

## CHAPTER 4: ENVIRONMENTAL LAW IN THE AFRICAN UNION<sup>1</sup>

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### 1 Introduction

The historical foundations of the African Union (AU) originated in the Union of African States, an early confederation that was established in the 1960s. The Organisation of African Unity (OAU) was established on 25 May 1963. On 9 September 1999, the heads of state and governments of the OAU issued the Sirte Declaration,<sup>2</sup> calling for the establishment of an African Union. The Declaration was followed by summits in Lomé in 2000, when the Constitutive Act of the African Union was adopted, and in Lusaka in 2001, when the Plan for the Implementation of the African Union was adopted. During the same period, the initiative for the establishment of the New Partnership for Africa's Development (NEPAD) was also established. The AU was launched in Durban on 9 July 2002 by the then South African President, Thabo Mbeki,<sup>3</sup> at the first session of the Assembly of the African Union. The Union's administrative centre is in Addis Ababa, Ethiopia and the working languages are Arabic, English, French, Portuguese, and Swahili. The African Union has 54 member states with Morocco being the only African State that is not a member. Geographically, the African Union covers an area of 29,757,900 km<sup>2</sup> and the United Nations Population Division estimated a population total of 1,256,000,000 for 2017.<sup>4</sup>

Given the African continent's bounty of natural resources, the protection and conservation of the environment must be an overarching aim within the AU; this is reflected in the African Union's legal framework.

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1 This chapter is a revised and updated version of Ruppel (2016).

2 Named after Sirte, in Libya.

3 Thabo Mbeki was the African Union's first President.

4 UN (2017).

## 2 Institutional structure in the AU

The Assembly is the supreme organ of the Union, and is composed of Heads of State and Government or their duly accredited representatives. The Assembly determines common policies. The Executive Council, composed of ministers or authorities designated by the governments of members states, is responsible to the Assembly and coordinates and makes decisions on common policies.

Together, a Chairperson, the Deputy Chairperson, eight Commissioners and staff members form the Commission. Each Commissioner is responsible for one portfolio (peace and security; political affairs; infrastructure and energy; social affairs; human resources, science and technology; trade and industry; rural economy and agriculture; and economic affairs). The Commission is comparable to a secretariat and plays a central role in the day-to-day management of the AU. The Commission *inter alia* represents the African Union and defends its interests; elaborates draft common positions of the African Union; prepares strategic plans and studies for the consideration of the Executive Council; elaborates, promotes, coordinates and harmonises the programmes and policies of the Union with those of the regional economic communities (RECs); and ensures the mainstreaming of gender in all programmes and activities of the African Union. The Executive Council is assisted by the Permanent Representatives Committee and the following Specialised Technical Committees, which assist the Executive Council in substantive matters: The Committee on Rural Economy and Agricultural Matters; the Committee on Monetary and Financial Affairs; the Committee on Trade, Customs and Immigration Matters; the Committee on Industry, Science and Technology, Energy, Natural Resources and Environment; the Committee on Transport, Communications and Tourism; the Committee on Health, Labour and Social Affairs; and the Committee on Education, Culture and Human Resources. The Pan-African Parliament implements policies, while the Economic, Social and Cultural Council is an advisory organ composed of different social and professional groups of the Member States. The Peace and Security Council makes decisions on prevention, management and resolution of conflicts. The financial institutions of the AU will consist of the African Central Bank, the African Monetary Fund, and the African Investment Bank. The African Court of Justice and Human Rights will ensure compliance with the law as outlined below.

