

**UNITED
NATIONS**

EP

UNEP(DEPI)/EAF/CP.5/7



**United Nations
Environment**

Distr.: General
28 August 2007

Original: English



Programme

**Fifth meeting of the Contracting Parties
to the Convention for the Protection,
Management and Development of the
Marine and Coastal Environment
of the Eastern African Region**
Johannesburg, South Africa, 5-8 November 2007

**THIRD DRAFT PROTOCOL ADDITIONAL TO THE NAIROBI
CONVENTION CONCERNING LAND-BASED SOURCES AND
ACTIVITIES (LBS/A) IN THE EASTERN AFRICAN REGION.**

**PREPARED WITH THE SUPPORT OF UNEP-GEF WIO-LaB
PROJECT**

April 2007

Table of Contents

Page

PREAMBLE 4

PART I: GENERAL PROVISIONS 6

ARTICLE 1: DEFINITIONS 6

ARTICLE 2: GEOGRAPHICAL SCOPE 8

ARTICLE 3: PROTOCOL APPLICATION 8

ARTICLE 4: GENERAL OBLIGATIONS 9

PART II: PROVISIONS ON POLLUTION AND OTHER DEGRADING ACTIVITIES AND SOURCES 10

ARTICLE 5: POLLUTION FROM POINT SOURCES 10

ARTICLE 6: POLLUTION FROM DIFFUSE SOURCES 11

ARTICLE 7: DEGRADATION FROM OTHER HARMFUL ACTIVITIES 11

ARTICLE 8: TRANSBOUNDARY POLLUTION 11

PART III: PROVISIONS TO ENSURE EFFECTIVE IMPLEMENTATION 12

ARTICLE 9: MEASURES OF IMPLEMENTATION 12

ARTICLE 10: COMPLIANCE AND ENFORCEMENT 12

ARTICLE 11: COMMON GUIDELINES, STANDARDS AND CRITERIA 13

ARTICLE 12: DATA COLLECTION, MONITORING AND EVALUATION 14

ARTICLE 13: ENVIRONMENTAL IMPACT ASSESSMENT AND AUDIT 15

ARTICLE 14: SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION,
TECHNICAL ASSISTANCE AND CAPACITY BUILDING 17

ARTICLE 15: PUBLIC PARTICIPATION, EDUCATIONAL AND AWARENESS PROGRAMMES 17

ARTICLE 16: REPORTING, EXCHANGE OF AND ACCESS TO

INFORMATION 18

PART IV: INSTITUTIONAL AND FINANCIAL ARRANGEMENTS 19

ARTICLE 17: SECRETARIAT AND COORDINATION MECHANISMS 19

ARTICLE 18: MEETINGS OF THE PARTIES 21

ARTICLE 19: NATIONAL FOCAL POINTS 22

ARTICLE 20: FINANCIAL ARRANGEMENTS 22

PART V: FINAL PROVISIONS 23

ARTICLE 21: ANNEXES 23

ARTICLE 22: SETTLEMENT OF DISPUTES 23

ARTICLE 23: RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION 23

ARTICLE 24: RELATIONSHIP BETWEEN THIS PROTOCOL, DOMESTIC LEGISLATION AND THIRD PARTIES 24

ARTICLE 25: SOVEREIGNTY CLAIMS AND RIGHTS 24

ARTICLE 26: SIGNATURE, RATIFICATION, ACCESSION, AMENDMENTS, DEPOSITARY AND ENTRY INTO FORCE 24

LIST OF PROPOSED ANNEXES 25

- ANNEX ON INDICATIVE LIST OF PRIORITY SUBSTANCES AND ACTIVITIES.

- ANNEX ON BEST AVAILABLE TECHNIQUES AND BEST ENVIRONMENTAL PRACTICE.

- ANNEX ON METHODOLOGY OF LISTING AND DE-LISTING OF HOT SPOTS.

- ANNEX ON ENVIRONMENTAL QUALITY STANDARDS (EQSs), ENVIRONMENTAL QUALITY OBJECTIVES (EQOs) AND EMISSION

LIMITS.

PREAMBLE

The Contracting Parties to this Protocol,

Being parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern and Southern Africa Region signed in Nairobi on 21 June 1985;

Determined to implement the Convention, in particular Article 7 thereof;

Conscious of the grave danger facing the coastal and marine environment, the rich diversity of resources as well as human health of the Eastern and Southern African Region from various land-based activities and sources, and affecting, *inter alia*, its rich heritage of biological diversity, coastal tourism, ports and harbours and other natural and human made endowments and resources;

Noting with particular concern the threats to the marine and coastal environment of the Eastern Africa Region from land based sources and activities, including domestic sewage and industrial effluents and discharges; solid domestic and industrial wastes; agricultural wastes and run-off including persistent organic pollutants, nutrients and silt; and activities causing physical alterations and destruction of habitats;

Conscious of the close and traditional dependency for livelihoods and other uses of local and other communities on the various coastal and marine resources, many of which are currently under serious threat from various land-based activities and sources; and increasing poverty levels;

Noting the special circumstances and vulnerabilities of the Small Island Developing States (SIDS) of the Region (Comoros, Mauritius and Seychelles);

