

## Upholding the rights to health and a healthy environment in Africa through enforcing plastic ban regulations

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**Abstract:** Over the last century, plastic items have unquestionably eased human transactions ranging from manufacturing, transporting, packaging, and protection of goods. Despite these positive outcomes, plastics heavily contribute to environmental pollution and human ailments. The physical and visible negative effects of plastics include pollution in rivers, streams, drainages, public spaces, beaches, farms, etc. The invisible effects of plastics in the human person can potentially cause breast, endocrine, prostate, etc. cancers. The above-cited effects are a direct consequence of the violation of the right to health and the right to a healthy environment. The negative effects of the propagation of plastic items resulting in the violation of these rights have caught the attention of activists and scholars forcing international advocacy movements to advocate for the promulgation of plastic ban laws. This article investigates the effectiveness of plastic ban laws in Africa with specific emphasis on Senegal, the Democratic Republic of Congo, Rwanda, and Cameroon. This article identifies legal instruments regulating plastics and their enforcement mechanisms in the countries under study, examines shortcomings contained in their exceptions, analyzes enforcement mechanisms, but also identifies a community ownership strategy as the fundamental strategy that is working in Rwanda. The results are significant and conclude with proposals that other countries could adopt to render the enforcement of plastic ban laws and regulations more effective.

**Keywords:** right to health, right to clean environment, plastics, ban, regulation, pollution, caners, microplastics, biodegradable, microns.

### Introduction

Plastics adversely affect the human person and the natural environment thereby violating the rights to health and a healthy environment. Plastic wastes and items including bottles carry bags, straws, etc., are principally responsible for the large majority of environmental pollution and human

ailments that develop slowly over time and later degenerate into more complicated health conditions. The science-informed international advocacy to reduce or eliminate plastic pollution is yielding some positive fruits across the world. Plastic pollution is a human-induced act that threatens present and future human generations and distorts natural environments including farming land, rivers, oceans, and their creatures. "Conscious of this threat for present and future generations, as well as the need to preserve the environment from human-induced degradation, many African countries have undertaken to ban plastic bags within their respective territories."<sup>1</sup> Particularly, some African countries have enacted legislation to regulate the propagation, manufacture, import, export, commercialization, use, and elimination of plastics. This article shall discuss the effectiveness of plastic ban regulations in Senegal, Rwanda, the Democratic Republic of Congo, and Cameroon. The four countries under review have enacted different legal instruments ranging from laws<sup>2</sup>, through decrees<sup>3</sup>, to ministerial circulars and orders<sup>4</sup> seeking to regulate plastics, reduce plastic pollution, and protect human rights to health and a healthy environment. This article shall examine the substance of these regulations and evaluate their effectiveness in enforcing plastic bans.

Africans have largely ignored the devastating impacts plastics have on their lives and the environment because plastic products facilitate the conduct of daily businesses and transactions. This ease caused many African countries to heavily depend on plastic products although the chemical compositions of plastics are harmful to the human body and the environment.<sup>5</sup> Though regulations regulating plastics tend to prohibit single-use plastics, science has proven that all types of plastics are harmful to the human body and the natural environment. Bisphenol (BPA), a synthetic chemical used to manufacture some types of plastics carries the highest chemicals worldwide and "is widely present in many hard plastic bottles and metal-based food and beverage

<sup>1</sup> Simo, Regis Y., Of Sustainable Development in Africa: Addressing the (In)Congruence of Plastic Bag Regulations with International Trade Rules (October 30, 2018). Brooklyn Journal of International Law, Vol. 45, No. 1 (2019), pp. 241-299, Available at SSRN: <https://ssrn.com/abstract=3391826> or <http://dx.doi.org/10.2139/ssrn.3391826>

<sup>2</sup> Rwanda N° 17/2019 of 10/08/2019 Law relating to the prohibition of manufacturing, importation, use, and sale of plastic carry bags and single-use plastic items; See also, Senegal's Law No. 2020-04 of January 8, 2020, on the prevention and reduction of the environmental impact of plastic products.