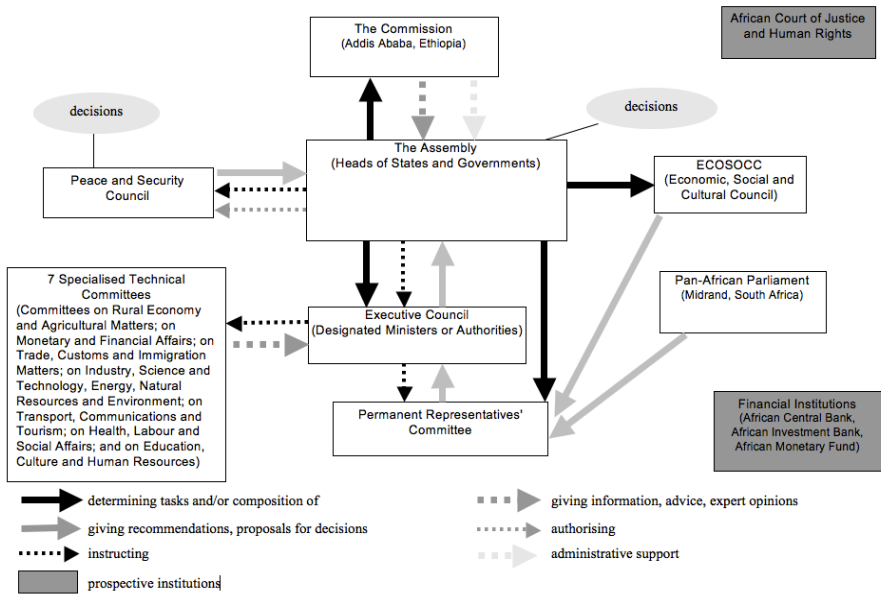


Figure 1: Structure of the African Union<sup>5</sup>

### 3 Environmental issues within the AU’s general legal framework

The Constitutive Act of the African Union, which was adopted in Lomé, Togo in 2000, provides in Article 13 that the Executive Council coordinates and takes decisions on policies in areas of common interest to the member states. This includes, foreign trade; energy, industry and mineral resources; food, agricultural and animal resources; livestock production and forestry; water resources and irrigation; and the environment and its protection.

The African Economic Community, the African Union’s economic institution was established in 1991 by the Abuja Treaty Establishing the African Economic Community. Cameroon signed this treaty in 1991. It contains specific provisions regarding environmental protection and the control of hazardous wastes. The Treaty contains broad economic objectives, which touch on the environment, firstly by the general objective of promoting economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and to promote

5 Chart compiled by C Luedemann based on Ouazghari (2007:5).

an indigenous and self-sustained development; and secondly, through the specific objective of ensuring the harmonisation and coordination of environmental protection policies, among the States Parties. The Treaty makes provision for several specialised technical committees, including a Committee on Industry, Science and Technology, Natural Resources and Environment. Each of these committees has the mandate to prepare projects and programmes in its sphere of duty, and of ensuring supervision and implementation of these.

Chapter VIII contains provisions with regard to food and agriculture, and provides for cooperation among member states in the development of rivers and lake basins, and the development and protection of marine and fisheries resources, and plant and animal protection. States Parties are required to ensure the development within their borders of certain basic industries that are identified as conducive to collective self-reliance and to modernisation, and to ensure proper application of science and technology to a number of sectors that, according to Article 51, include energy and the conservation of the environment. States have the obligation to coordinate and harmonise their policies and programmes in the field of energy and natural resources, and to promote new and renewable forms of energy and, in line with Article 58, to promote a healthy environment, and, to this end, to adopt national, regional and continental policies, strategies and programmes and establish appropriate industries for environmental development and protection. The Treaty requires member states to take appropriate measures to ban the importation and dumping of hazardous wastes in their territories, and to cooperate among themselves in the trans-boundary movement, management and processing of such wastes, where these emanate from a member state.

The African Charter for Human and Peoples' Rights has progressively taken up the issue of environmental protection by explicitly incorporating a human right to environment, a third generation human right.<sup>6</sup> Article 24 of the African Charter for Human and Peoples' Rights reads, "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development".

#### 4 Specific environmental conventions<sup>7</sup>

The following table provides an overview of environmental conventions at AU level and Cameroon's involvement.

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6 See Glazewski (2000:17); Ruppel (2008). For a detailed discussion on the right to environment under the African Charter on Human and Peoples' Rights see also Mekouar (2001).