Mindful that coastal and marine natural and human-made resources and endowments constitute a rich heritage of scientific, cultural, social, educational, recreational, aesthetic and economic value that needs to be effectively and sustainably protected;

Stressing the urgent need for tackling the various land-based activities and sources causing pollution and/or degradation of the coastal and marine environment of the Eastern African Region;

Aware of the need for proper and sustainable control, precaution, prevention, reduction, mitigation and to the maximum extent possible, complete elimination of those activities and sources;

Determined to pursue the protection and conservation of the coastal and marine environment as well as the sustainable development and/or use of the natural resources of

the Eastern Africa Region, by, *inter alia*, proactive and inclusive planning processes, so as to meet the needs of the present and future generations in an equitable manner and thereby ensure inter-generational equity;

Considering that all Contracting Parties are committed to co-operate in regional efforts to conserve, protect and restore the health and integrity of the coastal and marine environment of the Eastern Africa Region and that to this end, they have common but differentiated responsibilities;

Desirous of establishing closer collaboration and co-operation among the Contracting Parties in order to achieve the objective of better protection of the coastal and marine environment of the Eastern African Region from pollution from land-based activities and sources;

Recognising that, notwithstanding some achievements in efforts to reduce coastal and marine pollution from land-based activities and sources, existing efforts and measures at the local, national and regional levels have been inadequate and need to be enhanced and strengthened further;

Recognising further the need for enhanced collaboration and co-operation with other states and relevant regional and international organizations for better protection of the coastal and marine environment of the Eastern African Region;

Mindful of the provisions of the United Nations Law of the Sea Convention (1982) and particularly Articles 207 and 213 thereof;

Mindful also of the various relevant and in many cases recent international and regional commitments and instruments, as well as developments in other regional seas programmes;

Taking into account global, regional and national efforts concerning environmental sustainability, poverty reduction and access to drinking water and sanitation;

Have agreed as follows: -

PART I: GENERAL PROVISIONS

ARTICLE 1: DEFINITIONS

For the purposes of this Protocol:

- (i) “Convention” means the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern and Southern Africa Region;

- (ii) “Contracting Party” means any state or regional economic, political or other organization, of which at least one member is a coastal state of the Eastern African Region and which exercises competence in the fields covered by this Protocol, and that has become a party to this Protocol; or a non coastal state which is upstream and riparian to watercourses draining into or connected with the Eastern African side of the Indian Ocean;

- (iii) “Land-based activities and sources” means activities, sources and factors directly or indirectly causing or contributing to the pollution of the coastal and marine environment from the land-ward side as opposed to activities, sources and factors from the sea-ward side;

- (iv) “Hot spots” refers to geographically defined coastal areas and other areas of the sea, of national, regional and/or global/international significance, where the conditions are such as to adversely affect human health, threaten ecosystem functioning, reduce biodiversity and/or compromise resources and amenities of economic importance in a manner that would appear to warrant priority management attention;

- (v) “ Sensitive areas” refers to geographically defined areas, of national, regional and/or global significance which, although not degraded at present, are threatened with future degradation, either because of sensitivity of the receptor or the magnitude of the anthropogenic activity posing the threat;

- (vi) “Point sources” means sources of pollution where discharges and releases are introduced into the environment from any clearly discernable confined and discrete conveyance including but not limited to pipes, outfalls, channels, ditches, tunnels, conduits or wells from which pollutants are or may be discharged;

- (vii) “Diffuse sources” means sources of pollution other than point sources, from which substances enter the environment as a result of land or surface run-off, precipitation, atmospheric deposition, drainage seepage or by hydrologic modifications or destruction of habitats;

- (viii) “Fresh water limit” means the place in a water course where at low tide and in a period of low fresh water flow, there is an appreciable or discernible increase in salinity due to presence of sea water;

- (ix) “Emission controls” means controls requiring a specific emission limitation, or otherwise specifying limits or conditions on the effects, nature or other characteristics of an emission or operating conditions which affect emissions;
- (x) “Best available techniques” means the latest stage of development of processes, facilities or methods of operation, which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. “Techniques” include both the technology used and the way in which the installation is designed, built, maintained, operated and dismantled. What is “best available techniques” for a particular process will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding;
- (xi) “Best environmental practice” means the application of the most appropriate combination of environmental control measures and strategies. “Best environmental practice” for a particular source will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding;
- (xii) “Environmental quality objectives” means a set of clearly identified objectives or goals for purposes of environmental quality whether in specific or general application to relevant environmental resources, activities or programmes;
- (xiii) “Environmental quality standard” means the concentration of a particular substance or group of substances in water, sediment or biota which should not be exceeded in order to protect human health and the environment;
- (xiv) “Internal waters” means any water bodies or resources, such as rivers, lakes, dams, wetlands and others within the exclusive jurisdiction of a State, but does not include any shared or transboundary water bodies or resources.
- (xv) “Organization” means the body designated as responsible for carrying out secretariat functions pursuant to Article 16 of the Convention.
- (xvi) “Pollution” means the introduction by human intervention, directly or indirectly, of substances or organisms or energy into the marine and coastal environment, including estuaries, resulting in such deleterious affects as harm to

living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and reduction of amenities;

(xvii) “Wetlands” means areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.

