve drinking water reserves and water sources. In articles 16, 22, 37, the Law of the People's Republic of China on Water and Soil Conservation of 1991 (Adopted at the 20th Session of the Standing Committee of the 7th National People's Congress on June 29, 1991 and amended at the 18th Session of the Standing Committee of the 11th National People's Congress on December 25, 2010) provides for water and soil conservation practices like afforestation, conservation of vegetation and hillside fields as well as timber management guidelines. Article 20 of the Marine Environmental Protection Law of the People's Republic of China of 1999 (Adopted at the 24th Meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982, revised in 1999) provides for the protection of marine environments which contain historical, scientific and cultural value as well as protection of areas containing rare, endangered or economically valuable marine organisms.

Other laws include the Environmental Protection Law, promulgated in 1979 and revised in 1989 (Order No.22 of the President of the People's Republic of China), the Air Pollution Prevention Law, issued in 1987 and revised in 1995, The Import and Export Animal and Plant Quarantine Law (Lin & Yue, 2014). There is also in place the Regulation on National Wetland Park Management, the Guideline for the Strategic Plan of National Wetland Park, and the Regulation on Assessing the Pilot National Wetland Park of 2010 (Ramsar Convention Secretariat, 2010).

There are many other Laws in respect of the Environmental conservation, in China and as has been noted, China is well endowed with laws aimed to protect its diverse biological diversity, both terrestrial and marine. This is accordance with its international

obligations under the CBD and the Ramsar conventions. Further Still, Australia and China entered into a bi lateral agreement with Australia in order to protect migratory birds (Agreement between Australia and China for the Protection of Migratory Birds 1986), an indicator that buttresses China's commitment to biodiversity conservation. Through legislation, specifically the law on wild life protection and wild plants protection, China puts the control of these species under government control. This way, the species are safeguarded through controlled use (Yu and Czarnezki, 2013). To achieve this, the government uses traditional methods such as permits and licences (Yu and Czarnezki, 2013).

A major challenge China faces with the implementation and enforcement of biodiversity laws at the national level is the fact that China's national laws are meant to be enforced at local governments level yet local governments also have their own their regulations. This makes it difficult for efficiency to be achieved (Zheng and Cao, 2015). The State and Territory or local government are more often than not, likely to appreciate environmental issues from different perspectives. Different decisions can be arrived at different government levels, hence clashes (Yu and Czarnezki, 2013). Local governments have however been noted to lack sufficient funding for conservation management (Yu and Czarnezki, 2013). Even if enforcement is emphasised at local government level, it has been pointed out that China is still facing challenges with public participation (Yu and Czarnezki, 2013). Decision making is still monopolised at State level (Zheng and Cao, 2015). The grassroots community has been noted not to be widely involved in enforcement of legislation and biodiversity management. China needs to engage more in public participation especially since biological diversity is placed within communities.

China's legislation has been noted to lack strong and assertive language. It has been critiqued for being 'vague and unambiguous' and sounding more like policy statements rather than binding legislation (Yu & Czarnezki, 2013). In addition, China lacks institutions specifically and directly responsible for enforcement of environmental legislation (Zheng & Cao, 2015). As a result, some clashes in the line of duty have occurred. A case in point is the management of nature

reserves under the Regulations of the People's Republic of China on Nature Reserves (adopted at the 24th Executive Meeting of the State Council on September 2, 1994, promulgated by Decree No.167 of the State Council of the People's Republic of China on October 9, 1994, and effective as of December 1, 1994). Article 8 of the regulations provides that:

'The state shall practice a system which combines integrated management with separate departmental management for the management of nature reserves. The competent department of environmental protection administration under the State Council is responsible for the integrated management of the nature reserves throughout the country. The competent departments of forestry, agriculture, geology and mineral resources, water conservancy, and marine affairs and other departments concerned are responsible for relevant nature reserves under their jurisdiction. The people's governments of provinces, autonomous regions and municipalities directly under the central government shall decide, according to the specific condition of the locality, on the establishment and the responsibilities of the administrative departments of nature reserves in the people's governments at or above the county level.'