<sup>3</sup> Democratic Republic of Congo Decree No. 17/018 prohibiting the production, import, marketing and use of bags, sachets, films, and other plastic packaging

<sup>4</sup> Joint Ministerial Order No.0041/ MINEPDED/MINCOMMERCE of 24 October 2012, relating to the manufacture, importation, and commercialization of non-biodegradable packages

<sup>5</sup> Fonja Julius Achu, Plastic packages, and the law in Cameroon. A paradigm of an uncompleted battle, International Law and Policy Research Journal Vol.3(1), pp. 001-015, August 2017 Available online at <http://www.apexjournal.org>.

cans.”<sup>6</sup> Repeated washing and heating of plastics containing BPA causes the chemical substance to leach into food and subsequently into the human body through ingestion.<sup>7</sup> Consequently, BPA has leached widely throughout the world, and “studies have revealed links between BPA exposure and hormone-related cancers, including breast, prostate, and ovarian cancers and endometrial carcinoma.”<sup>8</sup> BPA can leach into food and beverages through the daily use of tin cans, baby bottles, reusable plastic water bottles, and polycarbonate plastic containers.”<sup>9</sup> While legislations regulate plastics because of the excessive pollution rates around the world, African legislators must consider the relationship between scientific evidence and some illnesses that are becoming rampant on the continent. These considerations should inform regulations and place the human right to health and a clean environment at the center of all plastic regulations.

### Definitions and scope of plastic ban

Evaluating the effectiveness of international advocacy to reduce plastic pollution and reduce the incidence of plastic in the human body is hampered by the lack of an agreed legal definition of plastics. Elements introduced into the plastic regulations vary from one jurisdiction to another. Though movements for the international advocacy to ban plastics, can claim success due to the proliferation of plastic regulations around the world, the movement faces huge challenges stemming from the type, quality, chemical composition, and other factors to include in the ban. In the United States, for example, public support to ban plastics “triggered policy changes from companies like Starbucks, American Airlines, Disney, and Ikea.”<sup>10</sup> These companies, along with hotel giants Hilton and Hyatt” internally banned plastic straws and single-use plastic products. Considering the effects of plastics on human health and the natural environment, different countries have adopted different legal strategies and varied categories of plastic bans.

Subject to the exceptions analyzed below, all countries under review prohibit the production, importation, sale, and use of single-use plastics. Rwanda prohibits single-use plastics and plastic

<sup>6</sup> Diamanti-Kandarakis E, Bourguignon JP, Giudice LC, et al. Endocrine-disrupting chemicals: an Endocrine Society scientific statement. *Endocr Rev.* 2009;30(4):293-342. doi:10.1210/er.2009-0002

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> (EESI), E., 2020. *Bans On Banning Bags: The Movement To End Single-Use Plastics Faces Significant Obstacles* / Article / EESI. [online] Eesi.org. Available at: <<https://www.eesi.org/articles/view/bans-on-banning-bags-the-movement-to-end-single-use-plastics-faces-signific>> [Accessed 29 July 2020].mom

carry bags,<sup>11</sup> Senegal bans single-use, disposable plastic products and regulates plastic bottles,<sup>12</sup> Cameroon bans any non-biodegradable plastic heavier than 61 microns,<sup>13</sup> and the Democratic Republic<sup>14</sup> of Congo limits the prohibition to non-biodegradable plastics.<sup>15</sup> Specifically, Senegal bans plastic cups, silverware, plates, straws, sachets used for water or alcoholic liquids.<sup>16</sup> Cameroon on the other hand prohibits non-biodegradable plastics not exceeding 60 microns with a thickness of 1/1000mm.<sup>17</sup> Rwanda does not give any further specifics but like all other countries under review provides for exceptions. The United Nations Environment Program has challenged the notion that biodegradable plastics are environmentally friendly and healthy to the human person. Most governments like Cameroon seek to strike a balance between conventional and biodegradable plastics. UNEP, however, argues that biodegradable plastics have drawbacks that require appropriate waste management technology to effectively degrade.<sup>18</sup> Generally, biodegradable plastics “break down completely only if exposed to prolonged high temperatures above 50°C (122°F)” and these temperatures are present in incineration facilitations but hardly in the natural environment.<sup>19</sup> Consequently, biodegradable plastics obtained from “renewable sources (such as corn starch, cassava roots, or sugarcane) or from bacterial fermentation of sugar or lipids (PHA34) do not automatically degrade in the environment and especially not in the ocean.”<sup>20</sup> Normally, when disposed of under adequate circumstances of 50°C for an average period of 12 weeks, plant based-biodegradable plastics could degrade to produce compost.<sup>21</sup>

While most African countries authorize biodegradable plastics, scientists continue to argue that it is a misconception to think that biodegradable plastics degrade quickly in the natural

<sup>11</sup> Article 1 of Law N° 17/2019 of 10/08/2019 Law relating to the prohibition of manufacturing, importation, use, and sale of plastic carry bags and single-use plastic items