ARTICLE 2: GEOGRAPHICAL SCOPE

1. The geographic area to which this Protocol applies (hereinafter referred to as the “Protocol Area”) is the Eastern and Southern African Region, including the Republic of South Africa, as defined in Articles 1 and 2 of the Convention.

2. The Protocol Area shall comprise the riparian and internal waters constituting part of the natural river basin draining into the Indian Ocean, the marine and coastal environment including the water shed of that part of the Indian Ocean situated within the Eastern African and Southern Region and falling within the jurisdiction of the Contracting Parties to this Protocol.

3. Without prejudice to the generality of paragraph 2 above, the Protocol Area includes the following:

(a) the seabed and its sub-soil;

(b) the waters, seabed and its sub-soil on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of water courses, up to the natural catchments or riparian limits upstream; and

(c) the terrestrial coastal areas designated by each of the parties, including wetlands.

4. Subject to paragraphs 3 and 4 above and any other provisions in the Convention and the other protocols, the Protocol Area shall not include internal waters of the Contracting Parties, consistently with Article 1(2) of the Convention.

ARTICLE 3: PROTOCOL APPLICATION

This Protocol shall apply to: -

- (a) Activities within the territories of the Contracting Parties that may directly or indirectly affect the marine or coastal environment of the Protocol Area including developments which cause physical alteration of the natural state of the coast line or otherwise result in physical alteration or destruction of habitats;
- (b) Discharges, releases or outflows originating from land-based point and diffuse sources and activities within the territories of the Contracting Parties that may affect directly or indirectly the coastal or marine environment of the Protocol Area. These discharges, releases or outflows shall include those which reach the coastal and marine environment through canals or other water courses, ground water flow or through run-off and disposal under the seabed with access from land;
- (c) Inputs of polluting substances transported through the atmosphere into the marine environment of the Protocol Area from land-based activities and sources within or originating from the territories of the Contracting Parties;

ARTICLE 4: GENERAL OBLIGATIONS

1. The Contracting Parties shall individually or jointly take all appropriate measures in conformity with international law and in accordance with the Convention and this Protocol, to prevent, reduce, mitigate, combat and to the extent possible, eliminate pollution or degradation of the Protocol Area from land-based activities and sources and to ensure sound environmental management of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their respective capabilities.

2. The Contracting Parties shall in particular:-

- (a) Apply the precautionary principle, by virtue of which, where there are threats of serious or irreversible damage to the coastal and marine environment or to public health, lack of full scientific certainty shall not be used as a reason for postponing prudent, precautionary and cost-effective measures to prevent such damage;
- (b) Apply the polluter pays principle by virtue of which, the costs of pollution, prevention, control, mitigation and reduction measures are to be borne by the polluter with due regard to the prevailing public interest;

- (c) Ensure that new or existing activities, developments, programmes and processes which are likely to cause significant adverse impacts on the coastal and marine environment are made subject to environmental impact assessments(EIA) and prior authorization or environmental audit (EA) as appropriate, by a competent national authority or authorities as a matter of law; and
- (d) Commit themselves to apply Integrated Coastal Area and River Basin Management (ICARM) principles, including in trans boundary water basins, taking into account the sustainable use of natural resources in the coastal and marine environment.
- (e) Designate hotspots and sensitive areas of special regional, transboundary or national importance and cooperate in efforts to create appropriate protection regimes and take measures to restore and de list them as appropriate;
3. The Contracting Parties shall take all appropriate measures in conformity with international law for proper and effective discharge of their obligations under the Convention and this Protocol and shall to this end; endeavour to harmonize their policies, laws and other regulatory frameworks.
4. The Contracting Parties shall co-operate with the competent and relevant international, regional and sub-regional organization to ensure the effective implementation of the Convention and this Protocol.
5. The Contracting Parties shall ensure that in taking the measures under paragraph 1 and 2 above, they do not cause directly or indirectly pollution of the coastal and marine environment outside the Protocol Area.

PART II: PROVISIONS ON POLLUTION AND OTHER DEGRADING ACTIVITIES AND SOURCES

ARTICLE 5: POLLUTION FROM POINT SOURCES

1. The Contracting Parties shall ensure that the emission controls of point source discharges and releases of substances into water or air in the Protocol Area that reach and affect or may affect the coastal and marine environment are based on best available techniques, best environmental practice or the relevant emission limit values as may be elaborated in **Annex** to this Protocol.
2. Point source discharges and releases shall be subject to authorisation and/or regulation

by the competent national authorities of the Contracting Parties as a matter of law, taking into account the provisions of this Protocol. In this regard, an indicative list of priority substances and activities is provided in **Annex** additional to this Protocol, and the same may be reviewed from time to time by the Contracting Parties.

3. The Contracting Parties may establish by **Annex** additional to this Protocol, methodology of listing and de-listing hot spots, as well as lists of hotspots, which shall form the basis for the elaboration of national strategies and timetables for achieving substantial reductions of inputs of pollutants from point sources. Such methodology, if and when established, shall be reviewed periodically by the Contracting Parties.