On reading this provision, it is not clear which body or department is in charge of the different nature reserves. The terms 'integrated management' and 'competent department' are indeed ambiguous. It has further been pointed out that the nature reserves are directly managed by many organs including but not limited to the Ministry of Environmental Protection, the State Forestry Administration, and the Minister of Education (Zheng & Cao, 2015). Having several bodies directly responsible for the nature reserves compromises accountability. The other challenge with this kind of arrangement is conflicting goals from the different organs as well as gathering of conflicting information on management of nature reserves (Zheng & Cao, 2015).

Furthermore, in the management of the nature reserves, trainings have been noted to be minimal and substandard, hence poor quality staff (Yu & Czarneski, 2013). In addition, the major objective of the regulations is to strengthen the construction and management of nature

reserves rather than protection of biodiversity. As a result, nature reserves have been destroyed as a result of ecological tourism. The legislation on wetlands faces the same dilemma, the economic rather than the ecological value (Cheng Deng, 2023). Further still, most of the environmental legislation has been noted to lack penal provisions and hence are not deterrent enough to prevent environmental destruction (Yu & Czarnezki, 2013). Moreover, China is still undergoing the ecological civilisation phase, on top of being under the pressure of population growth, rapid economic development and high poverty levels. China has lost 23% of freshwater marshes, 16% of lakes, 15% of rivers and 51% coastal wetlands (Yu & Czarnezki, 2013).

On top of being mostly dated, China's legislation is more focused on economic, rather than ecological value. A case in point is the Wildlife Animal Protection Law on 2004, which, until it was amended, provided for the protection of rare, endangered terrestrial, aquatic wild animals, useful animals or terrestrial wild animals with important economic and scientific research value (adopted at the Fourth Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by Order No. 9 of the President of the People's Republic of China on November 8, 1988, and effective as of March 1, 1989). Thus, the objective of this law was basically economic rather than specie conservation (Wenxuan, 2015). It is not surprising therefore to note that China has had programmes aimed at exploitation of natural resources for the purposes of economic development (Zheng & Cao, 2015). This has continued to compromise the biological diversity of China. Although the law was later amended to cut out the focus on economic value, China had lost a lot of time while focusing on economic benefit.

In addition, it has been noted that officials in government are selected based on how much Gross Domestic Product (GDP) has been accumulated (Zheng & Cao, 2015). This has been noted to compromise proper management of natural resources. Notably, forest cover has been lost due to deforestation which was carried out in order to use the wood fuel for production of steel (Zheng & Cao, 2015). Economic development and specifically urbanisation has continued to take precedence over ecological value. For example, mountain roads have

continued to be constructed in ecologically fragile zones hence compromising the biodiversity in those areas (Zheng & Cao, 2015). Further, the continued need for hydro energy has led to wide scale dam construction which continues to compromise ecological zones especially as a result of flooding. A case in point is the three gorges dam which although has come with benefits like electricity generation and attraction of tourists, has compromised the biodiversity for example fish species which used to flow up and down the river (Zheng & Cao, 2015).

The set of statutes governing the environment in China are loosely related to biological diversity conservation. The statutes include laws, regulations, rules and normative documents. There is no law that is specific to biological diversity yet, and no statute specifically deals with ecosystem conservation yet (Yu, 2015). The existing rules and normative documents have no legal ground for biodiversity conservation. The regulations on Nature Reserves (1994) ((adopted at the 24th Executive Meeting of the State Council on September 2, 1994, promulgated by Decree No.167 of the State Council of the People's Republic of China on October 9, 1994, and effective as of December 1, 1994) are the only relevant statute closest to biological diversity, and their main objective is to strengthen the construction and management of nature reserves and not ecological conservation. Similarly, the Grassland protection law has been critiqued as generally lacking any explicit reference to biological diversity or ecosystem health, despite major threats to these crucial aspects of ecology” (Yu and Czarnezki, 2013). “Chinese natural resources policy can therefore be characterised as management for the sake of productivity” (Yu and Czarnezki, 2013).

