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**The Conference of Plenipotentiaries and
the Sixth Meeting of Contracting Parties
to the Convention for the Protection,
Management and Development of the
Marine and Coastal Environment
of the Eastern African Region**

Nairobi, Kenya 29 March – 1 April 2010

Briefing Note

The process for the revision of the Convention for the Protection, Management and Development of the Coastal and Marine Environment in the Western Indian Ocean region and the Protocol for the Protection of the Coastal and Marine Environment from Land-based Sources and Activities in the Western Indian Ocean Region

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Theme: Sustaining Progress

1. Introduction:

1.1 The Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region was adopted in Nairobi, Kenya on 21st June 1985. The Convention constitutes the current regional legal framework for the protection and conservation of the marine and coastal environment of the Western Indian Ocean (WIO) Region. Article 7 of the Convention provides the broad framework requiring contracting parties to “endeavour to take all appropriate measures to prevent, reduce and combat” land based pollution and/or degradation of the marine and coastal territories of the Convention.

1.2 The Conferences of Parties of Nairobi Convention during its various sessions, vis, under decisions C/P1 of 1997, C/P2/1 of 1999, C/P3/6 of 2001, and C/P4/7 of 2004, requested UNEP, as the Secretariat of the Convention, to revise the Convention and to develop a new Protocol focussed on land-based sources and activities (LBSA) that are responsible for the degradation of the marine environment in the WIO Region.

1.3 In particular, COP 3 (Maputo, 2001) and COP 4 (Antananarivo, 2004) called upon the Executive Director of UNEP to expedite the process of revision of the Nairobi Convention and its Protocols as well as the development of the LBSA Protocol (ref: C.P. 3/6; C.P.4/7).

1.4 Subsequently, the Secretariat of Nairobi Convention, through the region-wide GEF and Government of Norway financed project entitled ‘*Addressing Land-based Activities in the Western Indian Ocean Region*’ (WIO-LAB), embarked on the process for the development of the new LBSA Protocol as well as the revision of the text of the Nairobi Convention.

1.5 The revision of the Nairobi Convention focused on incorporating emerging issues and trends, at both global and regional levels, particularly those that have implications on the management of the coastal and marine environment in the Western Indian Ocean region.

1.6 On the other hand, the development of the LBSA Protocol was based on the wide recognition by the Contracting Parties that pollution from land-based sources and activities constitutes one of the major threats to the sustainability of the marine and coastal environment in the WIO region.

1.7 Overall, the LBSA Protocol aims at preventing, reducing, mitigating and controlling pollution from land-based sources and activities from the Nairobi Convention area in order to protect and sustain the marine and coastal environment in the Western Indian Ocean.

2. The role of the Legal and Technical Review Task Force:

2.1 Based on the decisions [C/P1 of 1997, C/P2/1 of 1999, C/P3/6 of 2001, and C/P4/7 of 2004] made by the Conference of the Parties since 1997, the process for the formulation of the LBSA Protocol and the revision of the text of the Nairobi Convention was started more than five (5) years ago.

2.2 A Legal and Technical Review Regional Task Force was formed to lead the process at regional level. The Task Force was composed of Government-appointed legal and technical experts from all the nine countries in Eastern and Southern Africa including the Island States. At national level, multi-sectoral committees/working groups and/or task forces were involved in the process of developing national consensus on the two draft texts prepared by the Legal and Technical Review Task Force.

2.3 The Task Force, in the period between 2004 and 2009, held five (5) regional meetings. These meetings were held in Antananarivo (2001), Madagascar (2005); Kenya (2006 and 2009); Dar es Salaam, (2007) and, Somerset, South Africa (2008). During these meetings, various versions

of the draft LBSA Protocol and the revised Nairobi Convention were discussed by the experts drawn from the participating countries.