<sup>12</sup> Article 4 of Law No. 2020-04 of January 8, 2020, on the prevention and reduction of the environmental impact of plastic products

<sup>13</sup> Seed article 1 of Joint Order No. 004 / Minepded / Mincommerce of October 24, 2012, Regulating the manufacture, import, and marketing of non-biodegradable packaging

<sup>14</sup> Article 1 of Democratic Republic of Congo Decree No. 17/018 prohibiting the production, import, marketing and use of bags, sachets, films and other plastic packaging

<sup>15</sup> *Id.*

<sup>16</sup> Article 4 of Law No. 2020-04 of January 8, 2020, on the prevention and reduction of the environmental impact of plastic products

<sup>17</sup> Article 7 (1) Joint Order No. 004 / Minepded / Mincommerce of 24 October 2012 Regulating the manufacture, import, and marketing of non-biodegradable packaging.

<sup>18</sup> Wedocs.unep.org. 2020. [online] Available at:

<[https://wedocs.unep.org/bitstream/handle/20.500.11822/25496/singleUsePlastic\\_sustainability.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/25496/singleUsePlastic_sustainability.pdf)> [Accessed 29 July 2020].

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Thompson, R., Moore, C., vom Saal, F., and Swan, S., 2009. Plastics, the environment, and human health: current consensus and future trends. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 364(1526), pp.2153-2166.

environment. Instead, they could “merely disintegrate into small pieces that are not in themselves any more degradable than conventional plastic.”<sup>22</sup> Some countries have preferred authorizing lightweight plastic carrier bags and very lightweight plastic carrier bags evaluated on their thickness calculated in microns. Senegal’s current plastic ban law cited above, rescinds a 2016 law relating to the “importation, production, distribution and use of lightweight plastic bags that came into effect in Senegal.”<sup>23</sup> This 2016 law prohibited all plastic bags that were more than 30 microns thick.<sup>24</sup> Senegal's new law simply prohibits single-use plastics thereby indicating remarkable progress from the 2016 law.

Like Rwanda’s law banning single-use items and plastic bags,<sup>25</sup> Senegal's new law prohibits shopping bags given to consumers at the counter.<sup>26</sup> Single-use plastic constitutes the leading cause of pollution worldwide because they are comfortable, easy to use, and easy to dispose of. Disposing of single-use plastics begins inland, enters rivers and streams, then flows right into the ocean.<sup>27</sup> These plastics have adverse effects on aquatic life.<sup>28</sup> Scientists have determined that more than 100 marine creatures ingest plastic particles which eventually ends up in the seafood chain and human beings in turn consume the chemicals leached from these plastics into the food. Research has determined that “[m]icroplastics are found in many species intended for human consumption including invertebrates, crustaceans, and fish.”<sup>29</sup> These findings prove that plastics that end up in the ocean come back to hunt the human person this time in food and capable of causing serious health-related problems. Though single-use plastics are easy to use and make life easy, legislators must consider their long term effects on human health. Once humans get exposed to these plastics through food, they are “transported by M cells, specialized epithelial cells of the mucosa, from the gut into the blood where they are carried through the lymphatic system and into the liver and

<sup>22</sup> *Id.*

<sup>23</sup> Law No. 2015-09 of 04 May 2015 on the prohibition of production, the importation, possession, distribution, use of sachets allow-micron plastics, and the rational management of plastic waste.

<sup>24</sup> Article 4, *Id.*

<sup>25</sup> Article 3.

<sup>26</sup> Article 5.

<sup>27</sup> Rensburg, Melissa & Nkomo, L & Dube, Timothy. (2020). The 'plastic waste era'; social perceptions towards single-use plastic consumption and impacts on the marine environment in Durban, South Africa. *Applied Geography*. 114. 102132. 10.1016/j.apgeog.2019.102132.

<sup>28</sup> *Id.*

<sup>29</sup> Smith M, Love DC, Rochman CM, Neff RA. Microplastics in Seafood and the Implications for Human Health. *Curr Environ Health Rep*. 2018;5(3):375-386. doi:10.1007/s40572-018-0206-z

gallbladder.”<sup>30</sup>Consequently, the “systemic distribution from oral exposure to nanoparticles has been shown to have numerous effects: cardiopulmonary responses, alterations of endogenous metabolites, genotoxicity, inflammatory responses, oxidative stress, effects on nutrient absorption, gut microflora, and reproduction.”<sup>31</sup>

These factors must inform lawmakers to ensure human life and health is at the center of all plastic regulations because these scientific findings demonstrate that the negative effects of plastics go beyond environmental pollution and center on human life. While these factors could be considered in plastic ban regulation processes, the bigger question is the enforcement mechanisms used to enforce plastic ban regulations. Plastic pollution remains high across the continent despite the proliferation of plastic ban regulations. This puts to question the effectiveness of mechanisms adopted by different jurisdictions to enforce plastic regulations.