Furthermore, the main objective of the Regulations on Nature Reserves is to ensure strong construction and management of these reserves. The purpose statement does not mention any thing to do with biological diversity conservation. This has led to the loss of nature reserves to ‘ecological tourism’ (Yu and Czarnezki, 2013). In addition, there is no law or regulation specific to marine biological diversity (Kwan et al., 2023; Government of China, 2014/2015). The wetlands legislation emphasises the economic value rather than conservation (articles 15, 23, 34 and 35 of the Wetland Protection Law of the People`s Republic of China, 2021). Likewise, there is no law specific

to new animal or micro biological varieties. Whereas China has made effort to ensure the conservation of the biological diversity within its territory, it has not been without some challenges, as outlined in this section. Although China has in place the China National Biodiversity Conservation Strategy and Action Plan (2011-2030), efforts need to be put in place to enact legally binding biological diversity specific law to ensure biological diversity conservation in China. China therefore needs to put more effort in order to live up to the provisions of the CBD and the Ramsar Conventions which emphasise conservation, rather than utilisation and economic value.

4. Conclusion and Recommendations

This article set out to analyse the effectiveness of the international environmental instruments on the conservation of biodiversity. The study also set out to examine the extent to which China has implemented the international legal provisions on biodiversity protection. The study found out that whereas the instruments, to a large extent, are sufficient, their language is too general, open, non-specific and generally vague. Implementing states are given too much liberty to determine the levels of conservation and protection over biological diversity. A specific standard for all states to follow needs to be set up at the international level. The Instruments further lack implementation mechanisms which makes domestic implementation even harder.

The article further found that whereas China is doing tremendously well in conserving biodiversity especially through enacting relevant legislation, it still faces various sets backs. These include climate change, population increase, poverty, industrialisation and lack of public participation in biodiversity conservation. China's legislation though robust has been noted to have some pitfalls, including but not limited to placing emphasis on the economic value of the biological diversity as opposed to conservation, as outlined in the preceding paragraphs. Moreover, using authoritative and assertive language and embedding penal provisions in the legislation can go a long way in advancing biodiversity conservation. This, however, cannot be achieved unless China has the political will do so. China also needs to

strengthen the idea of protected areas, especially where natural environmental changes continue to be a threat to biodiversity.

REFERENCES

Agreement between Australia and China for the Protection of Migratory Birds 1986 (CAMBA), accessed 23 September, 2023 through <http://www.austlii.edu.au/au/other/dfat/treaties/1988/22.html>

Ahrends, A., Hollingsworth, P.M., Beckschater, P., Chen, H., Zomer, R.J., Zhang, L., Wang, M., and Xu, J. (2017) China's Fight to halt Tree cover Loss' 2017 *The Royal Society Publishing Online*.

Air Pollution Prevention Law, issued in 1987 and revised in 1995 and 2000 (China).

Armenteras, D. & Finlayson, M. C. (2012) *Biodiversity. Global Environment Outlook (GEO) 5 Report. The Future we want* (UNEP) accessed 20 August, 2023 from http://www.bik-f.de/files/sonstige/geo5_report_c5.pdf

Boer, B. (2002). Biodiversity planning Law: International and National in Reid., J.C (Ed). *Biodiversity Planning in the Asian Region* (Sri Lanka: IUCN).

Bowman, M. (2002/2003). The Ramsar Convention on Wetlands: Has it Made a Difference? in *Yearbook of International Co-operation on Environment and Development 2002/2003* (London: Earthscan).

CBD, *Global Biodiversity Outlook 3* (2010b) (Montreal: Secretariat of the CBD).

Chen, L.Z., & Zhao, S.D. Implementation of Convention on Biological Diversity in China, *Area Studies-China: Regional Sustainable Development Review*. Vol. III, Pg. 1 and 2 accessed 5 March, 2020, from <http://www.eolss.net/sample-chapters/c16/e1-54-35.pdf>.