ARTICLE 6: POLLUTION FROM DIFFUSE SOURCES

1. The Contracting Parties shall take all necessary measures to substantially, prevent, reduce, mitigate, combat and or eliminate as appropriate, the pollution load from diffuse sources, in particular, agricultural areas affecting the coastal and marine environment of the Protocol Area with a view to compliance with the agreed environmental quality standards and environmental quality objectives and emission limits elaborated in **Annex** to this Protocol.

2. The Contracting Parties shall ensure that the controls of diffuse sources of land-based pollution in the Protocol Area affecting or having the potential to affect the marine or coastal environment of the Protocol Area are based on best environmental practice and best available techniques as elaborated in **Annex** to this Protocol.

ARTICLE 7: DEGRADATION FROM OTHER HARMFUL ACTIVITIES

1. The Contracting Parties shall endeavour to ensure that activities within their respective territories or regulatory control and which affect or may affect the coastal and marine environment of the Protocol Area and which are not covered by the provisions of Articles 5 and 6 of this Protocol, are conducted on the basis of best available techniques and best environmental practice consistent with the **Annex** additional to this Protocol.

2. The Contracting Parties are to take measures to prevent, reduce, mitigate, combat, and to the extent possible, eliminate the effects of those activities or other sources of pollution or degradation, and also undertake restorative measures. These activities or other sources shall include those which, while socio-economically beneficial, cause physical alteration and destruction of habitats in the coastal and marine environment of the Protocol Area.

ARTICLE 8: TRANSBOUNDARY POLLUTION

1. In the event that pollution from land-based activities and sources originating

from any Contracting Party is likely to adversely affect the coastal and marine environment of one or more of the other Contracting Parties, the Contracting Party concerned shall inform and consult with the affected Contracting Party or Parties, with a view to amicably resolve the issue.

2. If discharges or releases from a water course or body which flows through or traverses the territories of two or more Contracting Parties or forms a boundary between them, cause or are likely to cause pollution of the marine environment of the Protocol Area, the Contracting Parties in question, respecting the provisions of this Protocol in so far as each of them is concerned, shall endeavour to co-operate with a view to ensuring its full application.

3. A Contracting Party shall not be responsible for any pollution originating on the territory of a non-Contracting Party, but the concerned Contracting Party shall nevertheless endeavour to co-operate with the said non-Contracting Party with a view to making possible the full application of this Protocol.

PART III: PROVISIONS TO ENSURE EFFECTIVE IMPLEMENTATION

ARTICLE 9: MEASURES OF IMPLEMENTATION

In implementing this Protocol, the Contracting Parties shall: -

- (a) Develop and adopt national and regional programmes or plans of actions, based on source control and containing measures and, where appropriate, timetables for their completion;
- (b) Prioritize national and regional programmes or plans of action and measures concerning designated or listed hotspots;
- (c) Address priority substances and activities listed in an **Annex** through the progressive development, adoption and implementation of national and regional: -
 - (i) Effluent and emission controls, including emission limits for relevant substances, environmental quality standards and environmental quality objectives, as well as management practices based on the factors defined in **Annex** ;and
 - (ii) Timetables for achieving the limits, environmental quality standards and environmental quality objectives, management practices and measures agreed by the Contracting Parties and without surpassing the emission limit values.

(d) Utilize or promote the best available techniques and the best environmental practice and the application of, access to and transfer of environmentally sound technology, including cleaner production, taking into account the social, economic and technological conditions and criteria set out in **Annex**.

ARTICLE 10 : COMPLIANCE AND ENFORCEMENT

1. Each Contracting Party shall take all measures at its disposal, in accordance with its capacities, and consistent with its obligations and prevailing international law, to enforce and comply with this Protocol at the national level, including, in particular, by enacting relevant domestic legislation, establishing institutions and related measures.

2. Each Contracting Party shall take all appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.

3. The meeting of Contracting Parties shall, as soon as possible, develop and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Protocol, including mechanisms for open exchange of information between the Contracting Parties. Procedures for the collection and submission of such information shall be determined by the meetings of the Contracting Parties.

4. In pursuance of the obligations set out in paragraph 2 of Article 5 above, the Contracting Parties shall provide for a system of regular monitoring and inspection by their competent national authorities to assess compliance with authorisations and regulations of substances into water or air, or activities, through, *inter alia*, environmental impact assessments and audits as provided for under Article 13 below.

5. The Contracting Parties shall establish appropriate punitive or other sanctions in case of non-compliance with authorisations and regulations contemplated under paragraph 4 above and also ensure their effective application and enforcement.

6. The Contracting Parties commit themselves to offer advice, assistance or co-operation among themselves or with non-contracting parties and relevant international, regional and sub-regional organizations in a spirit of mutual interest so as to enhance compliance with and enforcement of this Protocol.

ARTICLE 11: COMMON GUIDELINES, STANDARDS AND CRITERIA

1. The Contracting Parties shall, as soon as possible from the date of entry of this Protocol, and in co-operation with competent regional and international organizations, adopt generic guidelines, standards or criteria concerning the various aspects of the identification, prevention, reduction, mitigation or, where feasible, elimination of pollution or degradation of the coastal and marine environment of the Protocol Area. In particular, and without prejudice to the generality of the foregoing, such common guidelines, standards and criteria should deal with the following: -

- (a) Specific requirements concerning the quantities of the priority substances listed in **Annex** discharged, their effluent concentration and the methods of discharging them;
- (b) Special requirements for effluents necessitating separate treatment;
- (c) The quality of sea-water used for specific purposes that is necessary for the protection of human health, living resources and eco-systems;
- (d) The length, depth and position of pipelines for coastal outfalls, taking into account, in particular, the methods used for pre-treatment of effluents; and
- (e) The control and progressive replacement of products, installations and industrial and other processes causing significant pollution of the marine environment.

