

6-1-2018

Environmental Reform in Africa: A Comparative Continental Union Solution Through Plastic Reform Legislation

Wynee Ngo

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/bjil>

 Part of the [Comparative and Foreign Law Commons](#), [Environmental Law Commons](#), [European Law Commons](#), [International Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Wynee Ngo, *Environmental Reform in Africa: A Comparative Continental Union Solution Through Plastic Reform Legislation*, 43 Brook. J. Int'l L. 691 (2018).

Available at: <https://brooklynworks.brooklaw.edu/bjil/vol43/iss2/15>

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Brooklyn Journal of International Law by an authorized editor of BrooklynWorks.

ENVIRONMENTAL REFORM IN AFRICA: A COMPARATIVE CONTINENTAL UNION SOLUTION THROUGH PLASTIC REFORM LEGISLATION

INTRODUCTION

Disposable plastic bags have been the focus of environmental agencies, such as the United States Environmental Protection Agency,¹ for years. While disposable plastic bags are convenient, they have proven to be a major source of pollution.² The Environmental Protection Agency has conducted research concluding that “somewhere between five hundred billion and one trillion disposable bags are used each year around the world.”³ While plastic bags are convenient, they are used for short periods of time, never fully break down, and can “remain in landfills, oceans, and other places for thousands of years.”⁴ Plastic bags also require an extensive amount of “natural resources, water, and energy to manufacture and ship,” requiring “2.2 billion pounds of fossil fuel and 3.9 billion gallons of fresh water to produce the 100 billion plastic bags the [U.S.] consumes each year.”⁵ These are materials needed for the creation of plastic bags for use in just the United States alone, *not* including materials needed to create plastic bags for worldwide consumers. Due to the inability of plastics and plastic bags to biodegrade, plastics end up polluting soil, waterways, and oceans. Al-

1. The United States Environmental Protection Agency is an agency of the United States federal government, founded in 1970, aimed at protecting human health and the environment. *About EPA*, U.S. ENVTL. PROTECTION AGENCY (Aug. 21, 2017), <https://www.epa.gov/aboutepa> (last visited Feb. 12, 2018).

2. Rinkesh, *Causes, Effects, and Solutions of Plastic Pollution*, CONSERVE ENERGY FUTURE (Nov. 1, 2015), <https://www.conserve-energy-future.com/causes-effects-solutions-of-plastic-pollution.php>.

3. Douglas Lober, *Environmental Impact. Effects, Dangers of Plastic Bags*, REUSE THIS BAG (Oct. 26, 2017), <https://www.reusethisbag.com/articles/plastic-shopping-bags-environmental-impact/>.

4. *Id.*

5. B. Smith, *Reducing Disposable Bag Pollution*, CITIZENS CAMPAIGN (July 25, 2017), <https://www.citizenscampaign.org/campaigns/plastic-bags.asp>.

most 90 percent of the garbage and debris in the oceans is comprised of plastics, affecting fish and other marine animals.⁶ Plastic pollution is not only a major problem for the environment and wildlife; it is also “increasingly expensive for consumers and taxpayers,” resulting in millions of dollars for cities and states to clean up.⁷ Retailers spend billions of dollars a year on purchasing plastic bags, in turn, passing the costs to consumers via higher priced products.⁸

On June 5, 2017, in response to the plastic pollution issue, the United Nations⁹ conducted the Ocean Conference¹⁰ for five consecutive days.¹¹ The Conference led to the creation of the #CleanSeas campaign,¹² which emphasizes the harms that plastic and litter have on the world’s marine life.¹³ The Conference

6. *Plastic Bag Environmental Impact*, CONSERVING NOW, <https://conservingnow.com/plastic-bag-environmental-impact/> (last visited Oct. 22, 2017).

7. *Plastic Shopping Bags & Environmental Impact*, GARDEN CLUB MORRISTOWN, <https://www.gardenclubofmorristown.org/conservation.html>, (last visited Apr. 24, 2018).

8. Lober, *supra* note 3.

9. The United Nations is a global organization founded in 1945 after World War II. See *About the UN*, UNITED NATIONS, <http://www.un.org/en/about-un/> (last visited Oct. 22, 2017). It is aimed at bringing together countries of the world to confront common challenges, promote development, and uphold international law. *Id.*

10. The Ocean Conference is a U.N. conference that took place from June 5th to June 9th, 2017. See *About the Ocean Conference*, UNITED NATIONS, <http://www.un.org/en/conf/ocean/about.shtml> (last visited Mar. 23, 2018). It is aimed at addressing climate change and the health of oceans. See Joe DiFazio, *UN Ocean Conference 2017 Seeks to Avoid Climate Change Catastrophe*, INT'L BUS. TIMES (June 6, 2017), <http://www.ibtimes.com/un-ocean-conference-2017-seeks-avoid-climate-change-catastrophe-2548332>.

11. *The Ocean Conference*, UNITED NATIONS, <https://oceanconference.un.org/> (last visited Oct. 22, 2017).

12. The #CleanSeas campaign is a U.N. Environment initiative that urges governments to pass plastic reduction policies, targets commercial industries to redesign products, promotes the minimization of plastic packaging, and calls on people of the world to change habits. See Bethany Donithorn, *#CleanSeas Turn the Tide on Plastic*, OCEAN ACTION HUB (Feb. 23, 2017), <http://www.oceanactionhub.org/cleanseas-turn-tide-plastic>.

13. UN Environment, *The Clean Seas Global Campaign on Marine Litter*, OCEAN CONFERENCE, <https://oceanconference.un.org/commitments/?id=13900> (last visited Oct. 22, 2017).

was held in furtherance of the United Nations Sustainable Development Goals project,¹⁴ in particular for Sustainable Development Goal 14 to “conserve and sustainably use the oceans, seas and marine resources.”¹⁵ The Conference included an Avaaz¹⁶ petition, presented to the U.N. Environment¹⁷ in support of the #CleanSeas campaign, which was signed by over one million people. It was aimed at eliminating single use plastic, or plastics intended for one-time use, across the world within five years.¹⁸ One major concern is that the #CleanSeas campaign, along with the United Nation’s Sustainable Development Goal 14, lacks stringent enforcement and a sense of urgency on the global scale. On the one hand, plastic reform has been implemented in other countries for years. For example, China has had successful plastic reduction legislation for over nine years, since 2008.¹⁹ China’s effective implementation of plastic reduction legislation has saved over 1.4 million tons of plastic, which is “the

