



Three countries sharing a productive ecosystem
Três países partilhando um ecossistema produtivo



THE BENGUELA CURRENT CONVENTION

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ANGOLA

AND THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA



Partners and Sponsors

We would like to recognise the many partners who have contributed to the activities of the Benguela Current Commission. We thank the United Nations Development Programme (UNDP) and the Global Environment Facility (GEF) for their support and financial contribution to the BCC and its objectives since the early 1990s. Their support was instrumental to the creation of the BCC.

Other partners of the BCC include the governments of Norway and Iceland; the European Union; the Food and Agriculture Organization of the United Nations, via its -EAF-Nansen project; United Nations Office for Project Services (UNOPS); and the global conservation organisation, WWF.



The GEF unites 182 countries in partnership with international institutions, non-governmental organizations (NGOs), and the private sector to address global environmental issues while supporting national sustainable development initiatives.

Today the GEF is the largest public funder of projects to improve the global environment. An independently operating financial organization, the GEF provides grants for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants. Since 1991, GEF has achieved a strong track record with developing countries and countries with economies in transition, providing \$9.2 billion in grants and leveraging \$40 billion in co-financing for over 2,700 projects in over 168 countries.
www.thegef.org

UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in 177 countries and territories, we offer global perspective and local insight to help empower lives and build resilient nations.
www.undp.org

**Empowered lives.
Resilient nations.**





Introduction

As the Executive Secretary of the Benguela Current Commission, it gives me great pleasure to visit the city of Benguela and celebrate the signing of the Benguela Current Convention.

Our presence in Benguela, and the historic signing of the Benguela Current Convention, represents the culmination of many years of research, consultation and negotiation, all of which have been carried out in a spirit of trust and cooperation.

Indeed, the signing of this unique multilateral agreement is the next logical step after nearly two decades of collaboration between Angola, Namibia and South Africa. It will formally establish the Benguela Current Commission as a regional inter-governmental organisation with a mandate to promote the sustainable use and management of the Benguela Current Large Marine Ecosystem (BCLME) and thereby bring long-term social and economic benefits to the people of the region. The Convention will ensure that industrial development progresses in an environmentally responsible manner and that the three countries work together to protect biodiversity, maintain the integrity of the BCLME and minimise the risk of long-term or irreversible impacts caused by human activities.

Minimising marine pollution, be it from ships, land-based sources or from the marine mining and oil extraction industries, is a priority of the Benguela Current Convention. Harmonising policies, laws and regulations so that industrial activities in one country do not impact the coastal or marine environment of another country, is another priority. And the transboundary management of fisheries, including the monitoring and control of fishing activity, is a third priority.

At the heart of the Convention is the concept of the ecosystem approach: a long-term approach that aims to maintain ecosystem goods and services for sustainable use, while recognising that humans are an integral part of the process.

It is fitting that the Benguela Current Convention should be signed in the city that has given its name to the cold, productive current that bring so many ecosystem goods and services – including industry, mining, fisheries, food and livelihoods – to the shores of the Benguela region.

It has been a privilege to work with the governments of Angola, Namibia and South Africa over the past three years and to have seen the Convention text evolve over that period. By signing the Benguela Current Convention, the countries are demonstrating to the world that it is possible for African countries to overcome colonialism, occupation and bitter wars, work together constructively and peacefully and ensure that shared living marine resources are managed in a sustainable and integrated way for the benefit of all their people.

Hashali Hamukuaya

Executive Secretary of the Benguela Current Commission

Preamble

The Government of the Republic of Angola, the Government of the Republic of Namibia and the Government of the Republic of South Africa (hereinafter referred to in the singular as "a Party" and in the plural as "Parties");

Recognising the unique character of the Benguela Current Large Marine Ecosystem, the richness and complexity of its biological and physical functioning, its significance for the socio-economic development and for the well-being of the people depending on it and the threats to it;

Recalling the Interim Agreement between the Government of the Republic of Angola and the Government of the Republic of Namibia and the Government of the Republic of South Africa on the Establishment of the Benguela Current Commission signed by January 2007;

Further recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, the relevant provisions of the United Nations Convention on Biological Diversity of 5 June 1992, the relevant provisions of the United Nations Framework Convention on Climate Change of 21 March 1994, including implementation agreements under these conventions, as well as other global and regional instruments concerning conservation and management of marine resources, abatement of pollution, safety at sea, and protection of the environment;

Conscious of the need to avoid adverse impacts on the marine environment, protect biodiversity, maintain the integrity of the marine ecosystem and minimise the risk of long-term or irreversible effects by human activities;

Convinced of the need to take concrete actions collectively to ensure effective long-term transboundary co-operation and the integrated sustainable management and the protection of the marine resources;

Recognising the importance of stable institutional arrangements to ensure the implementation of an ecosystem

approach to the management of resources and of human activities affecting the Benguela Current Large Marine Ecosystem;