### **Plastic regulations enforcement mechanisms**

Plastic regulations in all countries under review provide enforcement mechanisms ranging from criminal enforcement, seizures, to financial fines. Enforcement mechanisms could deter citizens from violating plastic ban regulations but there must be an effective enforcement strategy to achieve the deterrent objective. Similarly, if the sanctions are weak, citizens could intentionally violate the regulations to earn profits, especially regarding financial sanctions. The countries under review have each provided sanctions as analyzed below.

### **Senegal**

Senegal’s plastic ban law categorizes criminal and financial sanctions according to the gravity of the violations. The importation or manufacture of single-use plastics including plastic cups, cutlery, sachets, and straws draws a prison term of between one to three years and a fine of between 5 million<sup>32</sup> to 10 million CFA.<sup>33</sup>The importation and exportation of plastic waste draw an imprisonment term of between five to ten years and a fine of between five million to ten million CFA. Besides these sanctions, the plastic law regulates and sets mechanisms for the management

<sup>30</sup> Bergmann M, Gutow L, Klages M. Marine anthropogenic litter. Cham: SpringerOpen; 2015; in Smith M, Love DC, Rochman CM, Neff RA. Microplastics in Seafood and the Implications for Human Health. *Curr Environ Health Rep*. 2018;5(3):375-386. doi:10.1007/s40572-018-0206-z

<sup>31</sup> *Id.*

<sup>32</sup> 1 USD equals 560 CFA.

<sup>33</sup> Article 27 of the Law.

and collection of authorized plastics that are injected into the economy. Producers who inject plastic products into the market must set appropriate waste management systems. These systems include organizing for single or collective management of the waste and the obligation to pay fees to the waste managers who could be individuals or associations.<sup>34</sup> Failure to comply with these requirements invites a jail term of between one and three years and a fine between ten and twenty million Francs CFA.<sup>35</sup> Besides these serious sanctions, the law provides less serious sanctions for some other categories of violations.

Manufacturers who inject plastic products into the market must use clear and indelible ink to label the package or the product itself. The labels must identify and state the address of the individual or company who injected the plastic product into the market.<sup>36</sup> Failure to comply with these requirements leads to an imprisonment term of between three and six months.<sup>37</sup> Anyone who is engaged in the business of recycling and buys a kilogram of plastic wastes at rates cheaper than those set by decree with a fine of between two and five million CFA.<sup>38</sup> Failure to integrate recycled plastics into the production of new plastics invites an imprisonment term of between one and three months and a fine between five to ten million.<sup>39</sup>

Senegal's law also makes provision for the return of used plastic bottles. Chapter three sets strategies to improve the collection and recycling of plastic bottles by introducing a deposit system where consumers leave an amount of money at the shop, collect the bottle, and must return the bottle before the storekeeper reimburses the deposit. Conditions for the purchase of products in plastic bottles and on the payment of a deposit shall be defined by a later decree.<sup>40</sup> Sellers must accept all returned plastic bottles and return them to the nearest collection point.<sup>41</sup> Producers must operate collection points to collect all used bottles and must also add value to returned bottles with recycling being top priority. Violating articles 6 and 7 invites 15-day imprisonment or a fine between 50.000 and 100.000 CFA for.<sup>42</sup>

<sup>34</sup> Article 11.

<sup>35</sup> Article 35.

<sup>36</sup> Article 17.

<sup>37</sup> Article 30.

<sup>38</sup> Article 31.

<sup>39</sup> Article 32.

<sup>40</sup> Article 6.

<sup>41</sup> Article 7.

<sup>42</sup> Article 33.



