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**Final Negotiations Meeting on the Protocol for the
Protection of the Coastal and Marine Environment
from Land-based Sources and Activities (LBSA) in
the Eastern and Southern Africa Region**

Mombasa, Kenya, 9-12 June 2009

**REPORT OF THE FINAL NEGOTIATIONS MEETING ON THE TEXT OF THE PROTOCOL FOR
THE PROTECTION OF THE MARINE AND COASTAL ENVIRONMENT FROM LAND-BASED
SOURCES AND ACTIVITIES (LBSA) IN THE EASTERN AND SOUTHERN AFRICA REGION**

1. Introduction

1.1 The final negotiations meeting on the text of the Protocol for the Protection of the Coastal and Marine Environment from Land-based Sources and Activities (LBSA) in Eastern and Southern Africa region was held at Whitesands Hotel, Mombasa, Kenya from 9th to 10th June 2009. The meeting was convened by the Secretariat for the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern and Southern Africa Region (Nairobi Convention) and hosted by the Government of Kenya.

1.2 The final negotiation meeting on the draft LBSA Protocol was held in response to decisions reached during the 4th Regional Meeting of the Legal and Technical Review Task Force held in Cape Town, South Africa in November 2008. During that meeting, the Nairobi Convention Secretariat was requested to organize a follow-up and final negotiation meeting on the draft LBSA Protocol.

1.3 The meeting is also in response to the Conference of Contracting Parties decision CP 5/4 on the Revision of the Nairobi Convention and related Protocols as adopted during the fifth Conference of the Contracting Parties to the Nairobi Convention (COP-5), held in Johannesburg, South Africa in November 2007.

1.4 The Draft Protocol for the protection of the coastal and marine environment from land based Sources and Activities in Eastern and Southern Africa (LBSA Protocol) has undergone four consecutive revisions by the Legal and Technical Experts Regional Task Force that is made up of legal and technical experts nominated by the Contracting Parties to the Nairobi Convention. Previous meetings have been held in Madagascar (2005), Kenya (2006), and Tanzania (2007).

1.5 Following the Cape Town meeting, the drafts Protocol as well as the amendments to Nairobi Convention were circulated to all the participating countries in order to facilitate the review of the same at national level. The comments were subsequently received from the Contracting Parties and used by the Secretariat to prepare the updated 4th Draft version of the Protocol that was discussed during the present meeting.

1.6 In accordance with the decision CP5/4 of COP-5, this meeting was convened with the goal of adopting the final text of the LBSA Protocol. The adoption of the final text of LBSA Protocol will pave way for the convening of a Conference of Plenipotentiaries to adopt the LBSA Protocol. The adopted Protocol will then be presented to the 6th Conference of Contracting Parties (COP-6) scheduled to be held in Mauritius in November 2009.

1.7 The meeting was attended by all the representatives of countries in Eastern and Southern Africa that are Contracting Parties to the Nairobi Convention. These include Seychelles, Comoros, Mauritius, France-Reunion, Madagascar, South Africa, Mozambique, Tanzania and Kenya. In addition to the Contracting Parties, in attendance were also representatives of various organizations that are partners to the Nairobi Convention. The list of participants is provided in Annex I of this report. In accordance with rule 15/16 of the Rules of Procedure, the Officers of the Secretariat received and examined letters of accreditation of the representatives of the Contracting Parties that attended the negotiations meeting.

2. Opening of the meeting and welcome remarks

2.1 Dr. Johnson U. Kithaka, Project Officer, UNEP WIO-LaB Project called the meeting to order at 9.00 am on Tuesday 9th June 2009 and invited the Director of the Kenya Marine and Fisheries Research Institute (KMFRI), representative of UNEP/Nairobi Convention and the Permanent Secretary in the Ministry of Fisheries Development in Kenya, to make some welcome remarks. Thereafter, the Minister of Fisheries Development in Kenya read an official speech during the opening ceremony. The following are summaries of speeches that were made:

2.2 Dr. Johnson M. Kazungu, the Director of Kenya Marine and Fisheries Research Institute (KMFRI) which is the host institution of the LBSA Protocol negotiation meeting, welcomed delegates to Mombasa, Kenya and thanked UNEP for giving KMFRI the opportunity to host the meeting on behalf of the Republic of Kenya. Recognising that the meeting was attended by senior government officials from participating countries, he emphasized on the achievement of the intended outputs of the meeting.