7 Table compiled by the author based on information from <http://www.au.int/en/treaties>, accessed 24 January 2015.

**Table 1: Important African environmental conventions**

Treaty / Agreement	Treaty / Agreement Particularities			Cameroonian Participation		
	Date of Adoption	Date Entry into Force	Date of Last Signature / Deposit	Date of Signature	Date of Ratification / Accession	Date Deposited
Phyto-Sanitary Convention for Africa	13.09.1967	06.10.1992	02.10.2016	-	11.04.1987	08.06.1987
African Convention on the Conservation of Nature and Natural Resources	15.09.1968	16.06.1969	24.01.2013	15.09.1968	18.07.1977	29.09.1978
Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa	01.01.1991	22.04.1998	07.03.2017	01.03.1991	11.07.1994	21.12.1995
African Maritime Transport Charter	11.06.1994	-	27.01.2012	-	-	-
The African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty)	11.04.1996	15.07.2009	22.02.2017	11.04.1996	11.06.2009	28.09.2010
African Convention on the Conservation of Nature and Natural Resources (Revised Version)	01.07.2003	23.07.2016	07.03.2017	-	-	-
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa	23.10.2009	06.12.2012	24.05.2017	-	06.04.2015	24.05.2017

Treaty / Agreement	Treaty / Agreement Particularities			Cameroonian Participation		
	Date of Adoption	Date Entry into Force	Date of Last Signature / Deposit	Date of Signature	Date of Ratification / Accession	Date Deposited
Revised African Maritime Transport Charter	26.07.2010	-	04.07.2017	-	-	-
African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter)	15.10.2016	-	30.01.2017	24.01.2017	-	-

#### 4.1 The African Convention on Conservation of Nature and Natural Resources, 1968

The 1968 African Convention on the Conservation of Nature and Natural Resources (also referred to as the African Nature Convention or the Algiers Convention), and the forerunner to the 2003 Revised Algiers Convention, which is outlined in the next paragraph, is arguably one of the centrepieces of the AU’s environmental texts.

This regional African Convention was originally adopted in Algiers in 1968 under the auspices of the Organisation of African Unity (OAU) and came into force in 1969. As such it was the successor to the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa, which was later superseded by the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State (the London Convention). The need for a treaty to address nature conservation had already been expressed in the Arusha Manifesto of 1961.<sup>8</sup> Hence, in 1963, the African Charter for the Protection and the Conservation of Nature was adopted, followed soon after by the Algiers Convention.

The objectives of the 1968 Convention encouraged individual and joint action for the conservation, utilisation and development of soil, water, flora and fauna for the present and future welfare of mankind, from an economic, nutritional, scientific, educational, cultural and aesthetic point of view. To this end, states undertake to adopt the measures necessary to ensure conservation, utilisation and development of soil, water, floral and faunal resources in accordance with scientific principles and with due regard to the best interests of the people (Article II); to take effective measures to

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8 IUCN (2006:4).

conserve and improve the soil and to control erosion and land use (Article IV); and to establish policies to conserve, utilise and develop water resources, prevent pollution and control water use (Article V). Furthermore, the Convention imposes on states the obligation to protect flora and ensure its best utilisation, the management of forests and control of burning, land clearance and overgrazing (Article VI); and to conserve faunal resources and use them wisely, manage populations and habitats, control hunting, capture and fishing, and prohibit the use of poisons, explosives and automatic weapons in hunting (Article VII). States are required to tightly control traffic in trophies, to prevent trade in illegally killed and obtained trophies and to establish and maintain conservation areas (Article X). A list of protected species that enjoy full total protection, and a list of species that may be taken only with authorisation is part of the Convention.

#### 4.2 The Revised (Algiers) Convention on the Conservation of Nature and Natural Resources, 2003

The Algiers Convention was revised in 2003 (Maputo) to take into account recent developments on the African environment and natural resources scenes, while bringing the Convention to the level and standard of current multilateral environmental agreements.<sup>9</sup> The revised Convention, which was adopted by the African Union in Mozambique in July 2003,<sup>10</sup> was described as “the most modern and comprehensive of all agreements concerning natural resources”.<sup>11</sup>

As of January 2018, 42<sup>12</sup> of the 54 member states have signed the Convention, and 16 member states<sup>13</sup> have deposited their instrument of ratification. The revised Convention thus still has to come in force, which will be 30 days after 15 countries have

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9 Decision of the Revised 1968 African Convention (Algiers Convention) on the Conservation of Nature and Natural Resources, Doc. EX/CL/50(III), Assembly/AU/Dec. 9(II).