Manufacturers are required to set up collection points for plastic bottles at the production sites or any other appropriate place.<sup>43</sup> Producers are required to add value or have the plastic bottles recovered, prioritizing, in the following order of preference, re-use, recycling, or any other recovery operation.<sup>44</sup> Any manufacturer who does not set up a sufficient number of plastic bottle collection points will face a prison sentence of between three to six months and a fine of five to ten million or all of these two sentences.<sup>45</sup> Anyone who disposes of plastic wastes or abandons plastic wastes in an unauthorized place except at plastic waste collection units shall be sanctioned with a prison term of between fifteen days and three months and a fine of between 20.000 and 50.000 CFA.<sup>46</sup>

The law distinguishes between the responsibilities of moral and physical persons concerning the enforcement of the plastic ban law.<sup>47</sup> Moral persons are responsible for the actions of their employees although employees shall be held personally responsible for their acts under this law. The law clarifies sanctions specific to corporations that violate plastic ban laws. This article provides that for financial violations, companies will incur five times the amount defined above.<sup>48</sup> The article also provides for the permanent closure of the business or a five-year suspension of one or all the businesses involved in the violation. Despite these definitions, prohibitions, and sanctions, the law provides certain exceptions that are analyzed in part V of this article.

### **Democratic Republic of Congo**

Congo's plastic ban decree authorizes the ministries of environment and industry to give formal notice to anyone who fails to comply with the provisions of the decree regulating plastics within 15 days.<sup>49</sup> In case the offender fails to comply, the competent administrative services may pronounce a financial penalty, the amount of which is proportionate to the seriousness of the breach of his situation, the extent of the damage, and the benefits derived from it. In another decree, laying down

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<sup>43</sup> Article 8.

<sup>44</sup> Article 8.

<sup>45</sup> Article 34.

<sup>46</sup> Article 37.

<sup>47</sup> Article 38.

<sup>48</sup> Article 39.

<sup>49</sup> Article 7.



measures for the enforcement of plastic bans, violations of plastic ban regulations are punishable by a fine ranging from 5,000,000<sup>50</sup> to 10,000,000 CDF.<sup>51</sup>

### Rwanda

Rwanda's plastic ban law expressly provides for administrative sanctions to defaulters. Manufacturers of plastic carry bags and single-use plastic items shall pay 10,000,000 Rwandan Francs<sup>52</sup> in fines, business closure, and seizure of their plastic items.<sup>53</sup> The importation of plastic carry bags and single-use plastic items invites seizure of the plastic items, and an administrative fine worth ten times the value of the plastic carry bags and single-use plastic items.<sup>54</sup> Retailers of plastic bags and single-use plastic items will pay a fine of 700,000 Rwandan Francs and have their plastic items seized.<sup>55</sup> Disposing or piling plastic wastes in unauthorized locations invites a fine of 50,000 Rwandan Francs, cleanup, and reparation if any damages the disposal caused any damages.<sup>56</sup> However, when entities or persons authorized to use plastics dispose of plastics in unauthorized locations, they shall incur a fine of 5,000,000<sup>57</sup> Rwandan Francs and their authorization will either be suspended or withdrawn.<sup>58</sup> Cases of recidivism will invite double the administrative fines.

### Cameroon

Amongst Cameroon's plethora of legal instruments regulating plastics is Circular No.00036/CAB/MINEPDED of 28 August 2014 relating to small scale violators of Joint Order No. 004/MINEPDED/MINCOMMERCE of 24 October 2012 on the prohibition of plastic packages containing less than 61 microns. This order references the law authorizing local councils to exercise jurisdiction over natural resource management, enforcement of law and order, creation of council police, and limitations of the council's jurisdiction over security matters concerning the central

<sup>50</sup> 1 USD equals 2000 Congolese Franc.

<sup>51</sup> Article 6 30 avril 2018. – ARRÊTÉ MINISTÉRIEL n° 017/CAB/MINET/ECONAT/2018 relatif aux mesures d'exécution du décret 17/018 du 30 décembre 2017 portant interdiction de production, d'importation, de commercialisation et d'utilisation des sacs, sachets, films et autres emballages en plastique

<sup>52</sup> Approximately \$10,000.

<sup>53</sup> Article 9.

<sup>54</sup> Article 10.

<sup>55</sup> Article 12.

<sup>56</sup> Article 13.

<sup>57</sup> \$1 equals 1000 Rwandan Francs.

<sup>58</sup> *Id.*

administration's powers.<sup>59</sup> These regulatory instruments import language from the Section 370 Penal Code to regulate and reprehend violators.<sup>60</sup> This section punishes anyone who violates “any legally made and regularly published regulation or order” with a fine ranging from 4.000 CFA to 25.000CFA or with imprisonment of from five to ten days.