14. The Sustainable Development Goals were adopted on September 25, 2015, as part of a new sustainable development agenda, in order to “end poverty, protect the planet, and ensure prosperity for all.” See *Sustainable Development Goals: 17 Goals to Transform Our World*, UNITED NATIONS, <http://www.un.org/sustainabledevelopment/sustainable-development-goals/#prettyPhoto> (last visited Oct. 22, 2017). The goals have specified deadlines to be achieved over the course of fifteen years. *Id.*

15. See *Goal 14: Conserve and Sustainably Use the Oceans, Seas and Marine Resources*, UNITED NATIONS, <http://www.un.org/sustainabledevelopment/oceans/> (last visited Oct. 22, 2017); *UN’s Mission to Keep Plastics Out of Oceans and Marine Life*, UNITED NATIONS (Apr. 27, 2017), <http://www.un.org/apps/news/story.asp?NewsID=56638#.WbKATXd95mA>; *UN Declares War on Ocean Plastic*, UN ENVIRONMENT (Feb. 23, 2017), <http://www.unep.org/newscentre/un-declares-war-ocean-plastic-0>.

16. Avaaz is a U.S. organization aimed at promoting global activism on issues such as climate change. See *About Us*, AVAAZ: THE WORLD IN ACTION, <https://secure.avaaz.org/page/en/about/> (last visited Oct. 22, 2017).

17. The UN Environment is a global environmental authority that promotes the global environmental agenda, promotes coherent implementation of the environmental dimension of sustainable development within the U.N. system, and serves as an advocate for the global environment. See *About UN Environment*, UN ENV’T, <https://www.unenvironment.org/about-un-environment> (last visited Mar. 1, 2018).

18. *A Million People Demand a Global Ban on Single-Use Plastic at UN Oceans Conference*, UN ENV’T (June 6, 2017), <http://www.unep.org/northamerica/news/2017/million-people-demand-global-ban-single-use-plastic-un-oceans-conference>.

19. John Upton, *China’s Plastic Bag Ban Turns Five Years Old*, GRIST (June 4, 2013), <http://grist.org/article/chinas-plastic-bag-ban-turns-five-years-old/>.

equivalent of 8.4 million tons of oil, 12 million tons of standard coal, and 30 million tons of carbon dioxide.”²⁰ On the other hand, Western countries have not contributed, in any significant way, to reduce plastic usage. Canada, as an example, had national legislation to reduce plastic usage that was later overturned.²¹ In the United States, despite over twenty states introducing bills to reform plastic use on the state level, U.S. federal legislation introduced to Congress in 2009 and 2015 has failed to pass.²²

Aside from legislation at the national level by countries to reduce the use of plastic, there have been international initiatives to reduce plastic use collectively as a continent or region, with widespread support by international agencies.²³ The European Union is one of the most prominent examples of legislative reform as a collective group. The European Union is an “economic and political union” comprised of twenty-eight European countries covering most of the European continent.²⁴ While the European Union originally began for purely economic purposes, it has evolved overtime into other policy areas from “climate, environment and health, to external relations and security, justice and migration.”²⁵ The European Union is founded and based on treaties. Everything is voluntarily and democratically agreed upon by its Member States.²⁶ There are EU initiatives already in place regarding plastic use, including EU Directive 94/62/EC “On Packaging and Packaging Waste,” and later EU Directive 2015/720, “Reducing the Consumption of Lightweight Plastic

20. Li You, *Experts Question China's Ban on 'Free' Plastic Bags*, SIXTH TONE (June 13, 2017), <http://www.sixthtone.com/news/1000322/experts-question-chinas-ban-on-free-plastic-bags>.

21. Chris Fox, *Bag Ban Overturned, Shopping Bylaw Unchanged*, CP24 (Nov. 28, 2012), <http://www.cp24.com/news/bag-ban-overturned-shopping-by-law-unchanged-1.1057255>.

22. See *State Plastic and Paper Bag Legislation*, NAT'L CONF. ST. LEGISLATURES (July 5, 2017), <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx>; *Federal Laws*, PLASTIC BAG LAWS, <http://plasticbaglaws.org/legislation/federal-laws/> (last visited Oct. 22, 2017).

23. *International Initiatives to Address Marine Debris*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/trash-free-waters/international-initiatives-address-marine-debris> (last visited Oct. 22, 2017).

24. *The EU in Brief*, EUR. UNION, https://europa.eu/european-union/about-eu/eu-in-brief_en (last visited Oct. 22, 2017).

25. *Id.*

26. *Id.*

Carrier Bags,” which amended the previous directives.²⁷ The EU Directives aim to impose charges and set national maximum consumption targets.²⁸

In comparison, other international unions do not have these initiatives or directives in place. One such international union is the African Union (AU). The establishment of the AU is still relatively new, officially coming into existence in 1999.²⁹ Today, the AU has fifty-five Member States, a much larger union and continent than the European Union.³⁰ The declaration of the AU calls for the acceleration of “the process of integration in the continent, to enable [Africa to] play its rightful role in the global economy while addressing multifaceted social, economic and political problems. . . .”³¹ One of the main objectives of the AU is “to coordinate and intensify cooperation for development,” as well as “to promote international cooperation within the framework of the United Nations.”³² Despite the AU’s goals and declaration, it does not have any plastic reform legislation implemented. Plastic is a particularly major problem for African countries.³³ Plastics are the common cause for “clogged drainage systems, sewers, and waterways,” which become the “breeding grounds for mosquitoes which cause malaria.”³⁴ Plastics are also a major cause of death for important livestock in African countries. For example, in Mauritania, “more than 70% of cattle and

27. EU Directive 2015/720, Amending Directive 94/62/EC Reducing the Consumption of Lightweight Plastic Carrier Bags, 2015 O.J. (L 115), 11, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015L0720>.

28. Ask EP, *Plastic Bags: EU’s Response to Reducing Consumption*, EUR. PARLIAMENTARY RES. SERV. BLOG (Jan. 17, 2017), <https://epthinktank.eu/2017/01/17/plastic-bags-eus-response-to-reducing-consumption/>.

29. *AU in a Nutshell*, AFR. UNION, <https://au.int/en/au-nutshell> (last visited Oct. 22, 2017).

30. Ruth Becker, *How Many Countries in Africa? How Hard Can the Question Be?*, AFR. CHECK (Jan. 31, 2017), <https://africacheck.org/reports/how-many-countries-in-africa-how-hard-can-the-question-be/>.

31. *AU in a Nutshell*, *supra* note 29.