2.3 Mr. Dixon Waruinge, the Programme Officer responsible for the Nairobi Convention Secretariat based at UNEP headquarters in Nairobi, Kenya, expressed profound gratitude to the Government of Kenya and in particular Kenya Marine and Fisheries Research Institute (KMFRI) for hosting the meeting in Mombasa on behalf of the Republic of Kenya. He also thanked the delegates for finding time to come to the meeting noting that this was a clear demonstration of the commitment of governments on matters related to the protection of the coastal and marine environment in Eastern and Southern Africa.

2.4 Mr. Waruinge also took the opportunity to brief the meeting on the process for the formulation of the LBSA Protocol noting that the same begun way back in 2005 with the support received from the Government of Norway, Global Environment Facility (GEF) and the United Nations Environment Programme (UNEP). He noted that the several regional meetings on the formulation of the Protocol have since been held in various countries in the Western Indian Ocean region, notably, Madagascar in 2005, Kenya in 2006, Zanzibar - Tanzania in 2007, and South Africa in 2008.

2.5 The Permanent Secretary in the Ministry of Fisheries Development of the Republic of Kenya, Prof. Micheni Ntiba in his opening remarks, noted that a number of large projects are being implemented in the Western Indian Region and it would be important for the countries to start gauging the impacts of these projects, citing in particular the UNEP-GEF WIO-LaB Project, World Bank –GEF Southwest Indian Ocean Fisheries Project and the UNEP-GEF Agulhas and Somali Current Large Marine Ecosystems Project. He also underscored the importance of applying science to create wealth among the people in the Western Indian Ocean region. He also urged that effort be made to widely disseminate the information about the LBSA Protocol so that it is known even at grassroot level. Prof. Ntiba also took the opportunity to brief the meeting on the recently launched Oceans and Marine Fisheries policy for Kenya.

2.6 Following the above official remarks, the final negotiation meeting on the text of the Protocol for the Protection of the Coastal and Marine Environment from Land-based Sources and Activities (LBSA) was

officially opened by the Deputy Minister of Fisheries Development of the Republic of Kenya, Honourable Abu Chiaba, MGH, MP. In his official remarks, the Minister noted the meeting comes only a day after the marking of the World Oceans Day which also focused on the overall protection of the oceans and marine resources. He informed the meeting that Kenya's Ministry of Fisheries Development is directly concerned with the protection of the Kenya's portion of the Western Indian Ocean and has created a Directorate that will address the issues of marine fisheries, both as an income generation activity and as a conservation measure. The Minister also informed the delegates that global warming has a potential of disseminating valuable parts of the Kenya coastline with devastating impacts on the coastal ecosystems and communities. Following the above remarks, the Minister wished the delegates fruitful deliberations and thereafter declared the meeting officially open.

3. Election of Officers and Examination of Credentials

3.1 The Chair of the Bureau of Nairobi Convention represented by Mr. Jogeewar Seewoobaduth, Divisional Environment Officer in the Mauritius Ministry of Environment and National Development Unit (NDU) introduced the above mentioned agenda item and proposed that South Africa be elected as the Chair of the present meeting. This proposal was seconded by Seychelles and was unanimously accepted by the delegates. Mr. Mongezi Nqoro, Senior Policy Advisor in the South Africa's Department of Environmental Affairs Tourism accepted to chair the meeting on behalf of South Africa. Seychelles was unanimously designated as the Rapporteur of the meeting by virtue of it been the Rapporteur of the Bureau of Nairobi Convention.