2. The common emission limit and other values, environmental quality standards or environmental quality objectives established in **Annex**, as well as any timetables for the implementation of the measures aimed at preventing, reducing or eliminating, to the maximum extent possible, pollution and degradation from land-based activities and sources, shall be established regionally by the Contracting Parties and periodically reviewed by them. The competent authorities shall be responsible for establishment, review or implementation of corresponding national measures, standards, objectives and limits, and shall render periodic reports in this regard to the Organization.

3. The common guidelines, standards and criteria under this Article may be amended reviewed by the meeting of the Contracting Parties on the proposal of one or more Contracting Parties. Parties shall strive to achieve consensus on any proposed amendments.

ARTICLE 12: DATA COLLECTION, MONITORING AND EVALUATION

1. The Contracting Parties shall carry out monitoring and evaluation programmes and activities, if necessary in co-operation or consultation with competent regional and international organizations in order to: -

- (a) Collect data on the conditions and features of the coastal and marine environment of the Protocol Area as regards its physical, biological and chemical characteristics;
- (b) Collect data and prepare and regularly maintain an inventory of inputs of priority substances and activities listed in **Annex** from land-based activities and sources including information on the distribution of activities and sources and the quantities of such substances introduced into the coastal and marine environment of the Protocol Area;
- (c) Systematically assess the levels of pollution or other degradation within their internal and territorial waters, in particular with regard to the substances that may have a potential significant impact on the coastal and marine environment and to periodically report in this respect to the Organization;
- (d) Systematically assess the state of the coastal and marine environment of the Protocol Area;
- (e) Evaluate the effectiveness of action plans, programmes, authorisations, measures and activities adopted and implemented under this Protocol to prevent, reduce, control, mitigate or eliminate to the maximum extent possible, pollution or degradation of the coastal and marine environment from land-based activities and sources;
- (f) Develop measurable indicators to assess the effectiveness of the measures under sub-paragraphs (c), (d), and (e) above;
- (g) Evaluate the effectiveness of any other measures taken under this Protocol to meet the various environmental objectives set out.

2. The Contracting Parties shall co-operate and collaborate jointly or collectively and if necessary with competent regional, sub-regional and international organizations, to establish comparable national monitoring programmes, as well as analytical quality control programmes and to promote data storage, retrieval and exchange as may be elaborated in **Annex** to this Protocol.

3. Each of the Contracting Parties shall establish or designate a national focal institution to lead and coordinate data collection, monitoring and evaluation programmes and activities under this Article and, consistent with Article 14 of the Convention, to form the nucleus of a regional network of national research centres and institutes to help in monitoring and setting standards and in ensuring compatible results.

ARTICLE 13: ENVIRONMENTAL IMPACT ASSESSMENT AND AUDIT

1. The Contracting Parties shall establish by law or other binding procedure, impact assessments and evaluations on the possible direct or indirect, immediate or long-term, environmental impact, including the cumulative and transboundary impact of the activities, programmes and processes being contemplated or planned;

2. In addition, the Contracting Parties shall provide for, by law, regular and systematic environmental audits for on-going or existing development activities, programmes, and processes with actual or potential polluting or degrading impact on the coastal and marine environment of the Protocol Area.

3. The Contracting Parties shall, in particular, require on priority basis an assessment or audit of the potential or actual environmental impacts during the planning and implementation stages of relevant development activities, programmes and projects within their territories, particularly in the coastal areas, which may cause significant risks of pollution or degradation from land-based activities and sources to the Protocol Area, and ensure that appropriate measures are taken to prevent, control, reduce, mitigate or eliminate to the maximum extent possible, such risks.

4. The Contracting Parties may develop technical and other guidelines concerning the assessment or audit of the potential or actual environmental impacts of development activities, programmes and projects referred to in paragraph 1, including possible transboundary effects, and where feasible, appropriate restorative measures. The assessment or audit should, as appropriate, contain *inter alia*, the following: -

- (a) A description of the geographical location of the development activities, programmes and processes to be carried out;
- (b) A description of the initial ecological state of the marine environment and the coastal area which may be affected by the development activities, programmes and processes;

(c) An indication of the nature, aims and scope of the development activities, programmes and processes;

(d) A description of the methods, installations and other means to be used or being used;

(e) A description of the foreseeable direct and indirect long-term and short-term effects of the activities on the coastal and marine environment, including biological diversity and the ecological balance;

(f) A statement setting out the measures proposed to reduce or mitigate to the minimum the risk of pollution or degradation by carrying out the development activities, programmes and processes and, in addition, possible process and pollution abatement alternatives to such measures, including restorative measures where feasible;

(g) An indication of the measures to be taken, or being taken, for the protection or restoration of the coastal and marine environment from pollution and degradation during and, as appropriate, at the end of the development activities, programmes and processes;

(h) Definition of commitments to ongoing environmental management and monitoring;

(i) Cost-benefit analysis as appropriate; and

(j) A brief summary of the assessment or audit as appropriate.