10 At the second ordinary session of the African Union Assembly held in Maputo, Mozambique in July 2003.

11 Kiss & Shelton (2007:183).

12 The Convention has been signed by Angola, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Cote d’Ivoire, Comoros, the DRC, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea-Bissau, Guinea, Kenya, Libya, Lesotho, Liberia, Madagascar, Mali, Malawi, Mozambique, Namibia, Nigeria, Niger, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, Somalia, South Africa, Sudan, South Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

13 i.e. Angola, Benin, Burkina Faso, Burundi, Chad, Cote d’Ivoire, Comoros, Congo, Ghana, Libya, Lesotho, Liberia, Mali, Niger, Rwanda and South Africa, see <http://www.africanunion.org/root/au/Documents/Treaties/List/Revised%20Convention%20on%20Nature%20and%20Natural%20Resources.pdf>, accessed 25 January 2018.

deposited their ratification instruments. Cameroon, being a signatory to the 1968 Convention, has not signed the revised Convention.

The revised Convention follows a comprehensive and general approach to environmental protection. It defines natural resources, addresses economic and social development goals, and stresses the necessity to work closely together towards the implementation of global and regional instruments supporting the goals of the Rio Declaration and Agenda 21.<sup>14</sup>

The Preamble sets the tone by providing that its “objectives would be better achieved by amending the 1968 Algiers Convention by expanding elements related to sustainable development”. In this vein, Article 4 on fundamental obligation, states:

The Parties shall adopt and implement all measures necessary to achieve the objectives of this Convention, in particular through preventive measures and the application of the precautionary principle, and with due regard to ethical and traditional values as well as scientific knowledge in interest of present and future generations.

The main objective of the Convention is to enhance environmental protection, to foster the conservation and sustainable use of natural resources, and to harmonise and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes. In realising these objectives, the Parties should be guided by the principles of a right to a satisfactory environment and the right to development – the so-called third-generation human rights.<sup>15</sup> Parties are required to adopt and implement all measures necessary to achieve the objectives of the Convention, in particular through preventive measures and the application of the precautionary principle, and with due regard to ethical and traditional value as well as scientific knowledge in the interest of present and future generations (Article IV).

The provisions of the Convention address the following areas:<sup>16</sup> Land and soil (Article VI), water (Article VII), vegetation cover (Article VIII), species and genetic diversity (Article IX), protected species (Article X), trade in specimens and products thereof (Article XI), conservation areas (Article XII), process and activities affecting the environment and natural resources (Article XIII), sustainable development and natural resources (Article XIV), military and hostile activities (Article XV), procedural rights (Article XVI), traditional rights of local communities and indigenous knowledge (Article XVII), research (Article XVIII), development and transfer of technology (Article XIX), capacity building, education and training (Article XX), national authorities (Article XXI), cooperation (Article XXII), compliance (Article XXIII), liability (Article XXIV), and exceptions (Article XXV).

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14 IUCN (2006:5).

15 (ibid.:6).

16 For a discussion on each of these areas see IUCN (2006:8).



The Conference of the Parties and the Secretariat are established by Articles XXVI and XXVII respectively. Article XXXIV relates to the relationship with the 1968 Algiers Convention and provides that for Parties that are bound by the revised Convention, only this Convention is to apply. The relationship between parties to the original Convention and parties to this Convention is to be governed by the provisions of the original Convention (Article XXXIV).

It has to be noted that unlike its predecessor, the 2003 Convention excludes reservations, which reflects the necessity for the parties to apply common solutions to common problems. If the parties had the right to make reservations, differing obligations would jeopardise the attainment of the Convention's objectives.<sup>17</sup>

Disputes regarding the interpretation and application of the Convention are primarily subject to alternative dispute resolution otherwise the African Court of Justice has jurisdiction.

#### 4.3 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa

The Convention was adopted in Bamako, Mali on 30 January 1991 and entered into force on 22 April 1998. As of January 2018, it had 35 signatories, of which 27 including Cameroon had ratified the Convention.

The Convention creates a framework of obligations to strictly regulate the transboundary movement of hazardous wastes to and within Africa. The Bamako Convention in Article 3 categorises hazardous wastes and enumerates general obligations of state parties in respect of the enforcement of a ban on hazardous waste import, and on the dumping of hazardous wastes at sea and internal waters in respect of waste generation, and the adoption of precautionary measures. States are furthermore required to establish monitoring and regulatory authorities to report and act on transboundary movement of hazardous wastes. A Secretariat to serve a Conference of the Parties is established. A list of categories of wastes which are hazardous waste and a list of hazardous characteristics are annexed to the Bamako Convention as well as annexes on disposal operations; information to be provided on notification; information to be provided on the movement document; and on arbitration.