32. *Id.*

33. Zipporah Musau, *Plastics Pose Biggest Threat to Oceans*, AFR. RENEWAL (May 2017), <http://www.un.org/africarenewal/magazine/may-july-2017/plastics-pose-biggest-threat-oceans>.

34. John-Paul Iwuoha, *Plastic Shopping Bags Will Soon Be History Everywhere in Africa. Here’s Why...*, HUFFINGTON POST (June 3, 2016), http://www.huffingtonpost.com/johnpaul-iwuoha/plastic-shopping-bags-wil_b_10277978.html.

sheep that die in the capital city, Nouakchott, die from eating plastic bags.”³⁵

This Note will examine the directives that currently govern plastic bag pollution in the European Union and will propose additions to the AU to effectively govern plastic use. The analysis will focus on the international framework of the European Union and the AU, their similarities and differences, strengths and weaknesses, and available powers in order to provide an effective and plausible solution for plastic usage reform. Without major reform on the international level, or as a collective group, reform will continue to be burdened. Similar to the efficiency of the European Union in tackling plastic reform collectively as a continent, Africa, through the use of the AU, can take a similar approach. Instead of the slow, uphill battle of implementing plastic reform on the African continent country by country, the AU can take a more direct approach, similar to that of the European Union, by implementing reform at the international level, directing all African countries to begin implementing legislative reform.

Part I of this Note will provide background information on the EU international framework and its current directives in place for plastic usage reform. Part II will analyze the AU international framework and the programs implemented at the national level by African countries. Part III will then analyze and compare the international frameworks of the AU and European Union. Finally, Part IV will propose AU model directives for plastic usage reform, based on EU directives. These will result in a balanced and effective environmental policy capable of effecting massive, widespread change.

I. THE EU INTERNATIONAL FRAMEWORK AND PLASTIC REFORM

This Part will go into the EU international framework, its institutions, powers, capabilities, and composition. This Part will also look into EU legislation already in place implementing plastic reform as a continent, detailing the history leading up to its current legislation.

A. *The EU International Framework*

The European Union was founded in 1993 as the successor to the European Economic Community, which was created in

35. *Id.*

1958.³⁶ The European Union is comprised of various European institutions. These include the European Parliament, the European Council, the Council, and the European Commission.³⁷ The European Parliament “represents the [European Union]’s citizens and are directly elected by them.”³⁸ The European Council consists of the “Heads of State of government of the [European Union] Member States.”³⁹ The Council represents the “governments of the [European Union] Member States.”⁴⁰ The European Commission represents “the interests of the [European Union] as a whole.”⁴¹ The European Commission is the organ in charge of proposing new laws to be adopted by the European Parliament and Council.⁴² The European Council then “defines the general political direction and priorities of the European Union,” with the Member States and the European Commission implementing them.⁴³

There are several types of legislation that affect the Member States in different ways, with varying degrees of accountability on EU Member States. These include regulations, directives, decisions, and recommendations or opinions.⁴⁴ A regulation is applicable and binding on all Member States directly and does not need to be passed into national law by the Member States, but may affect national laws of Member States to avoid conflict with EU passed regulations.⁴⁵ A directive is binding to Member States to achieve particular objectives and must be transposed into national law to become effective. Directives only specify the results to be achieved, leaving Member States the freedom to decide how to implement legislation or policy to achieve the goals of the directive.⁴⁶ Decisions are binding in their entirety, and may be addressed not just to Member States, but also to groups

36. *The EU in Brief*, *supra* note 24.

37. Directorate-General for Communication, *How the European Union Works*, EU PUBLICATIONS 5 (Mar. 11, 2015), <https://publications.europa.eu/en/publication-detail/-/publication/9a6a89dc-4ed7-4bb9-a9f7-53d7f1fb1dae>.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

of people or even individuals.⁴⁷ Recommendations or opinions, while helpful to further some goals of the European Union, have no binding effect.⁴⁸ The majority of EU legislation is adopted using the ordinary legislative procedure, where the European Parliament and the Council share legislative power.⁴⁹

The main organ of the European Union is the European Council, which brings together EU leaders to set the EU political agenda. The European Council decides the overall direction and political priorities of the European Union, with issues in the European Council generally decided by consensus.⁵⁰ In general, directives, such as the EU Directive 94/62/EC on plastic bag reform, is the highest legal act of the European Union. It requires Member States to achieve particular results or goals of the directive, without dictating the processes that the Member States must adopt in order to achieve them.⁵¹ Directives tend to give states the freedom to implement EU objectives in ways that the State's themselves see fit, so long as the purpose of the directive is fulfilled. The function of the European Union is based on the *Treaty on the Functioning of the European Union*.⁵² The treaty more specifically provides the legal basis for enacting directives under Article 288.⁵³ Directives are prepared by the European Commission, and the draft is later presented to the European Parliament and the European Council for evaluation and comment, then approval or rejection.⁵⁴ Directives are binding and generally addressed to all Member States, unless further specified.⁵⁵

47. *Id.*

48. *Id.*

49. *Id.* at 6. This page contains a comprehensible, detailed flow chart of the steps taken to implement EU legislation.

50. *European Council*, EUR. UNION, https://europa.eu/european-union/about-eu/institutions-bodies/european-council_en (last visited Oct. 22, 2017).

51. *Consolidated Version of the Treaty on the Functioning of the European Union*, 2012 O.J. (C 326), 47, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

52. *Id.*

53. *Id.* at 171.

54. *Id.* at 172.

55. *Id.*

B. The European Union and Plastic Reform

The European Union first introduced measures to manage packaging waste in the early 1980s with EU Directive 85/229/EEC, which set forth rules for “production, marketing, use, recycling and refilling of containers of liquids for human consumption and on the disposal of used containers.”⁵⁶ This precipitated the rise of national legislation to address the environmental impact of packaging waste.⁵⁷ Consequentially, this led to diverging national legislation, which required harmonization at the continental level.⁵⁸ This prompted the adoption of EU Directive 94/62/EC in 1994.⁵⁹ This Directive was later amended five additional times⁶⁰ before the latest revision on April 29, 2015, with the adoption of EU Directive 2015/720 regarding the consumption of lightweight plastic carrier bags.⁶¹ With the amendments, the Directives provided, amongst other things, criteria to clarify definitions, increased targets for recovery and recycling of packaging wastes, and illustrative lists of items to be considered packaging.⁶² These provided further clarity to the EU’s particular objective.⁶³

Prior to the adoption of EU Directive 2015/720, European States had initiated national legislation to address this issue.⁶⁴ In 2002, Ireland introduced a nationwide bag fee, setting plastic bag prices at fifteen euro cents.⁶⁵ In 2007, these fees were increased to twenty-two euro cents.⁶⁶ The fee immediately affected consumer behavior and reduced plastic bag consumption by an

56. *Packaging and Packaging Waste*, EUR. COMM’N ENV’T. (Aug. 6, 2016), http://ec.europa.eu/environment/waste/packaging/index_en.htm.