5. Where the development activities, programmes and projects contemplated under this Article have trans boundary effects, the Contracting Parties may seek assistance of the Organization.

6. The implementation of the development activities, programmes, and projects referred to in paragraph 1 above should be made subject to prior written authorization from the competent national authorities which take fully into account the findings of the environmental impact assessment or audit as appropriate.

7. The Contracting Parties shall co-operate with the Organization, consistently with Articles 16 and 17 below, and in accordance with Article 23 of the Convention, to develop procedures for the dissemination to all Contracting Parties of the reports on the results of environmental assessments or audits with a view to enabling the Contracting Parties which may be affected by the environmental impacts of the development activities, programmes and projects to consult with the Contracting Party concerned.

ARTICLE 14: SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION, TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. The Contracting Parties shall, in conformity with Article 7 of the Convention, co-operate in scientific and technological fields related to pollution from land-based activities and sources, particularly research on inputs, pathways and effects of pollutants and on the development of new methods for their treatment, reduction or elimination. To this end, the Contracting Parties shall, in particular, endeavour to:

- (i) Exchange scientific and technical information;
- (ii) Co-ordinate their research programmes of common nature; and
- (iii) Develop relevant scientific and technical capacities.

2. The Contracting Parties shall, directly or with the assistance of the Organization or competent regional and international organizations, co-operate with a view to formulate and implement programmes of assistance, particularly in the fields of science, education and technology for the prevention, reduction, mitigation or elimination, to the maximum extent possible, of pollution and degradation from land-based activities and sources.

3. Technical assistance shall include, in particular, the training of scientific and technical personnel, as well as the acquisition, utilization, maintenance and production of appropriate equipment and facilities.

4. The Contracting Parties shall, directly or with the assistance of the Organization or competent regional and international organizations, undertake capacity building programmes and initiatives, including the training and empowerment of scientific and technical personnel through international, regional and sub-regional cooperation and inter- institutional collaborations.

ARTICLE 15: PUBLIC PARTICIPATION, EDUCATIONAL AND AWARENESS PROGRAMMES

1. The Contracting Parties shall, in accordance with their respective national laws and regulations, enhance, facilitate and promote timely public access to the widest possible extent, to relevant information and documentation concerning pollution and degradation of the Protocol Area from land-based activities and sources, as well as the opportunity for public participation in decision-making processes concerning the implementation of this Protocol.

2. The Contracting Parties shall develop and implement individually and collectively, and if need be in co-operation with competent regional and international organizations, programmes and activities on environmental education and awareness for the public concerning or related to the need to prevent, reduce, control, mitigate or eliminate to the maximum extent possible pollution and degradation of the Protocol Area from land-based activities and sources, and shall to this end promote the training of individuals, the development of awareness materials in different formats and languages of the contracting parties, and outreach campaigns.

3. The Contracting Parties shall encourage the participation of local communities and civil society in the processes of adopting decisions that affect the marine and coastal environment or human livelihoods.

4. The Contracting Parties shall make available to civil society and local communities information on the status of the coastal and marine environment of the Protocol Area, on the measures adopted or about to be adopted to prevent, control, reduce, mitigate and remedy adverse effects and the effectiveness of such measures.

ARTICLE 16: REPORTING, EXCHANGE OF AND ACCESS TO INFORMATION

1. The Contracting Parties shall, in accordance with Article 23 of the Convention, submit regular reports to the Organization containing information or measures adopted, results obtained and any difficulties experienced in the implementation of this Protocol. The meeting of the Contracting Parties shall determine the nature of the information to be included and the collection, presentation and timing of these reports which shall be made available to the public with the exception of information deemed or classified as confidential in terms of paragraph 4 below. The Organization shall circulate the reports received under this paragraph to all Contracting Parties.

2. The reports contemplated under paragraph 1 above shall include the data and information described under Article 12 above, and particularly:-

- (i) Data on the quantities of priority substances discharged from their

territories;

- (ii) Data resulting from monitoring activities and programmes under this Protocol;
- (iii) Data on the authorisations, permissions and environmental assessments and audits under this Protocol as applicable;
- (iv) Information on legal and regulatory measures, action plans, programmes and other steps taken for the implementation of the Protocol and other recommendations or actions adopted there under;
- (v) Information on results achieved in the prevention, control, reduction or elimination as appropriate of any hot spots in the territory of the respective Contracting Party;
- (vi) Information on priority activities or substances altering, or destroying the coastline, habitats within coastal and marine areas and related watersheds; and
- (vii) Information on general results achieved and, if the case arises, difficulties encountered in the implementation of this Protocol.

3. The Organization shall, on the basis of the information and reports provided by the Contracting Parties as described in paragraphs 1 and 2 above, prepare periodic regional reports on the general implementation of this Protocol, including on the state of the coastal and marine environment of the Protocol Area, noting to include, in this regard, baseline data from the most current and updated assessments.

4. Where a Contracting Party designates a report, data or information as confidential, the same shall be useful in such a manner as to ensure its confidentiality. Nothing in this Protocol shall require a Contracting Party to supply information the disclosure of which is contrary to the essential interests of its security.