2.4 The process was also supported by the compilation of national review reports on the existing LBSA-related national policy, legislation and institutional frameworks that were also prepared by legal experts. The regional synthesis reports and the national review reports were presented to the regional and national task forces, respectively in order to inform the review process at regional and national levels. The reports also identified gaps in the capacity for the future implementation of the Protocol in the region, once adopted.

3. The review process

3.1 The first draft of the new LBSA Protocol was discussed in the second meeting of the Legal and Technical Review Task Force that was held in Mombasa, Kenya in March 2006. Updated drafts were subsequently prepared on the basis of recommendations made by the legal experts and presented to the second and third meetings of the Legal and Technical Review Task Force that were held in March 2006 and January 2007 in Mombasa, Kenya and Zanzibar, Tanzania, respectively.

3.2 The second and third drafts of the LBSA protocol were also subjected to a series of national stakeholder consultative meetings that were organised by the National Focal Point Institutions in each of the participating countries. The feedback received from the national consultative meetings led to the preparation of the 4th draft of the LBSA Protocol.

3.3 The 4th draft LBSA Protocol and the revised text of Nairobi Convention were then presented to the fifth Conference of the Contracting Parties to the Nairobi Convention (COP 5) that was held in November 2008 in Johannesburg, South Africa. The Parties took note of the progress made in preparation of two instruments and decision CP 5/4.2 was taken by the Contracting Parties requesting the Secretariat to organise the final negotiations meeting so that parties can agree on the final text of the LBSA protocol and the Revised Nairobi Convention. The Secretariat was also requested to organise a Conference of Plenipotentiaries and Conference of Parties for the purpose of formally adopting the new LBSA Protocol and the revised text of the Nairobi Convention, respectively.

3.4 Subsequent to COP5 decision, the Legal and Technical Review Task Force held its fourth meeting in Strand, South Africa in the period 19-20 November 2008 and came up with an updated 4th version of the draft LBSA Protocol and 2nd draft text of the revised Nairobi Convention. These were subsequently circulated to the participating countries for comments in the period between February and March 2009.

4. Final negotiation meetings:

4.1 Following receipt of comments from the participating countries in the period between March and May 2009, the Secretariat prepared the final version of the draft LBSA Protocol and the final draft text of the revised Nairobi Convention. These final texts were subsequently presented to the final negotiations meeting (as per COP5 decision), that was held in Mombasa, Kenya in the period 9-12 June 2009

4.2 During the final negotiation meetings, the final negotiated text of the LBSA Protocol and the final negotiated text of the Revised Nairobi Convention were agreed upon as detailed in the reports of the negotiation meetings.

4.3 Following the conclusions of the final negotiations, the Secretariat in fulfilment of relevant COP 5 decision proceeded to organise the Conference of Plenipotentiaries and Conference of

Parties to adopt the negotiated texts of the LBSA Protocol and the amended Nairobi Convention, respectively.

4.4 It is expected that the two instruments will be adopted by the Contracting Parties in order to pave way for their implementation.

5. Changes done by the Secretariat on the two draft instruments:

5.1 The final negotiations meetings on the draft LBSA Protocol and the amended Nairobi Convention gave mandate to the Secretariat to 'clean - up and or polish' the two draft instruments before the same are table to the Conference of Plenipotentiaries. In fulfilment of this mandate, the Secretariat effected certain minor changes to the two drafts as is illustrated in the attached Tables 1 and 2. Most of the changes done by the Secretariat were mainly of editorial in nature and did not alter the substance of the two draft instruments as had been negotiated by the parties in June 11 and 12, 2009.