China Biodiversity Conservation Strategy and Action Plan (2011 to 2030) accessed on 20 August, 2023 from <https://www.cbd.int/doc/world/cn/cn-nbsap-v2-en.pdf>

China's Fifth National Report on the Implementation of the Convention on Biological Diversity (2014) accessed 20 August, 2023 from <https://www.cbd.int/doc/world/cn/cn-nr-05-en.pdf>

Congress on April 12, 1986 and promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986).

Constitution of the Republic of China, 1982 as amended (China).

Convention on Biodiversity. 1760UNTS 79; 31 ILM 818 (1992) accessed on 17 July, 2023 from <http://www.cbd.int/convention/text>

Criminal Law of the People`s Republic of China, 1979 revised in 1997 (China).

Decision No. 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme.

Deng, Y. C (2023) Wetland Prtoection law of the People`s Republic of China: New Efforts in Wetland conservation *The International Journal of Marine and Coastal Law*.

Environmental Protection Law of China, 1989, revised in 2014 (China).

European Council (2001). *Presidency conclusions* Göteborg Council; 2001 June 15 and 16 (SN/200/1/01 REV1, EC, Brussels).

Forestry Law of the People`s Republic of China of 1985 (China).

Gaodi, X., Shuyan, C., Qisen, Y., Lin, X., Zhiyong, F., Ying, G., Lin, D., Liqiang, G., & Humphrey, S. *Living Planet Report. China:*

Development, Species and Ecological Civilisation (World Wide Fund for Nature (WWF)).

General Principles of the Civil Law of the People's Republic of China (Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986 and Promulgated by Order no. 37 of the President of the People's Republic of China on April 12, 1986).

Global Biodiversity outlook 2, *Implementing the Convention on Biological Diversity*, 2006 accessed 4 September, 2023 from <https://www.greenfacts.org/en/global-biodiversity-outlook/1-3/9-convention-biological-diversity.htm>

Government of China (2014/2015). National Report on the Implementation on the Ramsar Convention on Wetlands, submitted to the Ramsar Secretariat 2014/2015 accessed 5 September, 2023 from https://www.ramsar.org/sites/default/files/documents/2014/national-reports/COP12/cop12_nr_china.pdf.

Grassland Law of the People's Republic of China of 1985 (China).

Guangren, M.A. Wetlands Conservation in China, The Convention on Wetlands Management Office, P. R. China and the Office of Wetlands Conservation and Management, State Forestry Administration, P.R. China (PowerPoint presentation) accessed 20 June, 2021 from http://archive.ramsar.org/pdf/cop11/Pre%20COP11%20Asia%20Reg%20mtg%20PDFs/Presentations/26-%20Wetlands%20Conservation%20in%20China_%20Ma%20Guangren_China.pdf

Import and Export Animal and Plant Quarantine Law, 1982 (China).

Jianwei., C. Ramsar Convention and Wetland Conservation in China' Area studies - China: Regional Sustainable Development Review – Vol. III – Ramsar Convention and Wetland Conservation in China, accessed

on 24 September, 2023 from <https://www.eolss.net/sample-chapters/C16/E1-54-41.pdf>

Kabaseke., C. (2020) *Women's Right to Participation in Environmental Decision Making Process in Uganda: Lessons from International and Comparative Law* (Un published PhD thesis submitted to the School of Law of Wuhan University).

Keyuan, Z. (2010) International Law in the Chinese Domestic Context *Valparaiso University Law Review* 44 (3) 935-956.

Klein., C. New Leadership Needed: The Convention on Biological Diversity 2016 (31) *Emory International Law Review* 136-165.

Kwan, K.Y., Chen, R., Wang, C-C., Lin, S., Wu, L., Xie, X., Weng, Z., Hu, M., Zhou, H., Wu, Z., Zhen, W., Yang, X., & Wen, Y. (2023) Towards Effective Wildlife protection law for marine species in China: A stakeholders` perspective *Marine Fisheries, Aquaculture and Living Resources* (10).