4. Adoption of the Agenda and and presentation of the objectives of the meeting

4.1 The Chairperson, Mr. Mongezi Nqoro introduced the draft Provisional Agenda listed in the background documents for the meeting as document *UNEP/GEF/WIOLAB/LBSA/2009/2a* and requested delegates to consider and adopt the same. No changes were requested by the delegates on the draft provisional agenda and the same was unanimously adopted without any amendment.

4.2 The Chair then invited Mr. Robert Wabunoha, Legal Officer in the Freshwater and Marine Law and Governance Unit, UNEP's Division of Environmental Law and Conventions to present the objectives of the meeting as well as key elements of the negotiation skills. Mr. Wabunoha highlighted the main objectives of the meeting noting in particular the overall goal which was the adoption of the text of the draft Protocol for the protection of the coastal and marine environment from land-based sources and activities in Eastern and Southern Africa. The adoption of the draft Protocol will enable the Secretariat to proceed to organise a Conference of Plenipotentiaries who will officially adopt the Protocol.

4.3 Mr. Wabunoha also presented to the delegates some key elements on the treaty negotiation skills. The purpose of the presentation was to create awareness to the delegates on their specific roles during the meeting and also what will be expected of them during the negotiation process. He noted that negotiation is a give and take process and delegates should be flexible and respect opinion of other delegates. The presentation also highlighted key elements of negotiation etiquette. Specific examples of diplomatic words, methods of intervention on the floor and others were presented to the delegates.

5. Technical Negotiations on the Draft Text of the LBSA Protocol

5.1 Overview of the updated Draft Text of the LBSA Protocol

5.1.1 The Chair invited Mr. Robert Wabunoha to present an overview of the current updated version of the Draft Text of the LBSA Protocol. Mr. Wabunoha then proceeded to provide information on the provisions of the various Articles in the draft LBSA Protocol document drawing the attention of the delegations to the relevancy of the Articles to key issues and need for regional and sub-regional cooperation to tackle the problems of marine and coastal environment pollution and degradation resulting from land-based sources and activities in the Western Indian Ocean region. Generally agreed areas in Articles of the Draft LBSA Protocol were highlighted including those that required further consultations and/or discussions during the meeting.

5.1.2 The Secretariat commended the Contracting Parties for sending very useful comments that were used to prepare the updated 4th Draft of the LBSA Protocol. The details on the comments made by countries were presented in background documents that were provided to the delegates before and during the meeting (UNEP/GEF/WIOLAB/LBSA/2009/6).

5.2 *Secretariat Report on the implementation of decisions:*

5.2.1 Mr. Dixon Waruinge, Programme Officer responsible for the Nairobi Convention Secretariat briefed the meeting status of implementation of the decisions reached in previous meetings including the 4th meeting of the Legal and Technical Review Task Force meeting that was held in Cape Town, South Africa in December 2009. He informed the meeting that the Cape Town meeting requested the Secretariat to further update the Draft LBSA Protocol based on the new and additional inputs received during the Cape Town meeting.

5.2.2 The Secretariat implemented the requested changes and the updated version of the Draft LBSA Protocol was circulated to the countries for comments by January 2009. However, there was a delay in the submission of comments from the Contracting Parties and this necessitated shifting of date of the final negotiation meeting to June 2009. The detailed Secretariat report on the implementation of decisions reached in past meetings was presented to the delegates as background document *UNEP/GEF/WIOLAB/LBSA/2009/5*.

5.3 *Consideration of the updated Draft Text of the LBSA Protocol including comments received from countries.*

5.3.1 Following the presentation of the updated version of the Draft LBSA Protocol by the Secretariat, the Chairperson with the support of the Secretariat took the delegates through each and every Article of the updated 4th version of the Draft LBSA Protocol. The Chairperson then invited comments, clarifications or reactions from representatives of the Contracting Parties focusing mainly on the comments that were submitted earlier to the Secretariat by the Contracting Parties. There were no contradictory comments and the delegates re-confirmed ownership of the comments that they had submitted to the Secretariat.