Included as part of the 2003 Convention are three Annexes: on the Definition of Threatened Species; on Conservation Areas; and on Prohibited Means of Taking.

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17 IUCN (2006:7).

#### 4.4 The Maritime Transport Charters

Considering the importance of cooperation among African countries in the maritime transport sector and in order to find appropriate solutions to the problems impeding the development of this sector, the Charter was adopted in 1994 but has not come into force as of yet.<sup>18</sup> Cameroon has not signed the Charter. In 2010, the Revised African Maritime Transport Charter has been adopted. This Charter has so far been signed by 19 and ratified by nine member states, not by Cameroon. Ratification by 15 states is required for the Charter to come into force. The revised African Maritime Transport Charter, in contrast to its predecessor, puts a strong emphasis on the protection of the marine environment. The Charter recognises the interdependence between economic development and a sustainable policy for the protection and preservation of the marine environment. One of the objectives of the Charter is to develop and promote mutual assistance and cooperation between states parties in the area of maritime safety, security and protection of the marine environment. Article 28 provides that parties are to seek intensify their efforts to ensure the protection and preservation of the marine environment and to promote measures aimed at preventing and combating pollution incidents arising from marine transport. Furthermore, parties “commit themselves to the creation of a sustainable compensation regime to cover marine incidents of pollution of the sea that are not covered by existing international compensation regimes.”

#### 4.5 The African Nuclear Free Zone Treaty (Treaty of Pelindaba)

The Treaty, to which Cameroon became a signatory in 1996, entered into force in July 2009.<sup>19</sup> The Treaty establishes the African nuclear-weapon-free zone, thereby achieving, *inter alia*, the promotion of regional cooperation for the development and practical application of nuclear energy for peaceful purposes in the interest of sustainable social and economic development of the African continent, and keeping Africa free of environmental pollution by radioactive wastes and other radioactive matter.

Each party has the obligation to renounce nuclear explosive devices, prohibit in its territory the stationing of any nuclear explosive device, and prohibit testing of nuclear explosive devices. Any capability for the manufacture of nuclear explosive devices has to be declared and parties undertake to dismantle and destroy any nuclear explo-

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18 As of January 2018, 13 States have ratified the charter, while ratification of two-thirds of the member States is required for the Charter to come into force.

19 <http://www.au.int/en/sites/default/files/pelindaba%20Treaty.pdf>, accessed 25 January 2018.

sive device, destroy facilities for the manufacture of nuclear explosive devices or where possible to convert them to peaceful uses. Furthermore, the measures contained in the Bamako Convention on the Ban of the Import into Africa and Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa have to be implemented according to Article 7 in so far as it is relevant to radioactive waste and not to take any action to assist or encourage the dumping of radioactive wastes and other radioactive matter anywhere within the African nuclear-weapon-free zone. The use of nuclear science and technology for economic and social development is to be promoted, including cooperation under the African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology. Each party undertakes not to take, or assist, or encourage any action aimed at an armed attack by conventional or other means against nuclear installations in the African nuclear weapon-free zone. The Treaty of Pelindaba establishes the African Commission on Nuclear Energy for the purpose of ensuring compliance with their undertakings under the Treaty. Annual reports have to be submitted by the parties to the Commission and a Conference of the Parties is to be convened.

The Treaty has four Annexes, including a map of the African-nuclear free zone; and Annexes on Safeguards of the International Atomic Energy Agency and on the African Commission on Nuclear Energy; and an Annex on the complaints procedure and settlement of disputes.

#### 4.6 The Phyto-Sanitary Convention for Africa

The Phyto-Sanitary Convention for Africa was adopted in Kinshasa, DRC, on 13 September 1967. The Convention does not contain any provision relating to its entry into force. However, as of September 2015, 10 member states have deposited their instruments of ratification. The aim of this Convention is to control and eliminate plant diseases in Africa and prevent the introduction of new diseases. To this end, parties undertake to control import of plants and to take measures of quarantine, certification or inspection in respect of living organisms, plants, plant material, seeds, soil, compost and packing material. Cameroon is a party to this Convention.