57. *Id.*

58. *Id.*

59. *EU Directive 94/62/EC on Packaging and Packaging Waste*, 1994 O.J. (L. 365), 10, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01994L0062-20150526>.

60. *Id.*

61. *Packaging and Packaging Waste*, *supra* note 56.

62. *Id.*

63. *Id.*

64. Clarissa Morawski, *Dispatches from Europe: A Rush of Regulations on Plastic Bags*, RESOURCE RECYCLING (June 1, 2016), <https://resource-recycling.com/recycling/2016/06/01/dispatches-from-europe-a-rush-of-regulations-on-plastic-bags/>.

65. *Id.*

66. *Id.*

estimated 98 percent within the week.⁶⁷ Scotland, in 2014, and Northern Ireland, in 2013, also implemented plastic bag fees.⁶⁸ Within one year of implementing the charge, Scotland's plastic bag consumption saw a reduction of 18 percent, while Northern Ireland saw a reduction in consumption of 71 percent in the first year and 43 percent in the second year.⁶⁹ England implemented a plastic bag fee in October 2015, charging five pence for every plastic bag used.⁷⁰ They saw a reduction in consumption of 80 percent.⁷¹ The five pence fee is expected to "reduce litter cleanup costs by 60 million pounds."⁷² The United Kingdom's plastic bag use dropped from 7.6 billion bags in 2014 to just 0.6 billion bags from October 2015 to April 2016.⁷³

The amendment leading to the adoption of the EU Directive 2015/720 was first unveiled by the European Commission in 2013.⁷⁴ The proposal's main purpose is to target thin plastic bags that were generally provided free of charge by supermarkets, as they are less frequently reused and more prone to littering.⁷⁵ In 2013, the average European used about 200 thin plastic bags annually.⁷⁶ When Denmark introduced a tax on plastic bags, usage dropped to four plastic bags per person annually.⁷⁷ A shocking comparison to Europeans in Poland, Slovakia, and Portugal, who were consuming more than 450 plastic bags per year.⁷⁸ After the passing of EU Directive 2015/720, plastic carrier bags with wall thicknesses below fifty microns are highly regulated, with each Member State required to provide available and accurate data regarding their consumption.⁷⁹ The Directive also suggested "the use of economic instruments such as pricing" and

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Ilya Rzhavskiy, *EU Ban on Plastic Bags Making Impact*, EPOCH TIMES (Aug. 31, 2016), https://www.theepochtimes.com/eu-ban-on-plastic-bags-making-impact_2147559.html.

74. *European Commission Aims to Drastically Reduce Plastic Bag Use*, DEUTSCHE WELLE (Apr. 11, 2013), <http://www.dw.com/en/european-commission-aims-to-drastically-reduce-plastic-bag-use/a-17203401>.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. EU Directive 2015/720, *supra* note 27.

“taxes and levies, which have proved particularly effective in reducing the consumption of plastic carrier bags, and marketing restrictions . . . provided that [the] restrictions are proportionate and non-discriminatory.”⁸⁰ The Member States under the Directive are to reduce average plastic bag consumption from 200 bags per person in 2015 to ninety bags per person in 2019 and forty bags per person by 2025.⁸¹ The deadline to transpose the EU Directive into national law was set for November 27, 2016.⁸²

II. THE AU INTERNATIONAL FRAMEWORK AND STATE-LEVEL PLASTIC REFORM

The AU is a relatively new continental organization, aimed at promoting unity amongst its fifty-five Member States.⁸³ There has been widespread reform relating to the environmental impact of plastics at the national level by the AU’s Member States.⁸⁴ Each State is modeling its national legislation after its neighboring counterparts.⁸⁵

This Part will discuss the framework of the AU, including its institutions, powers, capabilities, and limitations. It will also show examples of the current trend of environmental plastic reform by AU Member States.

A. *The AU International Framework*

The AU was established in 2002 as the successor to the Organization of African Unity, which was created in 1963.⁸⁶ It is comprised of various African institutions, including the Assembly, the Executive Council, the Permanent Representatives’ Committee, and the AU Commission.⁸⁷ The Assembly is comprised of the Heads of State and Government or duly accredited representatives, and is the supreme or main organ of the AU.⁸⁸ The Executive Council is “composed of Ministers or Authorities designated by the Governments of Member States,” and is the main

80. *Id.*

81. Rzhavskiy, *supra* note 73.

82. Morawski, *supra* note 64.

83. Becker, *supra* note 30.

84. See discussion *infra* Part II.B.

85. *Id.*

86. *African Union*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/African-Union> (last visited Oct. 22, 2017).

87. *AU in a Nutshell*, *supra* note 29.

88. *Id.*

organ responsible to the Assembly.⁸⁹ The Permanent Representatives' Committee is "composed of Permanent Representatives of Member States accredited to the Union," and is charged with the responsibility of preparing the work of the AU's Executive Council.⁹⁰ The AU Commission "represents the Union and defends its interests" by clarifying draft common positions of the AU, preparing strategic plans and studies for the Executive Council's consideration, and effectively running the programs and policies of the AU.⁹¹ The AU Commission consists of a chairperson, a deputy chairperson, eight commissioners, and staff members.⁹² Each commissioner is charged with one of the following portfolios of the Commission: (1) Peace and Security, (2) Political Affairs, (3) Infrastructure and Energy, (4) Social Affairs, (5) Human Resources, Science and Technology, (6) Trade and Industry, (7) Rural Economy and Agriculture, and (8) Economic Affairs.⁹³ The Rural Economy and Agriculture Commissioner is in charge of the Department of Rural Economy and Agriculture, which consists of the following three divisions: (1) Agriculture and Food Security; (2) Environment, Climate Change, Water, Land and Natural Resources; and (3) Rural Economy.⁹⁴

B. Africa and State-Level Plastic Reform

Countries all over the world struggle with plastics and plastic reform. For developing countries, however, specifically like those in Africa, plastics prove to be a major challenge.⁹⁵ In developing countries, people begin to gain access to supermarkets and more affordable packaged foods. With development, however, comes the need for regulation. The greatest problem with plastics is that governments of developing countries lack the resources and funds to create new sanitation jobs to combat the cleanup and recycling that comes with the influx of plastic products.⁹⁶ This

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Meghan Werft, *How Eliminating Plastic Bags in Rwanda Saves Lives and the Economy*, GLOBAL CITIZEN (Sept. 22, 2015), <https://www.globalcitizen.org/en/content/how-eliminating-plastic-bags-in-rwanda-saves-liv-2/>.