5.3.2 Before the negotiations commenced, the meeting agreed that the Articles that were deemed acceptable in the Cape Town meeting be considered accepted without additional changes. Also, in order to ensure better management of time in the debates, it was agreed that the order of negotiations be as follows: Begin with Articles 2 to 26, then Preamble and finally Definitions.

5.4 *Specific highlights on the negotiation of various Articles of the Draft LBSA Protocol*

5.4.1 In view of the fact that the negotiations were conducted on Article by Article basis, the following account represents the highlights of the negotiations, decisions or the basis for the decisions. The Draft LBSA Protocol attached as Annex II to this report was simultaneously updated by the Secretariat as each and every Article was negotiated and agreed upon.

Title of the Protocol

In order for the title to be consistent with Article 2 (1), it was suggested that the title of the Protocol be modified. Suggestions were received from a Contact group composed of Kenya, Mauritius and Tanzania in addition to Comoros. Four alternative texts were considered at length and the title that was adopted is...*'Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean from Land-based Sources and Activities'*.

Article 2: Geographical Scope

Para. 1: Comments of Comoros that the geographical scope be *'South-West Indian Ocean'* were discussed but not adopted.

Para. 2: Definition of riparian as requested by Madagascar was provided and the paragraph 2 was subsequently adopted with changes.

Para. 2(2) and 2(4): Concerns of Madagascar on the possible confusion created by the Para. 2(2) and 2(4) were considered and clarified. However, the confusion was not confirmed by delegates and paragraphs were adopted without changes.

Article 3: Protocol Application

The Article was adopted without changes.

Article 4: General Obligations

Para. 1: Kenya expressed discomfort with the wording...'*best practicable means*'.... and proposed...'*best available technologies*'. This was deemed to be too broad and limiting by Mauritius and Tanzania and hence the paragraph was adopted without change.

Para. 2(a): Line 1: The contentious issues were with regard to the use of the wording...'*by virtue of which*'.., that comes before '*where*' in paragraph 2. as well as the definition of 'precautionary principle' as implied in paragraph 2(a). A Contact Group composed of Mauritius, Kenya and Tanzania came up with a compromise text. The text was improved by Seychelles by quoting the definition from the Rio declaration. The text with changes was adopted.

Para. 2(b): Adopted without changes.

Para. 2(c): The comment made by Mauritius was clarified. Kenya and Mozambique proposed the inclusion of the Strategic Environmental Assessment (SEA) to take care of *plans, policies* and *programmes*. There were lengthy deliberations on the inclusion of SEA in para. 2(c) which was eventually adopted with changes.

Para. 2(d): Adopted without changes.

Article 5: Pollution from Point Sources

Para. 2: The comment by Mauritius was clarified and para. 2 was adopted without changes.

Para. 3: The proposal by Mauritius to increase time period from 2 to 3 years was accepted and the paragraph was subsequently adopted with changes.

Para. 4 and 5: Adopted with changes

Articles 6: Pollution from Diffuse Sources

Adopted without changes.

Articles 7: Other Harmful Activities

Para. 2: The comment by Mauritius was clarified further and an alternative text was suggested and adopted with changes.

Para. 3: Mauritius comments made on Annex B as implied in para. 3 was clarified and para. 3 was subsequently adopted without changes.

Para. 4: Adopted without changes.

Article 8: Transboundary Pollution

Adopted with change

Article 9: Measures of Implementation

Adopted with changes.

Article 10: Compliance and Enforcement

Para. 1: Comment made by Mauritius was clarified and time period in line 1 increased to 3 years.

Para.2: Adopted with changes.

Article 11: Common Guidelines, Standards and Criteria

Para.1: Adopted without changes.

Para.1 (a): Comment made by Mauritius was clarified and paragraph adopted without change.

Para.1 (d): The definition that was earlier crafted by a Contact Group composed of Tanzania, South Africa and Seychelles was accepted

Para.2: Adopted with changes.

Article 12: Data Collection, Monitoring and Evaluation

Para. 1, 2, and 3: Adopted without changes.