### **Hurdles to the Effective of Enforcing plastic bans**

The effectiveness of plastic ban laws is a function of the larger political, judicial, and administrative landscape and the enforcement agencies of any jurisdiction. An evaluation of the effectiveness of plastic regulation laws in Africa does not paint a homogenous outcome. “On the whole, research suggests focused legislation is highly effective at reducing plastic bag use and the presence of bags in the natural environment.”<sup>61</sup> Legislation in itself will not successfully stop the import, use, disposal of plastics if the legal instruments are not focused or if the enforcement agencies lack the necessary capacity to enforce the plastic ban. This section reviews these factors.

### **Exceptions to prohibited plastics**

Different jurisdictions define plastics differently but offer some margin of exceptions. While exceptions to plastic ban regulations sometimes enable critical services like health to have the necessary working tools, some exceptions are overboard and constitute a hurdle in the effective enforcement of plastic ban regulations. Cameroon authorized biodegradable plastics with at most 61 microns and the Democratic Republic of Congo bans all non-biodegradable plastic items while Senegal bans all plastic items and Rwanda bans carry on plastic bags and single-use plastic items. The absence of a homogenous definition proves different jurisdictions view the negative effects of plastic differently.

Article 2 of the Congolese decree banning plastics exempts the production, marketing, and use of packaging for the sale of food, water, and drinks, including non-alcoholic drinks which article one of the same decree bans.<sup>62</sup> Similarly, article 1 prohibits the importation and marketing of raw materials for the manufacture of water bottles and non-alcoholic drinks but article 2 exempts them

<sup>59</sup> Articles 16, 84, 86, and 88 of Law No 2004/018 of 22 July 2004 to lay down the rules applicable to Councils.

<sup>60</sup> Fonja Julius Achu, Plastic packages, and the law in Cameroon. A paradigm of an uncompleted battle, International Law and Policy Research Journal Vol.3(1), pp. 001-015, August 2017 Available online at <http://www.apexjournal.org>.

<sup>61</sup> What laws work best to cut plastic pollution? • The revelator. (2020, July 16). The Revelator. <https://therevelator.org/plastic-pollution-laws/>

<sup>62</sup> Blaise-Pascal Ntirumenyerwa Mihigo, *Combattre la Pollution Plastique en République Démocratique du Congo: Les Défis des Récentes Réglementations en la Matière*, Paper Produced for the World Commission on Environmental Law

from the ban.<sup>63</sup> Except for Senegal that instituted a system where consumers deposit a fee and buy products in plastic bottles and the deposit would only be returned if the consumer returns the bottle, Cameroon, Democratic Republic of Congo, and Rwanda have not banned plastic bottles. Arguably, plastic bottles constitute a huge source of plastic wastes causing pollution in Africa. Plastic water bottles and non-alcoholic drinks and plastic food packaging are the primary plastics sources contributing to plastic pollution in the Democratic Republic of Congo as demonstrated by the pack of plastic water bottles covering the Congo river in Kinshasa.<sup>64</sup> Evidently, these exceptions do not adequately curb the widespread use and disposing of plastic items which continue the violation of the right to a healthy environment and right to health.

Besides these exceptions, plastic items in different forms like biodegradable, lightweight, microns, thickness etc., further complicate the enforcement of the regulation. Law enforcement officers and the local populations lack the expertise and equipment necessary to detect plastics items not compliant with regulations. As explained below, Rwanda's plastic ban success is partly due to the "Umganda" principle which seriously involves local populations. Similarly, the requirement to label plastic items indicating their thickness could be counter productive for lack of expertise and equipment to measure compliance. In cases where law enforcement officers could have the appropriate machinery to test for biodegradable quality, they may not benefit from community tip offs because communities cannot differentiate between illegal and authorized plastic items. These hurdles do not resolve the question of plastic pollution and subsequent human ingestion of plastic particles.

### **Fragmentation of laws**

The jurisdictions under review either use criminal laws to enforce plastic ban laws in their jurisdiction. Senegal, Rwanda, and Cameroon provide authorize judicial police officers to enforce plastic ban regulations. In addition to authorizing judicial police officers to enforce plastic ban regulations, all jurisdictions under review provide for specialized and sworn officers from different ministerial and specialized agencies to control the importation, manufacture, use, and disposal of

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

plastic items. In all jurisdictions under review, their laws do not cross-reference any criminal laws nor do they make provision for inter-agency collaboration.