Seeking to address the challenges identified by them in the Benguela Current Large Marine Ecosystem;

Convinced of their joint responsibility as custodians of this globally significant large marine ecosystem to conserve and manage it for the benefit of present and future generations; **HAVE AGREED** as follows:

Article 1 Definitions

In this Convention, unless the context indicates otherwise-

"Adverse Impact"

- (a) includes any actual or potential detrimental effect on the Benguela Current Large Marine Ecosystem that results directly or indirectly from human conduct originating wholly or partly within the area under jurisdiction of a Party or from a ship or aircraft under its jurisdiction or control; and
- (b) includes adverse impact that extends beyond the jurisdiction of a Party in which the physical origin of the adverse impact is situated; and
- (c) includes any actual or potential detrimental effect on legitimate uses of the Benguela Current Large Marine Ecosystem, on the health of the people of the Parties or on their ability to provide for their health, safety, cultural and economic well-being, which occurs or may occur as a consequence of a detrimental effect referred to in (a); but
- (d) does not include any actual or potential detrimental effect that is negligible or which has been assessed and to be determined acceptable under this Convention;

"Benguela Current Large Marine Ecosystem" means the large marine ecosystem associated with the Benguela Current and characterised by distinct bathymetry, hydrography, productivity and trophically dependent populations, within the area of application set out in this Convention;



Ecosystem means a dynamic system of plant, animal and micro-organisms communities and their non-living environment interacting as a functional unit;

Environment includes, but is not limited to, the whole or any component of -

- (a) nature, which includes air, water (including the sea, and the sea bed), land (including soils and minerals), energy and living organisms other than humans;
- (b) the interaction between the components of nature and between those components and humans; and
- (c) physical, aesthetic and cultural qualities or conditions that affect the health and well-being of humans;

Fishery Resources means resources of fish, molluscs, crustaceans, and other sedentary species;

Interim Agreement means the Agreement between the Republic of Angola, the Republic of Namibia and the Republic of South Africa on the Establishment of the Benguela Current Commission signed by January 2007;

Marine Resources means all living and non-living components of the marine ecosystem;

Party means either the Republic of Angola, the Republic of Namibia or the Republic of South Africa, and the "Parties" means the Republic of Angola, the Republic of Namibia and the Republic of South Africa jointly;

Pollution means the introduction by humans, directly or indirectly, of substances or energy into the Benguela Current Large Marine Ecosystem, which results in, or is likely to result in hazards to human health, harm to the ecosystem, damage to amenities or interference with legitimate uses of the Benguela Current Large Marine Ecosystem;

Precautionary Principle means the principle that a lack of full scientific certainty shall not be used as a reason for postponing measures or actions to give effect to the objective of this Convention; "Ship or Aircraft" means any waterborne or airborne man-made structure fixed or floating, their parts, fittings and equipment, whether self-propelled or not, operating in the marine environment; and

Strategic Action Programme means the Strategic Action Programme for the Benguela Current Large Marine Ecosystem adopted and signed by the Parties.

Article 2 Objective

The objective of this Convention is to promote a coordinated regional approach to the long-term conservation, protection, rehabilitation, enhancement and sustainable use of the Benguela Current Large Marine Ecosystem, to provide economic, environmental and social benefits.

Article 3 Area of Application

- (1) The area of application for this Convention comprises all areas within the national sovereignty and jurisdiction in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982, bounded by the high water mark along the coasts of the Parties.
- (2) This Convention applies to all human activities, aircrafts and ships under jurisdiction or control of a Party to the extent that these activities or the operation of such aircraft or ship result in, or are likely to result in adverse impacts.

Article 4 General Principles

- (1) The Parties shall be guided by the following principles:
 - (a) The cooperation, collaboration and sovereign equality principle;
 - (b) sustainable use and management of the marine resources;
 - (c) the precautionary principle;
 - (d) prevention, avoidance and mitigation of pollution;
 - (e) the polluter pays principle; and
 - (f) protection of biodiversity in the marine environment and conservation of the marine ecosystem.
- (2) In giving effect to the objective of this Convention and to the principles in paragraph (1), the Parties shall -
 - (a) take all possible steps to prevent, abate and minimise pollution and take the necessary measures to protect the marine ecosystem against any adverse impacts;
 - (b) undertake environmental impact assessment for proposed activities that are likely to cause adverse impacts on the marine and coastal environments;
 - (c) apply management measures based on the best scientific evidence available;
 - (d) establish mechanisms for intersectorial data collection, sharing and exchange thereof;
 - (e) where possible, reverse and prevent habitat alteration and destruction;
 - (f) protect vulnerable species and biological diversity; and
 - (g) take all possible steps to strengthen and maintain human and infrastructural capacity.