Article 13: Environmental Impact Assessment and Audit

Mozambique's proposal to include in the title of Article 13 the word 'environmental' before audit was accepted.

Para. 2: rephrased following request from Mauritius.

Para. 3: Adopted with changes.

Article 14: Scientific and Technological Co-operation, Technical Assistance and Capacity Building

Adopted without change.

Article 15: Public Participation, Education and Awareness Programmes

Para. 1: Adopted with change.

Para. 2: Comments by Kenya were considered and an alternative text was adopted with changes as suggested by a Contact Group composed of Mozambique, Kenya and Mauritius.

Para. 3: Adopted with changes.

Para. 4: Adopted with changes.

Para. 5: The alternative text adopted with changes following proposal from Mauritius.

Article 16: Reporting, Exchange of and Access to Information

Para. 1 & 2: Adopted without change.

Para. 3(i): Comment made by Mauritius was clarified and paragraph adopted.

Para. 4 to 7: Adopted with change

Article 17: Secretariat and Coordination Mechanisms

Para. (a) to (t): Adopted with change.

Article 18: Meetings of the Parties

Para. 1: Adopted without change.

Para. 2 (c): Adopted with change

Article 19: National Focal Points

Para.1: split into 2 paragraphs as suggested by the Secretariat.

Article 20: Financial Arrangements

Para. 1: Adopted with change

Para. 2-5: Adopted without change

Article 21: Annexes

Adopted without change

Article 22: Settlement of Disputes

Adopted without change

Article 23: Relationship between this Protocol and the Convention

Adopted without change

Article 24: Relationship between this Protocol, Domestic Legislation and Third Parties

Para.2: ‘Non-State Parties’ was changed to ‘non-Contracting Parties’ following concerns by Tanzania.

Article 25: Sovereignty Claims and Rights

Adopted without change

Article 26: Signature, Ratification, Accession, Amendments, Depositary and Entry into Force

Para. 1: Deleted.

Para. 2: Adopted with change and it was clarified by the Secretariat that the place of signature will be the place where the Conference of Plenipotentiaries will be held.

Para. 3 and 4: Adopted without change.

Annex A: Best valuable Techniques and Best Environmental Practice

Adopted without changes; Seychelles proposed in the sake of clarity to rename all the Annexes using Roman Numerals. This proposal was adopted.

Annex B: Priority Substances and Activities

There were lengthy discussions on comments made by Mauritius. The categories of substances were modified in order to include emissions; examples were also provided for non-toxic substances that may interfere with the legitimate use of the sea and also cause changes in the physical and chemical characteristics of seawater. The Annex was also re-organised according to the suggestions made by Mozambique.

Annex C: Data Collection, Monitoring and Evaluation

Para. (b) was adopted with change, while para. (a) – (g) were adopted without change.

Annex D: Environmental Impact Assessments, Evaluations and Audit Guidelines.

The word ‘processes’ was changed to ‘projects’ in para. (a) and (b).

Preamble:

There were no contentious issues and preamble was adopted with minor changes in Para. 4, 5, 6 and 14.

Proposal to insert a paragraph in the preamble on issues related to climate change was put forward by Mauritius. France confirmed that the same is consistent with Manado’s Declaration of the World Ocean Conference. The second alternative text proposed by Mauritius was hence adopted without changes.

Article 1: Definitions:

Definitions ii: Comment by Madagascar on the repetition of two words ‘best available practice’ and ‘best environmental technique’ in French text was considered and corrected.

Definition iii and iv: Kenya requested changes in the definition of geographical region, and necessary changes were done on the two definitions by inserting the word... ‘and Southern’ before Africa region.

Definition vii: Mauritius comment on the definition of ‘environmental audit’ was considered. A text borrowed from ISO was proposed and adopted with additional changes.

Definition xvi: Seychelles clarified on the comments they submitted on the definition of ‘pollution’. An alternative text provided by the Seychelles was discussed. However, following further discussions, the definition that is already in the Convention was adopted with slight changes.

