

Nairobi Convention Protocols

Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean from Land-Based Sources and Activities

Adopted in Nairobi, Kenya on 31 March 2010

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 African Region signed in Nairobi on 21 June 1985, as amended and renamed “the Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean” on the Thirty first day of March 2010;

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

Conscious of the grave danger posed by various land-based sources and activities to the marine and coastal environment, affecting, among others, its rich heritage of biological diversity, coastal tourism, ports and harbours, human health and other natural and human-made endowments and resources;

Noting with particular concern the threats to the marine and coastal environment of the Western Indian Ocean from land-based sources and activities, including but not limited to untreated domestic wastes and discharges, industrial discharges, agricultural run-off and activities causing physical alterations and destruction of habitats;

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

Taking into account the special circumstances and vulnerabilities of the Small Island States of the Western Indian Ocean region, that is, Comoros, Mauritius and Seychelles;

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

Stressing the urgent need to tackle the various land-based sources and activities causing pollution and degradation of the marine and coastal environment of the Western Indian Ocean region;

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

Aware also of the impacts of climate change on the marine and coastal environment resulting in, among others, sea-level rise, increased seawater temperature, ocean acidification, weather and climate variability that affect or are likely to affect coastal communities;

Determined to pursue the protection and conservation of the marine and coastal environment and the sustainable development and use of the natural resources of the Western Indian Ocean region, by, among others, undertaking proactive and inclusive planning processes, so as to meet the needs of present and future generations in an equitable manner;

Considering that the Contracting Parties have committed themselves to cooperate in regional efforts to conserve, protect and restore the health and integrity of the marine and coastal environment of the Western Indian Ocean region and that, to this end, they have common but differentiated responsibilities;

Desirous of establishing closer collaboration and cooperation between the Contracting Parties to achieve better protection of the marine and coastal environment of the Western Indian Ocean region from pollution from land-based sources and activities;

Recognizing that, notwithstanding some achievements in reducing marine and coastal pollution and degradation from land-based sources and activities, efforts and measures at the local, national and regional levels need to be enhanced and strengthened;

Further recognizing the need for enhanced collaboration and cooperation with other States and relevant regional and international organizations, together with civil society organizations and local communities, for better protection of the marine and coastal environment of the Western Indian Ocean region;

Mindful of the provisions of the 1982 United Nations Convention on the Law of the Sea and in particular articles 207 and 213 thereof;

Mindful also of the various relevant and in many cases recent international and regional commitments and instruments, in addition to 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:

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Article 1 :Definitions

For the purposes of this Protocol:

- i. "Best available technique" means the latest stage, in time, of development of a process, facility or method of operation that indicates the practical suitability of a particular measure for limiting discharges, emissions and waste. In this regard, "technique" includes both the technology used and the manner in which the process, facility or method is designed, built, maintained, operated or dismantled;
- i. "Best environmental practice" means the application at the latest stage in time of the most appropriate combination of environmental control measures and strategies;
- i. "Convention" means the Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean;
- i. "Contracting Party" means any State or regional economic, political or other organization, of which at least one member is a coastal State of the Western Indian Ocean region and that exercises competence in the fields covered by this Protocol, and has acceded to this Protocol, or a non coastal State that is upstream and riparian to watercourses draining into or connected with the Western Indian Ocean;
- i. "Diffuse source" means a source of pollution other than a point source from which substances enter the marine and coastal environment as a result of land or surface run off, precipitation, atmospheric deposition, drainage, seepage or by hydrological modification or destruction of habitats;
- i. "Emission control" means a control requiring a specific emission limitation, or otherwise specifying limits or conditions on the effect, nature or other characteristics of an emission or operating conditions that affect emissions;
- i. "Environmental audit" means a systematic documented verification process for objectively obtaining and evaluating evidence to determine whether specified environmental activities, events, conditions, management systems or information about the foregoing matters conforms with audit criteria and communicating the results of this process to the client;
- i. "Environmental quality objective" means a clearly identified objective or goal for purposes of environmental quality whether in specific or general application to relevant environmental resources, activities or programmes;
- i. "Environmental quality standard" means the concentration of a particular substance or group of substances in water, sediment or biota that should not be exceeded to protect human health or the environment;
- i. "Freshwater limit" means a place in a watercourse where at low tide or in a period of low freshwater flow there is an appreciable or discernible increase in salinity owing to the presence of sea water;
- i. "Hot spot" means a geographically defined marine or coastal area or other areas of the sea, of national, regional or international significance, whose conditions are such as to adversely affect human health, threaten the functioning of ecosystems and biological diversity or degrade resources and amenities of economic and social importance in a manner that warrants priority management attention;
- i. "Internal waters" means any water body or resource, such as a river, lake, dam, wetland or other waters within the exclusive jurisdiction of a State, but does not include any shared or transboundary water body or resource;
- i. "Land based sources and activities" means sources and activities directly or indirectly causing or contributing to the pollution or degradation of the marine and coastal environment from the landward side as opposed to sources and activities from the seaward side;
- i. "Organization" means the body designated as responsible for carrying out secretariat functions pursuant to article 17 of the Convention;