Though criminal, procedural, and environmental laws provide more substantive and procedural guarantees, collaboration between different agencies and actors gives more meaning to multi-sectional collaboration. Collaboration between actors helps in the exchange of necessary skills, development of human capacity, exchange of logistics, and finances which are all required for the efficient enforcement of cross-sectional laws. In Cameroon, for example, the Minister of Environment set up three tiers of inter-ministerial enforcement organs. These comprise operational units at the Sub-Divisional level, divisional, and regional levels. At the sub-divisional level, the Divisional Officer shall coordinate the sub-divisional officers, and representatives from the ministries of environment, commerce, finance, or directorate of customs, a representative of the mayor in whose jurisdiction the installation is located, four gendarme or police officers and three drivers.<sup>65</sup>

The same article sets a coordination unit at the divisional level and mandates the Senior Divisional Officer, the heads of the police, the gendarme, the secret service, the divisional delegates of the environment, commerce, finance or head of customs, and the state prosecutor.<sup>66</sup> The regional coordination unit is composed of the governor, the heads of the police, the gendarme, the secret service, the divisional delegates of the environment, commerce, finance or head of customs, and the Attorney General.<sup>67</sup> While the operational unit shall conduct surprise search and confiscate operations, the circular limits their powers to drawing up a report and submitting it to the divisional coordination unit which shall in turn submit the same to the regional coordinate unit.<sup>68</sup>

This example from Cameroon highlights at least two weaknesses in the enforcement of plastic ban regulation. It further fragments plastic ban regulation by limiting its application to large scale dealers in banned plastic items, that is, manufactures and importers.<sup>69</sup> Secondly, it increases a bureaucratic and cumbersome process for the enforcement of this law. The organization of

<sup>65</sup> Article 1 of circular N ° 096 / C / CAB / MINEPDED of April 10, 2014, relating to compliance control and repression of offenders

<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> Article 2 of Id.

<sup>69</sup> Fonja Julius Achu, Plastic packages, and the law in Cameroon. A paradigm of an uncompleted battle, International Law and Policy Research Journal Vol.3(1), pp. 001-015, August 2017 Available online at <http://www.apexjournal.org>.

Cameroon's judiciary institutes a court of the first instance at all sub-divisional headquarters<sup>70</sup> with original jurisdiction to hear all misdemeanors and simple offenses.<sup>71</sup> This court sits in the same town with the operational unit responsible for the enforcement of plastic ban laws at sub-divisional levels. A High Court seats at the divisional headquarters of every division except when a decree grants a particular court exclusive jurisdiction over more than one division.<sup>72</sup> The court has jurisdiction to hear original matters relating to felonies and related misdemeanors.<sup>73</sup> Unless in exceptional circumstances, this court seats in the same town with the divisional coordination unit responsible for the enforcement of plastic ban regulations. The only courts at the regional headquarters are courts with appellate jurisdiction.<sup>74</sup> Moving reports of violations from the sub-divisional level to the regional level increases bureaucracy and reduces the efficiency of enforcing plastic ban laws. This opens the question of who has the right to bring charges related to standing when plastic ban regulations are violated.

#### **Rwanda's success story hidden behind the cross-referencing of laws**

Cameroon's story starkly contradicts with the Rwandan experience. Beyond Rwanda's plastic ban law which does not specify enforcement mechanisms, an examination of Rwanda's Constitutional decentralization laws and the practice of "Umuganda" hold the key to Rwanda's success at becoming Africa's leader in enforcing plastic ban laws. "Umuganda is a practice that takes root from Rwandan culture of self-help and cooperation, in traditional Rwandan culture, members of the community would call upon their family, friends, and neighbors to help them complete a difficult task."<sup>75</sup> So, besides the administrative fines provided for by the plastic ban laws, the law organizing "Umuganda" and its implementing instrument decentralize community clean up campaigns and empower local communities to coordinate clean up. Rwanda's decentralization is structured to help "citizens to make their voices heard, including environmental committees at four levels of local government from the 'cell' upwards, which then pass on their concerns either at formal monthly

<sup>70</sup> Article 13 of law n° 2006/15 of 29 DECEMBER 2006 on Judicial Organization in Cameroon.

<sup>71</sup> Article 15 Id.

<sup>72</sup> Article 16 Id.

<sup>73</sup> Article 18 Id.

<sup>74</sup> Article 19 Id.

<sup>75</sup> See, [http://www.rgb.rw/fileadmin/Key\\_documents/HGS/UMUGANDA\\_2017.pdf](http://www.rgb.rw/fileadmin/Key_documents/HGS/UMUGANDA_2017.pdf)

meetings with sector officials or through the monthly 'Umuganda' community service day."<sup>76</sup>Unlike Cameroon where local communities, civil society organizations, and other stakeholders are not involved in the enforcement or plastic regulation, Rwanda's success is down to citizen participation.