#### 4.7 The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (hereafter the Kampala Convention)<sup>20</sup> was adopted on 23 October 2009 in Kampala. So far, the Kampala Convention has 40 signatories. Twenty-seven countries have so far ratified the Kampala Convention and it has entered into force on 6 December 2012. Cameroon ratified the Convention in 2015. The Convention is the first regional legal instrument in the world containing legal obligations for states with regard to the protection and assistance of internally displaced persons. It applies to displacement caused by a wide range of causes including conflict and human rights violations but also to natural or man-made disasters and has thus an environmental component. Member states commit themselves to establish early warning systems and adopt disaster preparedness and management measures to prevent displacement caused by natural disaster. The Convention provides standards for the protection of internally displaced people from arbitrary displacement, protection of internally displaced people while they are displaced and durable solutions to their displacement.

#### 4.8 African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter)

The African Charter on Maritime Security and Safety and Development in Africa has been adopted in Lomé, Togo in October 2016. As of January 2018, it has 34 signatories, including Cameroon, whereas only Togo has ratified the Charter so far. The Charter will come into force after it has been ratified by 15 member states. One main focus of the Charter is the prevention of transnational crime such as terrorism, piracy, smuggling of migrants, trafficking in drugs and persons, etc. at sea. Besides, many of the objectives laid down in the Charter's Article 2 are relevant for environmental protection. It states that the protection of the environment in general and the marine environment in particular are objectives of the charter, just as the promotion of a flourishing and sustainable Blue/Ocean Economy, which refers to the sustainable economic development of the oceans. Communities living next to the sears are to be sensitised for sustainable development of African coastline and biodiversity. En-

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20 Text available online at [http://www.au.int/en/sites/default/files/AFRICAN\\_UNION\\_CONVENTION\\_FOR\\_THE\\_PROTECTION\\_AND\\_ASSISTANCE\\_OF\\_INTERNALLY\\_DISPLACED\\_PERSONS\\_IN\\_AFRICA\\_\(KAMPALA\\_CONVENTION\).pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_FOR_THE_PROTECTION_AND_ASSISTANCE_OF_INTERNALLY_DISPLACED_PERSONS_IN_AFRICA_(KAMPALA_CONVENTION).pdf), accessed 24 January 2018.

hanced cooperation in various fields of the maritime domain is one of the tools envisaged by the Charter to realise its objectives. The Charter covers many areas of relevance for environmental protection, including illegal fishing; prevention of pollution at sea; sustainable exploitation of marine resources. State parties are encouraged to explore and exploit their maritime resources sustainably and to implement fisheries and aquaculture policies for the preservation of marine resources.

## 5 The African Union's judicial system and the consideration of environmental rights

Environmental agreements under the umbrella of the AU each have their own provision on how disputes are to be settled. Alternative dispute resolution plays an important role in this regard as it is the favourable mechanism, as e.g. provided for in the African Convention for Nature Conservation. The judicial system in the AU has subject to continuous development and several amendments in recent years.<sup>21</sup>

In 1998, the African Court on Human and Peoples' Rights (ACHPR) has been established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, which came into force in 2004. The ACHPR is situated in Arusha, United Republic of Tanzania and has received cases since June 2008.

In 2003, the African Court of Justice as ultimate organ of jurisdiction in the African Union was established by the Protocol of the Court of Justice of the African Union, which entered into force in February 2009. However, the Protocol on the Statute of the African Court of Justice and Human Rights adopted in 2008 during the African Union Summit of Heads of State and Government in Sharm El Sheikh, Arab Republic of Egypt provides for the 1998 and the 2003 Protocols to be replaced and the African Court on Human and Peoples' Rights and the Court of Justice of the African Union to be merged into a single Court to become what is now known as the 'African Court of Justice and Human Rights'. However, the 2008 Protocol on the merger of the courts has so far only been ratified by six<sup>22</sup> states and ratification by 15 states is required for the Protocol to come into force. Once operational, the merged court will have two sections, a General Affairs Section and a Human Rights Section, both composed of eight Judges. The court will have jurisdiction over all disputes and ap-

21 For more details on the creation of judicial structures in the AU see Franceschi (2014:141).

22 As of 24 January 2018, the Protocol has been ratified by Benin, Burkina Faso, Congo, Liberia, Libya, and Mali. See [http://www.au.int/en/sites/default/files/Protocol%20on%20Statute%20of%20the%20African%20Court%20of%20Justice%20and%20HR\\_0.pdf](http://www.au.int/en/sites/default/files/Protocol%20on%20Statute%20of%20the%20African%20Court%20of%20Justice%20and%20HR_0.pdf), accessed 24 January 2018.

plications referred to it, which *inter alia* relate to the interpretation and application of the AU Constitutive Act or the interpretation, application or validity of Union Treaties, as well as human rights violations.