Article 5 The Organisational Structure

The organisational structure shall be the following:

- (a) A Ministerial Conference;
- (b) a Commission; and
- (c) a Secretariat.

Article 6 The Ministerial Conference

- (1) Each Party shall authorise Ministers to attend the Ministerial Conference, one of whom shall be the head of the delegation, and may be accompanied by alternative representatives, experts and advisers.
- (2) The Ministerial Conference shall -
 - (a) evaluate the implementation of this Convention and approve any changes to the Strategic Action Programme as well as mandate the taking of any actions necessary to facilitate the effective implementation of that programme;
 - (b) approve the work plan and budget for the period between the ordinary conferences;
 - (c) approve the procedures, terms and conditions for the appointment of the Executive Secretary;
 - (d) approve any proposed amendments to the text of this Convention; and
 - (e) decide on any matter related to the work of the Commission that is not specifically assigned to any other of its organs.
- (3) A Ministerial Conference shall be convened at least every two years, or in accordance with a decision of the Ministerial Conference or at a written request by a Party.
- (4) Unless the Ministerial Conference decides otherwise, meetings shall be chaired on a rotational basis among the Parties.

Article 7 The Commission

- (1) Each Party shall be a member of the Commission and shall appoint a Commissioner and an alternate.
- (2) The Commissioner shall be accompanied by sectorial representatives, and experts and advisers as may be required.
- (3) Unless the Commission decides otherwise, meetings of the Commission shall be chaired on a rotational basis among the Parties.
- (4) Meetings of the Commission shall be convened ordinarily once a year or in accordance with a decision of the Commission or at a written request by a Party.

Article 8 Functions of the Commission

In giving effect to the objective of this Convention, the Commission shall -

- (a) coordinate the implementation and review of the Strategic Action Programme and recommend changes to the programme as well as possible action plans as may be necessary from time to time;

- (b) provide strategic direction, coordination and evaluation in the implementation of the work plans and budget;
- (c) agree on, where necessary, measures to prevent, abate and minimise pollution caused by or resulting from -
 - (i) dumping from ships or aircrafts;
 - (ii) exploration and exploitation of the continental shelf and the seabed and its subsoil; and
 - (iii) land-based sources;
- (d) agree on, where necessary, conservation and management measures concerning transboundary marine resources and the environment;
- (e) agree, as appropriate, on participatory rights, such as harvest levels and sharing arrangements concerning transboundary fishery resources;
- (f) promote, to the greatest extent possible, harmonisation, implementation and enforcement of existing policies and laws pertaining to the conservation and management of transboundary marine resources and environment;
- (g) encourage harmonisation of conservation and management measures concerning marine resources and the environment;
- (h) promote and support research programmes related to the transboundary marine resources and the environment;
- (i) promote the collection, exchange, dissemination and analyses of the relevant data and information, including statistical, biological, environmental and socio-economical;
- (j) promote collaboration on monitoring, control and surveillance, including joint activities in the Southern African Development Community region;
- (k) appoint an Executive Secretary and adopt rules of procedures for his or her functions;
- (l) support training and strengthening of capacity in areas covered by this Convention;
- (m) ensure adequate funding and resources to sustain the long-term operations of the Commission;
- (n) establish subsidiary bodies as it considers desirable for the exercise of its functions and direct their activities; and
- (o) carry out such other activities as may be necessary for the Commission to achieve the objective of this Convention.

Article 9 Permanent Committees of the Commission

- (1) There are hereby established as permanent committees to the Commission an Ecosystem Advisory Committee, a Finance and Administration Committee, and a Compliance Committee to provide advice and recommendations to the Commission on matters within their respective areas of

competence and carry out such activities as requested from time to time by the Commission.

- (2) Each Party shall appoint experts to each Committee.
- (3) Each Committee may establish working groups as it deems necessary.
- (4) Each Committee shall establish rules and procedures for its functioning, including work plans and budgets, to be approved by the Commission.

Article 10 The Ecosystem Advisory Committee

The Ecosystem Advisory Committee shall provide to the Commission the best scientific advice and relevant information available and shall -

- (a) establish and manage a science programme; and
- (b) recommend conservation and management measures.

Article 11 The Finance and Administration Committee

The Finance and Administration Committee shall provide financial and administrative advice to the Commission and shall, inter alia -

- (a) monitor the implementation of the budget and review the audited financial reports; and
- (b) review and recommend the projected budget for approval.

Article 12 The Compliance Committee

The Compliance Committee shall provide the Commission with information, advice and recommendations on the implementation of and compliance with the measures adopted to give effect to the objective of this Convention and shall -

- (a) coordinate compliance activities; and
- (b) coordinate with the other Committees on matters of common interests.