Lausche, B., *IUCN Guidelines for Protected Areas Legislation* (Gland, Switzerland: IUCN, 2011) accessed 24 September, 2023 from <http://data.iucn.org/dbtw-wpd/edocs/eplp-081.pdf>.

Lausche., B. J., & Burhenne-Guilmin., F. (2013). The Legal Aspects of Connectivity Conservation – A Concept Paper. IUCN EPLP No. 85. Vol.1 accessed 23 September, 2023 from <https://portals.iucn.org/library/node/10421>.

Law of the People's Republic of China on Water and Soil Conservation of 1991 (China).

Lin, Y., & Yue, C. (2014) China's New National Rules on Wetland Protection IUCNAEL *EJournal* 177 (5).

Mao, D., Wang, Z., Wu, J., Wu, B., Zeng, Y., Song, K., Yi, K., & Luo, 'L. (2018) China's Wetlands loss to Urban Expansion *Land Degradation and Development* (29) (8).

Marine Environmental Protection Law of the People's Republic of China of 1999 (China).

Matthews, G.V.T. (2006) *The Ramsar Convention on Wetlands: its History and Development* (Gland Switzerland: Ramsar Convention Bureau, Gland, Switzerland).

Navid., D. (1989). The International Law of Migratory Species: The Ramsar Convention 1989 (29) *Natural Resources Journal* accessed on 20 August, 2023 from <http://digitalrepository.unm.edu/nrj/vol29/iss4/5>

Puppim de Oliveira, J. A., Balaban, O., Doll, C.N.H., Moreno-Peranda, R., Gasparatos, A., Lossifova, D., & Suwa, A. (2011). Cities and biodiversity: Perspectives and governance challenges for implementing the convention on biological diversity (CBD) at the city level *Biological Conservation* (144) 1302–1313.

Ramsar Convention, 996 UNTS 245; TIAS 11084; 11 ILM 963 (1972) accessed 23 September, 2023 from http://portal.unesco.org/en/ev.php-URL_ID=15398&URL_DO=DO_TOPIC&URL_SECTION=201.html

Ramsar Resolution IX.1 Annex D (2005) *Ecological "outcome-oriented" Indicators for Assessing the Implementation Effectiveness of the Ramsar Convention*.

Regulation on Assessing the Pilot National Wetland Park of 2010 (China).

Regulation on National Wetland Park Management (China). Regulations of the People's Republic of China on Nature Reserves, adopted at the 24th Executive Meeting of the State Council

on September 2, 1994, promulgated by Decree No.167 of the State Council of the People's Republic of China on October 9, 1994, and effective as of December 1, 1994).

Regulations of the People's Republic of China on Nature Reserves, 1994 (China).

Regulations of the Peoples' Republic of China, Decree no. 167 of the State Council, 1994 (China).

Regulations on Wild Plants Protection of 1997 (China).

The Law of the People's Republic of China on the Protection of Wildlife, 1989 (China).

UNEP (2007) *Global Environment Outlook 4: Environment for Development* (Progress Press, Valletta: UNEP).

Wallace, R. (2015) The Reduced Effect of International Conservation Agreements: A New Zealand Case Study *Journal of Environmental Law* (27) 489–516.

Water Law of the People's Republic of China of 2002.

Wenxuan, Y. (2015). Biological Conservation Law. In Qin Tianbao (Ed): *Research Handbook on Chinese Environmental Law*. (Cltenan, Uk: Edward Elgar Publishing).

Wenxuan, Y., & Czarnezki, J.J. (2013). Challenges to China's Natural Resources Conservation & Biodiversity Legislation *Environmental Law Review* 43 (1) 125 – 144.

Wildlife Animal Protection Law, 1988 (China).

Zheng, H., & Cao, S. (2015) Threats to China's Biodiversity by Contradictions Policy (44) *AMBIO* 23-33.

Zongming, W., & ianguo, W., Marguerite, M., & Dehua, M. (2012) China's Wetlands: Conservation Plans and Policy Impacts *AMBIO* (41) 782–786.