5. The Contracting Parties shall directly or through the Organization, regularly exchange information and develop systems and networks for the exchange of information to facilitate the implementation of this Protocol and, for this purpose, the use of electronic

and web-based formats shall be encouraged.

6. Each Contracting Party shall in accordance with its national laws and regulations facilitate public access to the information concerning conditions of the coastal and marine environment of the Protocol Area, measures taken or planned to be taken to prevent, control, reduce, mitigate or eliminate pollution and degradation to the maximum extent possible, taking into account provisions of existing regional and international agreements concerning public access to environmental information.

PART IV: INSTITUTIONAL AND FINANCIAL ARRANGEMENTS

ARTICLE 17: SECRETARIAT AND COORDINATION MECHANISMS

The Contracting Parties shall, consistent with Article 16 of the Convention, designate the Organization to carry out the following secretariat functions, *inter alia*: -

- (a) Convene and service meetings of the Contracting Parties;
- (b) Assist in raising funds for the implementation of this Protocol;
- (c) Provide such guidance and assistance to national focal points, national focal institutions or research institutions, any committee, group or taskforce established under this Protocol or by the Contracting Parties;
- (d) Formulate draft procedures and mechanisms necessary to assess and promote compliance with and enforcement of the Protocol under Article 10 of this Protocol, for consideration by the Contracting Parties;
- (e) Formulate draft recommendations or common guidelines, standards and criteria under Article 11 of this Protocol for consideration by the Contracting Parties;
- (f) Provide appropriate assistance as may be identified by the Contracting Parties to facilitate: -
 - (i) the development and implementation of the plans, programmes and measures necessary to achieve the objective of this Protocol, including the development of procedures and mechanisms for compliance and enforcement;

- (ii) the development of incentive programmes to encourage the Contracting Parties to implement this Protocol;
 - (iii) the development of informative systems and networks for the exchange of information for the purposes of facilitating the implementation of this Protocol; and
 - (iv) the development and implementation of environmental education, training and public awareness and participation under this Protocol.
- (g) Prepare common formats as directed by the Contracting Parties to be used as a basis for reports and other communication to the Organization;
- (h) Establish, maintain and up-date databases on national, sub-regional and regional measures adopted for the implementation of this Protocol, including any other pertinent information;
- (i) Compile and make available to the Contracting Parties and other relevant parties reports and studies which may be required for the implementation of this Protocol or upon request by the Contracting Parties;
- (j) Prepare for the meetings of Contracting Parties regular reports which shall include a draft budget for the forthcoming annual, bi-annual or other period as well as an audited revenue and expenditure statement for the preceding annual, bi-annual or other period as may be agreed by the meetings of the Contracting Parties;
- (k) Enter into any administrative and financial arrangements as may be required for the effective discharge of the Secretariat functions;
- (l) Assist the Contracting Parties, in co-operation with competent regional and international, inter-governmental and non-governmental organizations, to establish and manage programmes and activities on the prevention, control, reduction, mitigation or elimination to the maximum extent possible of pollution and degradation from land-based activities and sources in the Protocol Area; and in this regard conduct programmes of technical, scientific and management research; prepare management plans and develop co-operative educational and training materials designed for various groups;

(m) Convene, co-ordinate and/or organize the meetings of the National Focal Points and provide them with Secretariat facilitation and services;

(n) Co-operate with regional, international, inter-governmental and non-governmental organizations concerned with the prevention, control, reduction, mitigation or elimination of pollution and degradation of the coastal and marine environment of the Protocol Area from land-based activities and sources: provided that the specificity of each organization and the need to avoid the duplication of activities and roles are respected;

(o) Perform all other functions as specified under Article 16 paragraph (1) and Article 17 of the Convention; and

(p) Carry out any other functions assigned to it by the Contracting Parties.

ARTICLE 18: MEETINGS OF THE PARTIES

1. Ordinary meetings of the Contracting Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to Article 17 of the Convention. The Contracting Parties to this Protocol may also hold extra-ordinary meetings provided for in Article 17 paragraph (3) of the Convention.

2. It shall be the function of the meetings of the Contracting Parties to this Protocol, in particular: -

(a) to consider the efficacy of the measures adopted and to examine the need for other measures, in particular, in the form of **annexes** in conformity with the provisions of Article 20 of the Convention;

(b) to adopt, review and amend as required any **Annex** in accordance with Article 22 to this Protocol;

(c) to consider the recommendations of meetings of National Focal Points established under Article 20 of this Protocol;

(d) to consider, as appropriate, information transmitted by the Contracting Parties to this Protocol to the Organization under Article 23 of the Convention; and

(e) to perform all other functions or exercise such powers as specified under Article 17 paragraph (1) of the Convention as appropriate.

ARTICLE 19: NATIONAL FOCAL POINTS

Each Contracting Party shall designate National Focal Point(s), consistent with those for the Convention, to serve as liaison with the Organization on the technical and scientific, as well as legal, aspects of the implementation of this Protocol. The National Focal Points shall communicate regularly and meet periodically to carry out the functions deriving from this Protocol.