Article 13 The Secretariat

The Secretariat shall be headed by an Executive Secretary, and it shall -

- (a) provide services to the Ministerial Conference, the Commission and its subsidiary bodies to facilitate the execution of their functions;
- (b) establish rules and procedures of operation, functioning and appointment of its staff to be approved by the Commission;
- (c) propose the creation or termination of such positions as deemed necessary to perform its functions, with the approval of the Commission;
- (d) source resources, additional to the contributions made by the Parties, to carry out and implement the programmes of the Commission;
- (e) establish partnerships with other organisations; and
- (f) perform such other functions as the Commission may determine.

Article 14 National Coordinators

Each Party may appoint, at its own expense, a National Coordinator to coordinate sectorial participation at national level.

Article 15 Finance and Budget

- (1) Each Party shall pay the expenses of its own delegation to any meetings held pursuant to this Convention.
- (2) The Parties shall contribute in equal proportions to the budget of the Commission that shall be payable in the currency of the country in which the headquarters of the Commission is located.
- (3) The Executive Secretary shall submit drafts of the annual budgets for the two succeeding financial years to each Party no later than sixty days before the annual meeting of the Commission.



- (4) A Party that fails to pay its contributions for two consecutive years shall not, during the period of its default, have the right to participate in the taking of decisions and adopt recommendations in the Commission.

Article 16 Decisions and Recommendations

- (1) Decisions and recommendations shall be taken by consensus.
- (2) Concerning decisions and recommendations on transboundary issues affecting only two Parties, consensus means that those decisions and recommendations are supported by the affected Parties.

Article 17 Obligations

- (1) Each Party shall take measures to ensure the implementation of this Convention and any decisions and measures agreed pursuant thereto, including adoption of the necessary legislation.
- (2) Each Party shall report to the Commission on an annual basis indicating how it has implemented decisions of and acted on recommendations by the Commission.

Article 18 Cooperation with other Organisations

- (1) The Commission shall seek to develop cooperative relationships and may enter into agreements with organisations that can contribute to its work.
- (2) The Commission shall provide for the participation by invitation or on request of organisations having special competence in the fields of activity of the Commission in its meeting as observers in accordance with its Rules of Procedure.

Article 19 Settlement of Disputes

- (1) The Parties shall cooperate in order to prevent disputes.
- (2) If any disputes arise between Parties concerning the interpretation or implementation of this Convention, those concerned shall consult among themselves as soon as possible in order to settle the dispute by negotiation or any other means as they may agree upon.

Article 20 Languages

The official languages shall be English and Portuguese.

Article 21 Headquarters

The headquarters shall be established in Namibia.

Article 22 Signature, Ratification, Acceptance and Approval

- (1) This Convention shall be open for signature by the Parties on 18 March 2013.
- (2) This Convention is subject to ratification, acceptance or approval in accordance with the domestic law and procedures in force in the countries of the Parties.
- (3) Instruments of ratification, acceptance or approval shall be deposited with the depositary.

Article 23 Entry into Force

This Convention shall enter into force 30 days after the date of the deposit with the depositary of the last instruments of ratification, acceptance or approval by the Parties.



Article 24 Reservations and Exceptions

No reservations or exceptions may be made to this Convention.

Article 25 Declarations and Statements

Article 22 does not preclude a Party, when signing or ratifying this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to harmonisation of its laws and regulations to provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that Party.

Article 26 Relationship with other International Instruments

This Convention shall not alter the rights and obligations of the Parties, which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Convention.

Article 27 Amendments

- (1) Any Party may propose amendments to this Convention to be considered by the Commission. Any such proposal shall be made by written communication addressed to the Executive Secretary at least 60 (sixty) days before the meeting of the Commission at which it is to be considered. The Executive Secretary shall promptly circulate such communication to all Parties.
- (2) Amendments to this Convention shall be considered at the annual meeting of the Commission unless a majority of the Parties requests a special meeting to consider the proposed amendments. A special meeting may be convened on not less than 60 (sixty) days' notice. The text of any agreed amendment shall be transmitted promptly by the Executive Secretary to all Parties.
- (3) Amendments to this Convention shall enter into force for the Party ratifying or acceding to them on the 30th (thirtieth) day following the deposit of the instrument of ratification or accession by at least two of the Parties.

Article 28 Withdrawal

A Party may, by written notification addressed to the depositary, withdraw from this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the withdrawal. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

Article 29 Transition

- (1) The existing committees, subcommittees and working groups established under the Interim Agreement shall continue to exist unless terminated or reviewed by the Commission.
- (2) All decisions, recommendations and other agreements adopted under the Interim Agreement shall continue to be valid to the extent that they are consistent with or not explicitly terminated by this Convention.

Article 30 Depositary

The Republic of Namibia shall be the depositary of this Convention and any amendments thereto. The depositary shall register this Convention with the Secretary-General of the United Nations in accordance with article 102 of the Charter of the United Nations.

Article 31 Authentic Texts

The English and Portuguese texts of this Convention are equally authentic.