5.2 The draft changes effected by the Secretariat were subsequently communicated to the parties.

AMENDED NAIROBI CONVENTION	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON THE AMENDED NC
Preamble	Introduced the word ‘further’ in para. 5 after the word..’Recogni
	<i>Para. 12 moved to the first section of the preamble and listed as para.7</i>
	<i>Para. 8: introduced the word ...‘themselves’... instead of ...‘ourselves’...</i>
	<i>Para 13: deleted the word ...‘further’... after the word ...‘Noting’...</i>
	<i>Para 13: last sentence, replaced the wording... ‘Eastern and Southern Africa’... with the wording ‘Western Indian Ocean’...</i>
	<i>Para.14: last sentence, replaced the wording ...‘Eastern and Southern Africa’ ...with the wording... ‘Western Indian Ocean’.</i>
	<i>Italicized para. 16.</i>
<i>Article 1: GEOGRAPHICAL COVERAGE</i>	
<i>Article 2: DEFINITIONS</i>	
<i>Article 3: GENERAL PROVISIONS</i>	
<i>Article 4: GENERAL OBLIGATIONS</i>	
<i>Article 5: POLLUTION FROM SHIPS</i>	
Article 6: POLLUTION CAUSED BY DUMPING	
Article 7: POLLUTION FROM LAND-BASED SOURCES AND ACTIVITIES	

AMENDED NAIROBI CONVENTION	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON THE AMENDED NC
<i>Article 8:</i> POLLUTION FROM SEABED ACTIVITIES	
<i>Article 9:</i> POLLUTION RESULTING FROM TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES	<i>Redrafted Article 2: The wording... ‘The Contracting Parties shall seek to adopt appropriate international measures...’ was replaced with the wording... ‘The measures taken by the Contracting Parties under Paragraph 1 shall be...’</i>
<i>Article 10:</i> AIRBORNE POLLUTION	
<i>Article 11:</i> BIOLOGICAL DIVERSITY	<i>Underlined para. 3 since the same was omitted in the June 11, 2009 draft</i>
<i>Article 12:</i> CO-OPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY	
<i>Article 13:</i> ENVIRONMENTAL DAMAGE FROM ENGINEERING ACTIVITIES	
<i>Article 14:</i> ENVIRONMENTAL IMPACT ASSESSMENT	
<i>Article 15:</i> SCIENTIFIC AND TECHNICAL CO-OPERATION	<i>Underlined para. 2 since it was omitted in the June 11, 2009 version.</i>
	<i>Para. 3: the following wording in the second part of the para. 3 deleted ...‘with the aim of further protecting the convention area, the Contracting Parties shall endeavour to participate in international arrangements for research and monitoring outside the convention’.</i>
	<i>Para. 4 introduced as a new paragraph.</i>
	<i>The original para. 5 stating with the wording... ‘the contracting parties shall encourage the coordination of activities carried out under this convention’...was deleted.</i>
<i>Article 16:</i> LIABILITY AND COMPENSATION	

AMENDED NAIROBI CONVENTION	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON THE AMENDED NC
<i>Article 1: INSTITUTIONAL AND FINANCIAL ARRANGEMENTS</i>	<i>The wording... 'Executive Director of' added before the wording 'United Nations Environment Programme'.</i>
<i>Article 18: MEETINGS OF THE CONTRACTING PARTIES</i>	<i>The word ...'To'... starting the sentences in bullet points a to g in para.1 deleted</i>
	Secretariat deleted the original para. 2 starting with the wording ...'The organization shall convene' ...
	Para. 3 renamed as para. 2 and the word... 'shall be' in the first line of the sentence inserted to replace the word... 'are' ...after the wordings....'Extraordinary meetings ...'
<i>Article 19: ADOPTION OF PROTOCOLS</i>	
<i>Article 20: AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS</i>	
<i>Article 21: ANNEXES AND AMENDMENTS OF ANNEXES</i>	
<i>Article 22: RULES OF PROCEDURES AND FINANCIAL RULES</i>	
<i>Article 23: SPECIAL EXERCISE OF THE RIGHT TO VOTE</i>	
<i>Article 24: TRANSMISSION OF INFORMATION</i>	
<i>Article 25: SETTLEMENT OF DISPUTES</i>	
<i>Article 26: RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS</i>	<i>The article 26 on Sovereignty Claims and Rights re-numbered as Article 28 and the former 28 renumbered as article 26.</i>