96. *Id.*

leads to high costs of recycling plastics for the developing countries or citizens, which causes them to resort to burning plastics, which releases toxic pollutants into the air.⁹⁷ Burning plastics result “in the emission of toxic gases that contribute to atmospheric degradation courtesy of volatile organic compounds.”⁹⁸ Not only do these gases affect indoor air quality, but they also consequently lead to irritation of the eyes, nose, and throat, affecting overall quality of life.⁹⁹

Plastic trash has caused serious damage, not just to the environment, but to human lives in an indirect manner. In Ghana, plastics clogged public drains, causing a flood that killed 150 people, and ultimately leading to a fuel fire.¹⁰⁰ This singular event cost the Ghana government hundreds of millions of dollars in damages.¹⁰¹ Plastics clogging public sewers and drains is also a natural petri dish for diseases and disease carriers. Flooded sewers are homes to the mosquito population, which may cause severe cases of malaria, amongst other deadly diseases.¹⁰²

While the environment and environmental impact is one of the portfolios of the eight commissions, comprised of a Rural Economy and Agriculture Commissioner and an Environment, Climate Change, Water, Land and Natural Resources Division, the AU painfully lacks any legislation addressing plastic consumption and plastic use on the continental level.

Like the United States, where legislative reform has happened on a small scale at the U.S. state level, Africa, as a continent, has seen similar progress with countries like Rwanda implementing plastic reform. Rwanda set the ball rolling in Africa in relation to plastic reform, setting its ban on plastic bags as early as 2008.¹⁰³ This is due to the Rwandan culture of maintaining clean homes and gardens in hopes of bringing their sense of

97. *Id.*

98. Edwin Nyakang'i, *Negative Effects of Plastic Papers: Case of Kenya's Government Ban*, KENYAYOTE (Aug. 23, 2017), <http://kenyayote.com/negative-effects-of-plastic-papers-case-of-kenyas-government-ban/>.

99. *Id.*

100. Werft, *supra* note 95.

101. *Id.*

102. John-Paul Iwuoha, *Plastic Shopping Bags Will Soon Be History in Africa. See How This Smart Entrepreneur is Making Money from the Change...*, SMALLSTARTER (Nov. 9, 2015), <http://www.smallstarter.com/get-inspired/how-to-make-money-from-the-ban-of-plastic-shopping-bags-in-africa/>.

103. Asha Gopalkrishnan, *Africa's War on Plastic*, WARTSILÄ (June 9, 2017), <https://www.wartsila.com/twentyfour7/environment/africa-s-war-on-plastic>.

cleanliness to common areas.¹⁰⁴ Rwanda initially began their ban by prohibiting shops from giving away plastic bags to customers back in 2004.¹⁰⁵ Other examples of countries implementing bans include Eritrea, which adopted a ban in 2005, Tanzania in 2006, Mauritania in 2013, Morocco in 2015, Senegal in 2016, and Kenya in 2017.¹⁰⁶

Tanzania was the first African country to outlaw the import, selling, and use of plastic bags in 2006.¹⁰⁷ Then, in April of 2016, the Tanzanian government issued a “notice of intention to impose a total ban on plastic bags by January 1, 2017. . . .”¹⁰⁸

Mauritania, while many steps behind the world with respect to other development issues, such as slavery, has progressively taken steps to reduce the consumption of plastic bags.¹⁰⁹ In 2013, Mauritania implemented national legislation to reform plastic bag use.¹¹⁰ The legislation banned not only the use of plastic bags, but also the manufacturing and importing of plastic bags.¹¹¹ Manufacturers of plastic bags in Mauritania could face up to one year in jail.¹¹²

In October 2015, Morocco “banned the production, sale, and distribution of plastic bags (locally known as *mika*) across the country. The ban became effective on July 1, 2016.”¹¹³ The country had made prior efforts to ban the use of black plastic bags for littering the streets and beaches, but were only partially successful, struggling to implement and curtail production of the bags.¹¹⁴ Prior to the implementation of this ban, Morocco was the second largest plastic bag consumer, behind only the United States.¹¹⁵

104. *Id.*

105. MICHAEL NIAOUNAKIS, MANAGEMENT OF MARINE PLASTIC DEBRIS 394 (2017).

106. Christopher Nicastro, *Ditching Plastic Bags: A Lesson from Africa*, ZERO WASTE EUR. (Mar. 7, 2017), <https://www.zerowasteurope.eu/2017/07/ditching-plastic-bags-a-lesson-from-africa/>.

107. NIAOUNAKIS, *supra* note 105.

108. *Id.*

109. Jacey Fortin, *Mauritania Cracks Down on a Silent Killer: Plastic Bags*, INT'L BUS. TIMES (Jan. 4, 2014), <http://www.ibtimes.com/mauritania-cracks-down-silent-killer-plastic-bags-992774>.

110. NIAOUNAKIS, *supra* note 105.

111. Iwuoha, *supra* note 34.

112. *Id.*

113. NIAOUNAKIS, *supra* note 105.

114. *Id.*

115. *Id.*

In 2015, Senegal's legislation prohibited not just the production and importation of plastic shopping bags, but also the possession and use of them.¹¹⁶ The legislation banned plastic bags that were thinner than thirty microns.¹¹⁷ If found in violation of the legislation, violators could face up to two years in jail, alongside fines of up to 20 million CFA.¹¹⁸

Kenya is the most recent country to join the forty plus nations in implementing plastic reform.¹¹⁹ Kenya tried to implement plastic reform three times in ten years, with two unsuccessful attempts in 2007 and 2011.¹²⁰ To date, Kenya has introduced one of the world's toughest plastic reform legislations, with a possible imprisonment of up to four years or fines up to \$40,000 USD.¹²¹ There are over fifteen African countries that have adopted or proposed bans similar to those adopted by Rwanda and Kenya.¹²²

III. COMPARISON BETWEEN THE EUROPEAN UNION AND THE AFRICAN UNION

In general, the AU is "modeled almost entirely on the [European Union]."¹²³ The AU Assembly is similar to the European Council of the European Union, or the General Assembly of the United Nations, and acts as the "political organ of the Union."¹²⁴ Similar to the functions and authorities under the European Council, the AU Assembly determines the "common policies of

116. *Id.*

117. *Id.*

118. *Id.*

119. Lars Peterson, *Kenya Plastic Bag Ban Officially Goes Into Effect in Effort to Reduce Pollution*, JURIST (Aug. 28, 2017), <http://www.jurist.org/paperchase/2017/08/kenyan-plastic-bag-ban-officially-goes-into-effect-in-effort-to-reduce-pollution.php>.