ARTICLE 20: FINANCIAL ARRANGEMENTS

1. The Contracting Parties, taking into account their capabilities, and in accordance with their obligations under Article 21 of the Convention, shall as far as possible ensure that adequate or substantial financial resources are available for the formulation, coordination and implementation of programmes, projects, measures and activities necessary to achieve the objectives of this Protocol, including the operating budget of the Secretariat. These financial resources may include voluntary contributions for the achievement of specific objectives of this Protocol made by the Contracting Parties, other governments and government agencies, international organizations, non-governmental organizations, the private sector and individuals.

2. In particular, the Contracting Parties shall: -

- (a) Promote and facilitate the mobilisation of substantial financial resources, including national budgetary allocations, and grants and concessional loans from bilateral and multi-lateral funding sources and mechanisms;
- (b) Commit and raise sufficient domestic and external financial resources on the basis of both assessed and voluntary contributions, grants, donations and loans; and
- (c) Explore innovative methods and incentives for mobilising and channelling resources, including those of foundations, non-governmental organizations and other private sector entities.

3. In addition to the financial contributions by the Contracting Parties, the Organization may, in response to a request from any or all the Contracting Parties or on its own motion, seek additional funds or other forms of assistance for activities related to this Protocol; these funds may include voluntary contributions for the achievement of specific objectives of this Protocol made by the Contracting Parties, other governments

and government agencies, international organizations, non-governmental organizations, private sector entities and individuals.

4. Each Contracting Party shall endeavour to prioritise, for funding purposes, national policies and strategies, plans, programmes, measures and activities related to this Protocol.

PART V: FINAL PROVISIONS

ARTICLE 21: ANNEXES

1. The provisions as to establishment and status, relationship to the Protocol, and amendment of **Annexes** set out in Article 20 of the Convention apply *mutatis mutandis* to **Annexes** to this Protocol.

2. The Contracting Parties may also, in an evolutionary and progressive manner, develop such additional annexes as they deem appropriate and the provisions of Article 20 of the Convention shall apply *mutatis mutandis*.

ARTICLE 22: SETTLEMENT OF DISPUTES

The provisions of Article 24 of the Convention regarding the settlement of disputes shall apply *mutatis mutandis* to this Protocol.

ARTICLE 23: RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

1. The provisions of the Convention relating to its Protocols shall apply with respect to this Protocol.

2. The rules of procedure and the financial rules adopted pursuant to Article 21 of the Convention shall apply to this Protocol, unless the Contracting Parties to this Protocol agree otherwise.

ARTICLE 24: RELATIONSHIP BETWEEN THIS PROTOCOL, DOMESTIC LEGISLATION AND THIRD PARTIES

1. The provisions of this Protocol shall not affect the right of the Contracting Parties to enact relevant stricter domestic legislation or measures for the better implementation of this Protocol.

2. The Contracting Parties may invite non-States Parties to this Protocol, regional and international, inter-governmental and non-governmental organizations to co-operate in the implementation of this Protocol.

3. The Contracting Parties shall adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity which is inconsistent with, contrary or prejudicial, to the objectives, principles or purposes of this Protocol.

ARTICLE 25: SOVEREIGNTY CLAIMS AND RIGHTS

1. Nothing in this Protocol nor any act adopted on the basis of this Protocol shall prejudice the rights, the present and future claims or legal views of any state relating to the law of the sea, in particular, the 1982 United Nations Law of the Sea Convention, concerning the nature and the extent of marine areas, the delimitation of marine areas between states with opposite or adjacent coasts, freedom of navigation on the high seas, the right and the modalities of passage through straits used for international navigation and the right of innocent passage in territorial seas, as well as the nature and extent of jurisdiction of the coastal state, island or archipelagic states, the flag states and the port states.

2. No act or activity undertaken on the basis of this Protocol shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

ARTICLE 26: SIGNATURE, RATIFICATION, ACCESSION, AMENDMENTS, DEPOSITARY AND ENTRY INTO FORCE

1. The provisions of the Convention as to signature, ratification, accession, acceptance, approval, amendments, review, depositary and entry into force shall apply *mutatis mutandis* to this Protocol.

2. This Protocol shall be open for signature at [NAIROBI' [OR WHEREVER] from..... to.....(dates to be supplied) by any State Party to the Convention.

3. This Protocol shall be open for accession by any non-State Party to the Convention or organizations contemplated by Article 26 of the Convention, and in accordance with the provisions of Article 28 of the Convention. Provided that such acceding state or organization has been duly invited by the organization upon prior approval by all Contracting Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE AT NAIROBI (OR WHEREVER) this..... day ofin a single copy of the English and French languages, the two texts being equally authentic.

LIST OF PROPOSED ANNEXES

- **ANNEX ON INDICATIVE LIST OF PRIORITY SUBSTANCES AND ACTIVITIES.**

- **ANNEX ON BEST AVAILABLE TECHNIQUES AND BEST ENVIRONMENTAL PRACTICE.**

- **ANNEX ON METHODOLOGY OF LISTING AND DE-LISTING OF HOT SPOTS.**

- **ANNEX ON ENVIRONMENTAL QUALITY STANDARDS (EQSs), ENVIRONMENTAL QUALITY OBJECTIVES (EQOs) AND EMISSION LIMITS.**

*******END*******