In June 2014, a Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights<sup>23</sup> has been adopted to extend the jurisdiction of the African Court of Justice and Human Rights to cover individual criminal liability for serious crimes committed in violation of international law – making the African Court the first regional court with criminal jurisdiction over genocide, war crimes and crimes against humanity once the Protocol comes into operation upon ratification of 15 member states.<sup>24</sup> At the same time, the Protocol gives immunity to sitting Heads of State and Government, and to other senior officials based on their function, before the African Court, which has been subject to criticism as no other international tribunal that provides individual criminal liability for serious crimes allows such immunity.<sup>25</sup>

The African Commission on Human and Peoples' Rights (hereafter African Commission) is a quasi-judicial body established by the 1981 African (Banjul) Charter on Human and Peoples' Rights (hereafter African Charter) and is responsible for monitoring compliance with the African Charter. The African Charter is a human rights treaty that already proclaims environmental rights in broadly qualitative terms. It protects the right of peoples both to the 'best attainable state of physical and mental health' (Article 16) and to a 'general satisfactory environment favourable to their development' (Article 24). Article 24 of the African Charter establishes a binding human-rights-based approach to environmental protection, linking the right to environment to the right to development.<sup>26</sup>

One famous case related to some environmental issues heard by the African Commission was the *Ogoni* case. The African Commission held, *inter alia*, that Article 24 of the African Charter imposed an obligation on the state to take reasonable measures to "prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources".<sup>27</sup> The *Ogoni* case is considered to be a landmark decision with regard to the effective protection of economic, social and cultural rights in Africa, particularly the protection of the right of peoples to a satisfactory environment.

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23 Available at <http://www.au.int/en/content/protocol-amendments-protocol-statute-african-court-justice-and-human-rights>, accessed 16 September 2015.

24 While this Protocol has received ten signatures so far, no state has ratified it.

25 See HRW (2014); Du Plessis (2012).

26 Van der Linde & Louw (2003).

27 The Social and Economic Rights Action Center (SERAC) & the Center for Economic and Social Rights (CESR) v. Nigeria.

The recognition of a right to a satisfactory environment by the African Charter and progressive jurisprudence by the African Commission emphasise the issue of environmental protection from a human rights perspective and underline the linkage between climate change and human rights, in a modern holistic approach to one of the most burning issues of today.<sup>28</sup> The impacts of climate change on human rights have been explicitly recognised by the African Commission. In its AU Resolution 153 the African Commission called on the Assembly of Heads of State and Government to take all necessary measures to ensure that the African Commission is included in the African Union's negotiating team on climate change.<sup>29</sup> In the same communication it decided to carry out a study on the impact of climate change on human rights in Africa.<sup>30</sup>

## 6 Selected institutions and initiatives particularly relevant for environmental protection

### 6.1 The African Ministerial Conference on the Environment (AMCEN)

The African Ministerial Conference on the Environment (AMCEN) has a strong regional and sub-regional focus. AMCEN thus builds on the potential that regional economic communities (RECs) have to integrate adaptation measures into regional policies and socio-economic development.<sup>31</sup> AMCEN is a permanent forum where African ministers of the environment discuss matters of relevance to the environment of the continent. It was established in 1985 when African ministers met in Egypt and adopted the Cairo Programme for African cooperation. The Conference is convened every second year. In the 2010 Bamako Declaration on the Environment for Sustainable Development, at the thirteenth session of the African Ministerial Conference on the Environment, the Conference's contribution in providing political guidance and leadership on environmental management to Africa since its creation in 1985 in Cairo was appreciated. AMCEN was established to provide advocacy for environmental protection in Africa; to ensure that basic human needs are met adequately and in a sustainable manner; to ensure that social and economic development is realised at all levels; and to ensure that agricultural activities and practices meet the food security needs of the region.

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28 Ruppel (2010).

29 ACHPR/Res. 153 (XLV09).

30 See [http://www.achpr.org/english/resolutions/resolution153\\_en.htm](http://www.achpr.org/english/resolutions/resolution153_en.htm), accessed 14 February 2012.