AMENDED NAIROBI CONVENTION	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON THE AMENDED NC
	Para. 2 starting with the wording ‘...Decisions concerning any protocol shall be taken by the Contracting Parties to the protocol concerned..’ deleted
<i>Article 27: COMPLIANCE AND ENFORCEMENT</i>	
<i>Article 28: SOVEREIGNTY CLAIMS AND RIGHTS</i>	
<i>Article 29: SIGNATURE</i>	<i>Deleted the wording ...‘Nairobi’ in the first sentence of para. 1</i>
<i>Article 30: RATIFICATION, ACCEPTANCE, APPROVAL AND DEPOSITARY</i>	
Article 31: ACCESSION	Para. 4: Since no changes were done, the underline was removed
<i>Article 32: ENTRY INTO FORCE</i>	<i>Para. 1: second line of the sentence, the wording ‘...as soon as it enters into force...’ was deleted</i>
<i>Article 33: WITHDRAWAL</i>	
<i>Article 34: RESPONSIBILITIES OF THE DEPOSITARY</i>	<i>Para. 2: the wording...‘the Government of the Republic of Kenya..’ was deleted in the second line of the sentence.</i>
	For the sentence starting as ...‘IN WITNESS WHEREOF...the wording ...‘or organizations’... was deleted.

LBSA PROTOCOL	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON LBSA PROTOCOL
Preamble	Para. 1: The new wording... <i>'and renamed as 'the Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean' ...added</i>
	Para. 3: Reformulated by inserting new wording after the wordings... <i>'grave danger'</i> . The new wordings inserted is... <i>'posed by various land-based sources and activities to the marine and coastal environment, affecting, among others' ...</i>
	Para. 4: Italicised the wording... <i>'Noting with particular concern' ...</i>
	Para.10: The wording ... <i>'among others'</i> added after the word... <i>'resulting in'..</i>
	Para. 11: The word... <i>'and'</i> added after the word... <i>'environment'</i> and the wording... <i>'among other things'</i> inserted before the word... <i>'proactive'</i> .
	Para. 12: The word... <i>'have'</i> added after the word ... <i>'Contracting Parties'</i> . The word <i>'themselves'</i> added after the word <i>'committed....'</i>
	Para. 13: The word ... <i>'between'</i> added after the word <i>'cooperation'</i> .
	Para. 17: The word... <i>'in addition' ...</i> added after the word... <i>'instruments'</i> . in the second line of the sentence.
Part I: General provisions	
<i>Article 1: Definitions</i>	Definition IV: The word... <i>'acceded'</i> ...added after the words.. <i>'and has'</i> . The word <i>'state'</i> to begin with a capital letter.
	Definition x: The wording... <i>'owing'</i> and <i>'the'</i> added in the last line of the sentence.
	Definition xi: The wording... <i>'adversely'</i> added after the word <i>'affect'</i> in the second line of the sentence. The word... <i>'the</i>