120. Gopalkrishnan, *supra* note 103.

121. *Kenya Brings in World's Toughest Plastic Bag Ban: Four Years Jail or \$40,000 Fine*, GUARDIAN (Aug. 28, 2017), <https://www.theguardian.com/environment/2017/aug/28/kenya-brings-in-worlds-toughest-plastic-bag-ban-four-years-jail-or-40000-fine>.

122. Victor Kiprop, *Kenya: Finally, Kenya Effects Ban on Plastic Bags*, ALL AFR. (Sept. 7, 2017), <http://allafrica.com/stories/201709080110.html>.

123. Nsongurua J. Udombana, *The Institutional Structure of the African Union: A Legal Analysis*, 33 CAL. W. INT'L L.J. 69, 73 (2002), <http://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1171&context=cwilj>.

124. *Id.* at 87.

the Union” and “monitor[s] their implementation by the [M]ember [S]tates.”¹²⁵ Assembly decisions may take one of three forms, either (a) in the form of regulations; (b) in the form of directives; or (c) in the form of recommendations, declarations, resolutions, or opinions.¹²⁶ Generally, resolutions and recommendations are not binding on the AU Member States; however, they are formal texts and “are intended to guide and harmonise the viewpoints of the Member States.”¹²⁷ Resolutions have limited competence, but are generally used as evidence of international law, eventually become binding under customary international law¹²⁸ if the provisions of the resolutions are later “shown to have become general practice by States.”¹²⁹ Directives are the most powerful form of legislation that the AU Assembly can pass and are “addressed to any or all Member States, to undertakings, or to individuals.”¹³⁰ Directives also “bind Member States to the objectives to be achieved while leaving national authorities with power to determine the form and the means to be used for their fair implementation.”¹³¹

This Part will explore the skepticism and criticism related to the development and growth of the AU, as well as detail the defensive commentary made by hopefuls towards AU skeptics. It will also provide a comparison between the AU and European Union, detailing their fundamental differences in creation, as well as the challenges and criticisms to the powerful influence the latter has had on the former.

125. *Constitutive Act of the African Union*, July 11, 2000, CAB/LEG/23.15, art. 9(1)(a), 9(1)(e) (entered into force Sept. 13, 1963), https://http://www.au2002.gov.za/docs/key_oau/au.int/sites/default/files/treaties/7758-treaty-0021_-_constitutive_act_of_the_african_union_e.pdf.

126. Rules of Procedure of the Assembly of the Union, Assembly of the AU, 1st Ord. Summit, A.U. Doc. ASS/AU/2(1)-a, Durban, South Africa (2002), http://www.au2002.gov.za/docs/summit_council/assemrop.pdf.

127. *Id.*

128. See discussion *infra* Part IV (discussing customary international law).

129. Udombana, *supra* note 123, at 93.

130. Rules of Procedure of the Assembly of the Union, *supra* note 126, r. 33 (1)(b).

131. *Id.*

A. AU Criticism and Skepticism

Positive news reports on the African continent have been rare, with the media focusing on some of the most unpleasant and serious tragedies in history.¹³² These tragedies range from slave trade and AIDS to intertribal warfare and colonialism.¹³³ According to critics, these tragedies have hindered the development of African independence and the promotion of self-determination in most African nations.¹³⁴ The Organization of African Unity became the AU in an attempt to “allow Africa to become a more significant and forceful entity in terms of promoting social, economic, and political change throughout the African continent. . . .”¹³⁵ Many critics, however, believe that the Organization of African Unity and the AU are “two faces of the same coin, essentially calling the [AU] worthless.”¹³⁶ The continual problems plaguing the African continent have kept skepticism towards the AU alive, not just within the continent, but within the global community.¹³⁷ The criticism is not helped by the fact that many AU leaders are the same leaders who presided over the Organization of African Unity.¹³⁸ The Organization of African Unity was previously known as the “Dictator’s Club.”¹³⁹ The extremity in terms of underdevelopment and political instability in Africa, coupled with the “complex, accelerated, and precise” plans of the AU by modeling itself after the European Union, have contributed to scholars’ skepticism.¹⁴⁰

Despite criticism and skeptic attitudes towards the AU, some hopefuls are pushing for the AU to be the new vessel of change.¹⁴¹ While the AU is young and developing, it is trying to

132. Elizabeth Justice, *The African Union: Building a Dream to Facilitate Trade, Development, and Debt Relief*, 12 CURRENTS: INT’L TRADE L.J. 127 (2003).

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Profile: African Union*, BBC NEWS (Aug. 24, 2017), <http://www.bbc.com/news/world-africa-16910745>.

139. *Id.*

140. Craig Jackson, *Symposium: The African Union and the New Pan-Africanism: Rushing to Organize or Timely Shift: Constitutional Structure and Governance Strategies for Economic Integration in Africa and Europe*, 13 TRANSNAT’L L. & CONTEMP. PROBS. 139, 141 (2003).

141. Justice, *supra* note 132.

rectify the tragedies that plague the African continent.¹⁴² It could become “a serious agent for reform on the continent” if it was “equipped with a comprehensive package, addressing a combination of debt and trade relief.”¹⁴³ While there is merit to AU critiques, Africa is in better shape with the AU than they are without it.¹⁴⁴ The AU is under severe institutional constraints, and therefore cannot always make impactful decisions or grand gestures like its counterparts.¹⁴⁵ This leads to much of the criticism it receives. Despite its constraints, however, the AU puts much of its efforts into smaller initiatives, yielding incremental results that are mostly effective.¹⁴⁶ These hopefuls believe that with the proper infrastructure, the continual challenges affecting the African continent can be eliminated, and the AU can enjoy success similar to that enjoyed by the European Union.¹⁴⁷

B. The African Union Versus the European Union

Critics have compared European integration to a “bicycle on which all members have to keep pedaling to avoid falling off.”¹⁴⁸ African integration, on the other hand, has been compared to a “bumpy ride on the back of a rickety mammy-wagon on potholed roads with failing brakes and lights and the memorable sign ‘No condition is permanent’ inscribed on the vehicle.”¹⁴⁹ This is an extreme and descriptive comparison, but one that is not without merit.