31 Scholtz (2010), AMCEN (2011).

## 6.2 Relevant departments within the AU Commission

Several departments within the AU Commission play an important role when it comes to issues related to environmental protection. The most relevant one is probably the Department of Rural Economy and Agriculture and the Department of Infrastructure and Energy.

One of the objectives for establishing the Department of Rural Economy and Agriculture was to promote sustainable development and sound environmental and natural resources management while ensuring food and nutrition security. Located within the Department of Rural Economy and Agriculture are the Division of Agriculture and Food Security and the Division of Environment, Climate Change, Water and Land Management among others. The mission of the Department of Rural Economy and Agriculture is to<sup>32</sup>

develop and promote the implementation of policies and strategies aimed at strengthening African agriculture and sound environmental management; by working with AU Member States, RECs, African Citizens, Institutions and other Stakeholders.

With a view to foster the African agenda on agricultural growth and transformation and sound environmental Management, the Department of Rural Economy and Agriculture has launched its second Strategic and Operational Plan (2014-2017)<sup>33</sup> in January 2014, spanning multiple sectors such as environment in general, agriculture, water, fisheries and aquaculture, land, climate change and many more.

Other departments that can be involved with issues pertaining to environmental protection include the Departments of Political Affairs; Infrastructure and Energy; Human Resources, Science and Technology; Trade and Industry; and Peace and Security.

## 6.3 The Peace and Security Council (PSC)

Article 3 of the AU Constitutive Act contains the objectives of the AU, including, among other things, the promotion of sustainable development, international cooperation, continental integration, and the promotion of scientific and technological research to advance development of the continent. In the Protocol relating to the Establishment of the Peace and Security Council (PSC) of the African Union, member states committed themselves to various guiding principles (Article 4), including early responses to contain crises situations, the recognition of the interdependence between

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32 See [www.rea.au.int](http://www.rea.au.int), accessed 16 September 2015.

33 Available at <http://rea.au.int/en/sites/default/files/DREA%202014-2017%20Strategic%20and%20Operational-%20%20Plan.pdf>, accessed 16 September 2015.



socio-economic development and the security of peoples and states. Moreover, in Article 6 of the AU Constitutive Act, the functions of the PSC are outlined as, among others, the promotion of peace, security and stability in Africa; early warning and preventive diplomacy; peace-making; humanitarian action and disaster management. All of the aforementioned provisions provide a clear mandate for addressing environmental problems, especially when it comes to natural or man-made disasters.

#### 6.4 The New Partnership for Africa's Development (NEPAD)

The New Partnership for Africa's Development (NEPAD) was adopted in 2001 in Lusaka, Zambia by African Heads of State and the Government of the OAU in 2001 and was ratified by the AU in 2002. Its overall aim is to promote partnership and cooperation between Africa and the developed world and it envisages the economic and social revival of Africa. Its founding document states:<sup>34</sup>

This New Partnership for Africa's Development is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic. The Programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.

NEPAD includes an environmental component, in that:<sup>35</sup>

It has been recognised that a healthy and productive environment is a prerequisite for the New Partnership for Africa's Development, that the range of issues necessary to nurture this environmental base is vast and complex, and that a systematic combination of initiatives is necessary to develop a coherent environmental programme.

NEPAD recognises that the region's environmental base must be nurtured, while promoting the sustainable use of its natural resources. To this end, the environmental initiative targets eight sub-themes for priority intervention:

- combating desertification;
- wetland conservation;
- invasive alien species control;
- coastal management;
- global warming;

34 NEPAD founding document available at <http://www.nepad.org/resource/new-partnership-africas-development>, accessed 25 January 2018.

35 Preamble to Chapter 8 of the NEPAD documentation, titled *The Environmental Initiative*; see generally Van der Linde (2002).

- cross-border conservation areas;
- environmental governance; and
- financing.

A process aimed at a specific NEPAD Environment Action Plan commenced early in the NEPAD initiative, and a framework for the action plan was endorsed by the African Ministerial Conference on the Environment (AMCEN) in 2002 by the AU in the same year. The Environment Action Plan is underpinned by the notion of sustainable development in that it takes account of economic growth, income distribution, poverty eradication, social equity and better governance.

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