Definition xvii: Mauritius comment on the definition of ‘pre-treatment’ was clarified. However, Seychelles noted that ‘pre-treatment’ does not appear anywhere in the Protocol and suggested it be deleted.

Definition xviii: Comment sent by Madagascar to have a definition of ‘riparian’ was considered. A text was proposed by the Secretariat and adopted with changes.

Definition xix: Request by Mauritius to re-examine the definition of ‘sensitive area’ was considered. The definition was subsequently reworded and adopted with changes following inputs from Mauritius and France.

Definition xx: Seychelles request for re-examination of the definition for ‘treatment’ was considered. There were lengthy discussions on the two alternative texts suggested by a Contact Group composed of Seychelles,

South Africa and Tanzania (established during Cape Town meeting) including an alternative text provided by Seychelles during the meeting. The definition by the Seychelles was adopted with changes.

The rest of the definitions were adopted without changes.

5.4.2. After the negotiations as detailed in section 5.4.1 and following unanimous agreement, the meeting adopted the Protocol as the agreed negotiated text of the Protocol for the Protection of the Coastal and Marine Environment from Land-Based Sources and Activities (LBSA) in Eastern and Southern African Region of the Western Indian Ocean, being the product of the Final Negotiations Meeting held in Mombasa, Kenya from 9th to 12th June, 2009. The adopted text of the LBSA Protocol is attached to this report of the negotiation meeting as Annex II.

6. Presentation and adoption of the report on the LBSA Protocol negotiations

6.1 The Chair of the Bureau of the Nairobi Convention introduced the above mentioned agenda item and invite the Rapporteur to present the Report of the LBSA Protocol negotiation meeting. The Rapporteur represented by Seychelles then proceeded to present the Report on the negotiation of the Draft LBSA Protocol for the protection of the coastal and marine environment from land-based sources and activities in Eastern and Southern Africa region of the Western Indian Ocean.

7. Administrative Matters and Any Other Business

7.1 The Chairperson invited the delegates to raise and consider any other matters. However, no any other matters were raised by the delegates. The Secretariat proceeded to make some few announcements to the delegates related to logistical arrangements and their travel arrangements back to their countries.

8. Closure of the Workshop

8.1 The Chair of the Bureau of the Nairobi Convention invited representatives of the host country, Kenya and the Nairobi Convention Secretariat to make some closing remarks. Short closing remarks were made by Mr. Dixon Waruinge of the Nairobi Convention Secretariat, Dr. Johnson M. Kazungu, the Director of KMFRI, and Prof. Micheni Ntiba, the Permanent Secretary in the Kenya's Ministry of Fisheries Development.

8.2 Dr. Johnson M Kazungu congratulated WIO-LaB Poject for taking the lead in producing the Strategic Action Programme (SAP) focused on land-based sources and activities and also expressed appreciations to the Secretariat for giving the opportunity to KMFRI to host the two meetings. Mr. Waruinge thanked the Chair for effectively leading the discussions and also, the delegates for offering guidance on the three documents during the meeting. He also expressed gratitudes to the Kenya Marine and Fisheries Research Institute (KMFRI) for hosting the meeting.

8.3 Prof. Ntiba appreciated the extensive work that was undertaken during the meeting that led to the adoption of the three crucial documents (Draft LBSA Protocol, text of Amended Nairobi Convention). He reassured the delegates the support of the Kenya Government and urged countries in the Western Indian Ocean region to cooperate with each other in the management of transboundary marine resources of the Western Indian Ocean.

8.4 The Chair on behalf of the Bureau of the Nairobi Convention, thanked the Government of Kenya for hosting the meeting. The Chairperson also thanked the delegates as well as the Nairobi Convention Secretariat for all the arrangements for the meetings. He also expressed appreciations to the translators and all others that made the meeting a success.

8.5 There being no any other business, Chairperson formally closed the meeting at 6.50 pm 12th June 2009.

Annexes:

1. List of Participants

2. The adopted text of the Protocol for the Protection of the coastal and marine environment from land-based sources and activities in Eastern Africa and Southern African Region.