The most fundamental difference between the AU and the European Union is that the AU “is a political organization first, whereas the [European Union] is premised on economic cooperation.”¹⁵⁰ This leads to major differences in the effectiveness of these continental organizations. For one, all African countries have an equal vote, creating a “club of [M]ember [S]tates with

142. *Id.*

143. *Id.*

144. Simon Allison, *Think Again: In Defence of the African Union*, INST. FOR SEC. STUD. (Sept. 9, 2014), <https://issafrica.org/iss-today/think-again-in-defence-of-the-african-union>.

145. *Id.*

146. *Id.*

147. Justice, *supra* note 132.

148. Adekeye Adebajo, *AU and EU: Poor and Rich Man's Club*, MAIL & GUARDIAN (Mar. 25, 2011), <https://mg.co.za/article/2011-03-25-au-and-eu-poor-rich-mans-club/>.

149. *Id.*

150. Allison, *supra* note 144.

no distinction between elected or unelected national leadership.”¹⁵¹ With the European Union, on the other hand, “membership is by invitation only and countries must meet certain economic criteria.”¹⁵² The AU giving all African countries a say, regardless of limitations to their political, economic, or human rights backgrounds, makes it extremely difficult for the AU to execute progressive mandates.¹⁵³ The AU stressing the importance of African unity also runs the risk of placing unity above the promotion of international norms, such as human rights and democracy.¹⁵⁴

In relation to age and composition, the European Union has existed for more than forty years, in one way or another, with regional integration of mainly Western European States.¹⁵⁵ Scholars believe that the European Union is structurally benefitted by the fact that there are a “manageable number of states and a reasonably high level of development” in Europe.¹⁵⁶ By contrast, in Africa, the continent is not only underdeveloped, but the number of Member States vastly outnumbers that of the European Union.¹⁵⁷ To address the issue of manageability, the AU operates on the “principle that constituent units are both Member-States and parts of sub-regional integration units. . . .”¹⁵⁸ An example of sub-regional integration units include the Economic Community of West African States and the Community of Eastern and Southern Africa.¹⁵⁹ African integration is slow due to these units, “as the regional units are not yet reliable organizational structures, and have yet to exhibit the level of organization one might expect at such a crucial sub-regional level.”¹⁶⁰

While it is no secret that the AU is partially modeled after the European Union, the similarities between the two organizations

151. *Id.*

152. *Id.*

153. *Id.*

154. Cate Gower, *What is the African Union and has it Proven to be Successful*, TELEGRAPH (July 28, 2015), <http://www.telegraph.co.uk/news/world-news/africaandindianocean/11766227/What-is-the-African-Union-and-has-it-proven-to-be-successful.html>.

155. Jackson, *supra* note 140, at 141–42.

156. *Id.* at 142.

157. *Id.* at 143.

158. *Id.*

159. *Id.*

160. *Id.*

are starkly contrasted by their vastly different economic and development statuses.¹⁶¹ The AU has shared the EU's aspirations, but has thus far failed to enjoy the same kind of success Europe has had in regional integration.¹⁶² The long term calls for African unity have been faced with the harsh reality of a lack of commitment to the ideals of regional integration on the part of African governments.¹⁶³ If African countries do not change their attitudes, Africa's regional efforts may continue to fail, despite the continuing rhetorical commitment to them on the part of the region's governments.¹⁶⁴

The AU also operates under massive economic constraints, greatly limiting the scope of its ability due to immense financial challenges.¹⁶⁵ For one, Africa is the poorest continent with developing countries.¹⁶⁶ It is also "the continent most afflicted by violence."¹⁶⁷ The AU budget from 2014 was \$308 million USD, compared to the United Nations budget of \$5.2 billion USD.¹⁶⁸ The EU budget from 2017, in contrast, is at €145 billion.¹⁶⁹ The AU's low budget, coupled with large scale problems that many other continents and continental organizations do not face, such as intertribal violence and AIDs, means that the AU budget is wholly inadequate to address core issues.¹⁷⁰ Member States are expected to contribute to the AU, and while prosperous States, such as Nigeria and South Africa, contribute more than their fair share, many struggle to meet their financial obligations to the AU.¹⁷¹ A stunt in financial backing means that Africa "simply can't afford to address major crises on its own."¹⁷² Major crises are expensive, whether it is medical or humanitarian intervention, or peacekeeping amongst its own Member States.¹⁷³

161. *Id.*

162. JEFFREY HAYNES, ET. AL., *WORLD POLITICS* 296, 317 (2d ed. 2011).

163. *Id.*

164. *Id.*

165. Allison, *supra* note 144.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Topics of the European Union: Budget*, EUR. UNION, https://europa.eu/european-union/topics/budget_en (last visited Nov. 12, 2017).

170. Allison, *supra* note 144.

171. *Id.*

172. *Id.*

173. *Id.*

Despite harsh criticism about the competence of the AU, European integration did not start off as a success.¹⁷⁴ In fact, the full potential of integration for the European continent was not realized until the late 1980s.¹⁷⁵ The European Union and AU also emerged and evolved at different paces, with the AU developing later and lagging behind.¹⁷⁶ The differences in evolution are also due to the fact that the two regions are confronted with different challenges.¹⁷⁷ The European Union, however, has been a large influencer in the development of regionalism in Africa.¹⁷⁸ The European Union has done so through teaching and support, by influencing the regional policy of Africa, and providing funds and capacity building to Africa.¹⁷⁹ The European Union “is Africa’s first source of remittances (36%), amounting to €21 billion in 2015.”¹⁸⁰ The European Union is also “Africa’s biggest trading partner accounting for 4% of African exports and 33.5% of African imports in 2016.”¹⁸¹ The AU and European Union also adopted an Africa-EU Joint Strategy (JAES) and Action Plan following the second Africa-EU Summit in December 2007.¹⁸² The JAES demonstrates “the wider processes of integration in both continents as well as geopolitical changes occurring in the wider international landscape, particularly, the challenges of globalization.”¹⁸³ The partnership allows for the continued, productive influence of the European Union in implementing change in all areas, as well as in the regional integration and infrastructure of Africa.¹⁸⁴ As the AU is still relatively new, it may take some time before its full potential will be realized. The European Union has strong financial and political backing, as well as experience with trial and error amongst its own Member States. With

174. Jackson, *supra* note 140, at 145.

175. *Id.*

176. Nicoletta Pirozzi, et. al., *The EU and Africa: Regionalism and Interregionalism Beyond Institutions*, ATLANTIC FUTURE (Nov. 17, 2015), http://www.iai.it/sites/default/files/af_wp_26.pdf.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Did You Know?*, AFR.-EU PARTNERSHIP, <http://www.africa-eu-partnership.org/en> (last visited Nov. 12, 2017).