LBSA PROTOCOL	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON LBSA PROTOCOL
	<i>functioning of</i> added after the word ' <i>threaten</i> '.
<i>Article 2: Geographical scope</i>	Para. 1, 2 & 3: The word...' <i>Area</i> '... changed to...' <i>area</i> '. The word...' <i>Africa</i> '...changed to ' <i>African</i> '...
<i>Article 3: Protocol application</i>	Various minor editorial corrections done-starting of the bullet points in capital letters.
<i>Article 4: General obligations</i>	Para. 1, line 3, the word...' <i>the</i> ' added after the word...' <i>eliminate</i> '.
	Para. 3: The word...' <i>the</i> ' added in line 2 before the word...' <i>proper</i> '.
<i>Article 5: Pollution from point sources</i>	Para. 1, 2 and 4: Minor editorial corrections...
Part II: Provisions on pollution and other degrading activities and sources	
<i>Article 6: Pollution from diffuse sources</i>	
<i>Article 7: Other harmful activities</i>	Para. 1: minor editorial corrections in line 2, 3 and 4.
	Para. 5: minor editorial correction in lines 2 and 3.
<i>Article 8: Transboundary pollution</i>	Para. 2 and 3: Minor editorial corrections in lines 4 and 2, respectively.
Part III: Provisions for effective implementation	
<i>Article 9: Measures of implementation</i>	
<i>Article 10: Compliance and enforcement</i>	Para. 4: The wording ...' <i>among other things</i> '...inserted in line 4 after the word...' <i>through</i> '...
<i>Article 11: Common guidelines, standards and criteria</i>	Para. 1: Minor editorial correction in line 5.
<i>Article 12: Data collection,</i>	

LBSA PROTOCOL	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON LBSA PROTOCOL
<i>monitoring and evaluation</i>	
<i>Article 13: Environmental impact assessment and environmental audit</i>	Para. 3: The wording...' <i>among other things</i> '... inserted in line 6 after the word...' <i>contain</i> '.
<i>Article 14: Scientific and technological cooperation, technical assistance and capacity-building</i>	Para. 2: Minor editorial correction in line 4.
<i>Article 15: Public participation, educational and awareness programmes</i>	Para. 1: The wording...' <i>in addition</i> '... added in line 3 after the word...' <i>activities</i> '.
	Para. 2: The word...' <i>of this article</i> ' added at the end of the sentence.
	Para. 3: minor editorial correction in line 5. The word...' <i>of the convention</i> '... added after the word...' <i>article 12</i> '.
	Para. 5: minor editorial corrections in lines 2 and 4.
<i>Article 16: Reporting, exchange of and access to information</i>	Para. 2 & 3: minor editorial corrections in lines 4 and 2, respectively.
	Para. 4: minor correction in line 1.
Part IV: Institutional and financial arrangements	
<i>Article 17: Secretariat and coordination mechanisms</i>	Para. 1: line 2, the word...' <i>among other things</i> '... inserted after the word...' <i>functions</i> '. Bullet points <i>a</i> to <i>q</i> corrected in order to start with the word...'<i>To</i>' instead of ...'<i>to</i>'.
<i>Article 18: Meetings of the Contracting Parties</i>	
<i>Article 19: National focal points</i>	Para.1: the word...' <i>points</i> ' added after the word...' <i>or</i> '.
<i>Article 20: Financial arrangements</i>	Para. 2 and 3(b): minor corrections done.

LBSA PROTOCOL	
ARTICLES	SPECIFIC CHANGES MADE BY THE SECRETARIAT ON LBSA PROTOCOL
Part V: Final provisions	
<i>Article 21: Annexes</i>	Para. 1: minor correction in line 2.
<i>Article 22: Settlement of disputes</i>	
<i>Article 23: Relationship between this protocol and the convention</i>	Para. 1: line 2, the word....'regard' ...inserted after the word....'with'.
<i>Article 24: Relationship between this Protocol, domestic legislation and third parties</i>	
<i>Article 25: Sovereignty claims and rights</i>	Para. 1: The word....'states'...written as....'States'.
1.0 Annex I: Best Available Techniques and Best Environmental Practice	2.0 The word....'use' added after the word....'shall'. Correction of the starting letters in bullets a – f.
3.0 Annex II: Priority substances and activities 4.0	5.0 Para. 3: Bullet points corrected so as to start with capital letters. Minor improvements done.
6.0 Annex III: Data collection, monitoring and evaluation 7.0	8.0 Bullet points corrected so as to start with capital letters. Minor adjustments done.
9.0 Annex IV: Environment Impact Assessments, Evaluation and Audit Guidelines 10.0	11.0 Minor corrections done on the bullet points so that they commence with capital letters.