Rwanda's law establishing community works<sup>77</sup> defines community works as "the gathering of efforts of many people for them to carry out a general interest activity."<sup>78</sup> One of the objectives of community works is to promote development activities and "provide an opportunity for conviviality among people."<sup>79</sup> The law makes community work mandatory every last Saturday of the month between 8 am and 11 am for every Rwanda between 18 and 65 years.<sup>80</sup> "Umuganda" has largely contributed to environmental protection in Rwanda ranging from public participation in street cleaning, grass cutting, cleaning drainages, planting trees, etc.<sup>81</sup> Community work is organized from the national to the village level<sup>82</sup> and the community work supervisory committees at every level shall consult with the population and specify activities to be carried out in the general interest of the community.<sup>83</sup> At all levels, communities shall define strategies to identify members who actively take part in community works.<sup>84</sup> The law equally provides exemptions from participation in community works but defaulters who do not fall in the prescribed categories pay a fine of 5000 Rwandan Francs.<sup>85</sup>

Though Umuganda is not a specific enforcement mechanism of Rwanda's plastic ban law, it has positively contributed to enforcing the plastic ban laws. "Rwanda's plastic ban, Umuganda, and a decade-long awareness campaign have arguably made Kigali the cleanest city in Africa."<sup>86</sup> In addition to Umuganda, law enforcement agencies including the police, customs, local decentralized

<sup>76</sup> Telesphore, Kabera & Wilson, David & Nishimwe, Honorine. (2019). Benchmarking performance of solid waste management and recycling systems in East Africa: Comparing Kigali Rwanda with other major cities. *Waste Management & Research*. 37. 58-72. 10.1177/0734242X18819752.

<sup>77</sup> Law Number 53/2007 of 17/11/2007

<sup>78</sup> Article 2 of *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Penine Uwimbabazi, *Indigenous Practice for Social Economic Development: An Analysis of Umuganda*, In Home-Grown Solutions Legacy to Generations in Africa (Vol. 1) Tharcisse Gatwa / Deo Mbonyinkebe (Editors)

<sup>82</sup> Article 7 of Law Number 53/2007 of 17/11/2007

<sup>83</sup> Article 8 *Id.*

<sup>84</sup> Article 9 *Id.*

<sup>85</sup> Article 13 *Id.*

<sup>86</sup> <https://www.downtoearth.org.in/news/waste/going-surgical-on-plastics-in-rwanda-68446>

units charged with enforcing the plastic ban laws collaborate to enforce plastic ban laws. They organize joint patrols and control units at the borders or the airport and the Environmental Regulation Authority agrees that the "national police is helping us to gather information."<sup>87</sup>

## Conclusion

The preceding analysis shows that while plastic bans laws proliferate over the African continent, effective implementation is a hurdle to surmount. The difficulty to effectively implement these regulations continues to violate the right to health and the right to a healthy environment and have long term nefarious effects on the human person and the natural environment. Contrastingly, the essence of the plastic regulations has not clearly articulated the objectives as seen with the vast exemptions and the convoluted bureaucracies in some jurisdictions. Though Senegal's 2019 plastic ban law is very progressive, it is premature to evaluate its effectiveness because it is relatively new and may not go operational effectively anytime soon because of the COVID-19 pandemic. Unfortunately, from the preceding analysis and risk of plastic to human health, competing interests should trump the value in banning plastics from circulating in human society.

Addressing plastic bans directly through prohibitions financial and criminal sanctions aimed at attaining the objective of banning plastics to uphold the right to health and the right to a clean environment is a feasible means of progressing. However, enforcement mechanisms, collaboration, sensitization, and public participation are fundamental in a successful endeavor. The Rwandan "Umuganda" experience is a great experience combining a mix of laws, citizen participation, general sensitization, and citizen ownership of the implementation process. One immediate step to successfully implement plastic bans in other African countries would be to adopt the Rwandan experience and ensure citizens buy into the implementation process. While repressive measures may help force implementation, the "Umuganda" approach will facilitate the identification of people transacting plastics within communities as communities buy the message and objectives of

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<sup>87</sup> Audrey Froidbise, *Behind the Scenes of the Plastic Bag Ban in Rwanda Connections to Culture, Power and Sustainability*, 2015. Unpublished Master's Degree Thesis.



plastic ban regulations. The adoption of a citizen-led approach against plastics would also provide a valuable strategy for citizen participation in community development.

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