181. *Id.*

182. *Africa-EU*, AFR. UNION, https://au.int/en/partnerships/africa_eu (last visited Nov. 12, 2017).

183. *Id.*

184. *Id.*

the help of the European Union, the potential of the AU may be realized sooner than critics think.

IV. SUGGESTED APPROACH

In an approach similar to the European Union, the AU may pass directives binding African Member States to reduce the consumption of lightweight plastic carrier bags. This would be a directive similar to the EU Directive 94/62/EC. The AU may take an even broader approach than the European Union by covering a larger variety of plastic products, as opposed to only lightweight plastic carrier bags. Understandably, directives are tough to pass and even tougher to implement, as they involve a widespread mandate, creating tension between the international organization and State sovereignty. In such an instance, any form of resolution or recommendation from the AU may still accord widespread change. For one, while resolutions have limited competence, they may eventually be used to prove customary international law through general State practice. Customary international law is one of the strongest sources of international law,¹⁸⁵ and one international organization taking the leap may inspire others to follow. An international organization, such as the AU, following suit with another international organization as prominent as the European Union would only further the environmental goals of the State, rather than hinder them.

This Part will explore the prospective utilization of an AU Directive as a long-term solution to implementing continental plastic reform. It will also provide alternatives available at the AU's disposal to create a model for Member States not regulating plastic usage, as well as, to influence uniformity for regulating Member States.

A. Long-Term Solution: AU Directive

Despite criticisms of the AU's effectiveness, it has had the ability to pass effective initiatives that have yielded incremental results.¹⁸⁶ Most of the challenges that the AU has faced as a continental organization, with respect to passing progressive mandates, have dealt with large scale issues, such as human

185. *What Are the Sources of International Law*, GLOBALIZATION 101, <http://www.globalization101.org/what-are-the-sources-of-international-law/> (last visited Oct. 22, 2017).

186. Allison, *supra* note 144.

rights.¹⁸⁷ Contrary to large scale issues that have faced pushback, an environmental concern like plastic pollution and potential plastic reform affects all African countries, without being a politically charged and polarizing issue. The AU pushing a directive is also an inexpensive alternative to implementing plastic reform as a continental organization. A directive would leave plastic reform up to the AU Member States, minimizing a need for continued interference with its Member States after passage.

A directive is the most effective way to implement plastic reform at the continental level. The directive would further environmental policy in a continent of developing countries that are sorely lacking in environmental reform. The binding element of a directive would push States to take an affirmative step towards addressing the impacts of plastics that did not plague their countries prior to development. A directive on plastic reform would effectively and quickly alter the landscape of Africa as a continent, with a continuing effect.

B. Short-Term Solution: Resolutions and Recommendations to Establish Custom

While a directive is a binding solution that would most effectively alter the environmental landscape of Africa as a continent, it is a difficult solution to achieve. Directives create tension between the international organization and State sovereignty. In this instance, if a directive cannot be effectively implemented, any type of resolution or recommendation from the AU may still accord widespread change. Resolutions have limited competence, but they may eventually be used to prove customary international law through general state practice. An international organization taking the leap may prove inspiring for other organizations to follow. The AU, following suit with another international organization as prominent as the European Union, would only further the environmental goals of the continent, rather than hinder them.

A resolution or recommendation would bring to light the environmental impact of plastics on Africa's environment, which may lead States ignoring the current environmental situation to take steps necessary to implement reform. The current trend in

187. *Id.*

Africa is that States are taking their own initiative in implementing environmental reform, modeling their legislation after other neighboring States. Resolutions and recommendations would only further goals by serving as a base or background for potential legislation for AU Member States. This would assist Member States with challenges they may face while creating legislation, such as acceptable penalties for violations or proper timeframes for long term implementation of plastic reform. If the AU was to pass a resolution or recommendation suggesting potential national legislation, States may be keener to implement these suggestions into their national agendas.

CONCLUSION

For the last decade, African nations have taken steps to advance effective legislative change on the national level to address the environmental impact of plastics on their environment.¹⁸⁸ The European Union, widely known as a model for the creation of the AU,¹⁸⁹ has successfully implemented directives aimed at addressing plastics impact on the environment.¹⁹⁰ The European Union's use of a directive required their Member States to implement national legislation addressing plastic use, but maintained State sovereignty by not inducing States to follow the same model of legislation. In practice, the abovementioned long-term approach would provide more effective, widespread, and practical change for the African continent, ensuring speedy environmental reform in a continent where the trend towards environmental protection has already begun. Not only would the directive address the environmental impact of plastics on the African continent, but it would also reduce the economic and livelihood risks that come with a lack of regulation towards plastic use, such as flood repair damages and disease risks.¹⁹¹ Understandably, given the difficulty of passing a directive, it may not presently be a viable option. Therefore, any type of resolution or recommendation passed by the AU may be a better, more appropriate step for it to take. Beginning with a resolution or recommendation to test the waters and palate of its Member States may later pave the way for the AU to implement a binding

188. NIAOUNAKIS, *supra* note 105.

189. Udombana, *supra* note 123.

190. EU Directive 2015/720, *supra* note 27.

191. Iwuoha, *supra* note 34.

directive. As more States begin to implement plastic reform at the national level, pushback towards a directive will also steadily decline.

*Wynnee Ngo**

* B.A., State University of New York at Stony Brook (2016); J.D., Brooklyn Law School (Expected 2019); Managing Editor, *Brooklyn Journal of International Law* (2018–2019). Thank you to the Journal staff for their support in the development of this Note. In particular, I would like to thank Jessica Martin, Michelle S. Lee, and Matthew B. Hurowitz for their advice and guidance throughout this process. Thank you to my significant other, Anthony F. Gargano, Jr., for your patience, unwavering support, and countless coffee runs. Thank you to my alter ego, Grace Cho, for your invaluable friendship, feedback, and reassurances as we advance our legal careers together. Most importantly, I would like to thank my parents, Jerry Ngo and Phung T. Phan, for their unconditional love and support. Without your encouragement and motivation throughout my endeavors, I would not be where I am today. All errors or omissions are my own.