- i. "Point source" means a source of pollution where the discharge or release is introduced into the environment from a clearly discernable confined and discrete conveyance including but not limited to a pipe, outfall, channel, ditch, tunnel, conduit or well from which pollutants are or may be discharged;
- i. "Pollution" means the introduction by human intervention, directly or indirectly, or through river flows, of substances, organisms or energy into the marine and coastal environment, including estuaries, resulting in deleterious effects such as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of seawater and reduction of amenities;
- i. "Riparian" means a zone or area within a river basin or watercourse that is naturally under the direct influence of the river or watercourse;
- i. "Sensitive area" means a geographically defined area of national, regional or international significance that although not degraded at present is threatened with future pollution or degradation either because of the sensitivity of the receptor or the magnitude of the anthropogenic activity posing the threat;
- i. "Treatment" means the application of physical, chemical or biological processes that change the characteristics or composition of the waste to meet environmental or other standards, prior to its release into the environment or reuse; and
- i. "Wetland" means an area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or saline, including areas of marine water the depth of which at low tide does not exceed six metres.

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Article 2 :Geographical scope

1. The geographical scope of this Protocol is the Eastern and Southern African region of the Western Indian Ocean as defined in articles 1 and 2 of the Convention (hereinafter referred to as "the Protocol area").
1. The Protocol area shall include the riparian and internal waters constituting part of the natural river basins draining into the Western Indian Ocean, the marine and coastal environment including the watershed of that part of the Western Indian Ocean situated within the Eastern and Southern African region and falling within the jurisdiction of the Contracting Parties to this Protocol.
1. Without prejudice to the generality of paragraph 2 above, the Protocol area includes the following:
 - a. The seabed and its subsoil;
 - a. The waters, seabed and its subsoil on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the natural catchments or riparian limits upstream; and
 - a. The terrestrial coastal areas designated by each of the Parties, including wetlands.
1. The Protocol area shall not include internal waters of the Contracting Parties that are not covered under paragraphs 2 and 3 of this article.

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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 that cause physical alteration of the natural state of the coastline or otherwise result in physical alteration or destruction of habitats;
- a. Discharges, releases or outflows originating from land based point and diffuse sources and activities within the territories of the Contracting Parties that may directly or indirectly affect the marine or coastal environment of the Protocol area;
- a. Inputs of polluting substances transported through the atmosphere into the marine and

coastal environment of the Protocol area from land based sources and activities within or originating from the territory of any Contracting Party.

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Article 4 : General obligations

1. The Contracting Parties shall individually or jointly take 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 the pollution or degradation of the Protocol area from land based sources and activities, using for this purpose the best practicable means at their disposal and in accordance with their respective capabilities.
1. 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 marine and coastal 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;
 - a. Apply the polluter pays principle, by virtue of which, the costs of pollution, prevention, control, mitigation and reduction measures shall be borne by the polluter, with due regard to prevailing public interest;
 - a. Ensure that new or existing activities, developments, programmes, plans, policies and processes that are likely to cause significant adverse impacts to the marine and/or coastal environment are subjected to environmental impact assessment, environmental audit or strategic environmental assessment, as appropriate, and prior authorization by a competent national authority or authorities as a matter of law; and
 - a. Designate hot spots and sensitive areas of special regional, transboundary or national importance and cooperate in efforts to create other protection regimes and take measures to restore them as appropriate.
1. The Contracting Parties shall take all appropriate measures in conformity with international law for the proper and effective discharge of their obligations under the Convention and this Protocol and shall, to this end, endeavour to harmonize their programmes, policies, laws and other regulatory frameworks.
1. The Contracting Parties shall cooperate with the competent and relevant international, regional and subregional organizations to ensure the effective implementation of the Convention and this Protocol.
1. The Contracting Parties shall ensure that the measures under paragraphs 1 and 2 of this article do not directly or indirectly pollute or degrade the marine and/ or coastal environment outside the Protocol area.

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Part II: Provisions on pollution and other degrading activities and sources

Article 5 : Pollution from point sources

1. The Contracting Parties shall ensure that 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 marine and coastal environment are based on best available techniques and best environmental practice as established under annex I to this Protocol.
2. The Contracting Parties shall ensure that emission controls of point source discharges and releases of substances into water or air in the Protocol area are based on emission and discharge limit values taking into account the Parties' social, economic and technological capacities as may be established under this Protocol.
3. The Contracting Parties shall establish permissible limits, environmental quality standards and environmental quality objectives, management practices and measures within a period of three years from the date of entry into force of this Protocol.
4. The Contracting Parties shall ensure that regulatory and administrative mechanisms are in

place to authorize and regulate point source discharges and releases. In this regard, an indicative list of priority substances and activities may be established under this Protocol, and the list may be reviewed from time to time by the Contracting Parties.

5. The Contracting Parties shall designate hot spots and establish the methodology to be used for such designation. The methodology for the designation of hot spots shall also be used to elaborate national strategies and time frames for achieving substantial reductions of pollutants from point sources.

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Article 6 : Pollution from diffuse sources

1. The Contracting Parties shall take all necessary measures to prevent, reduce, mitigate, combat or eliminate, as appropriate, the pollution load from diffuse sources, in particular, agricultural activities affecting the marine and coastal environment of the Protocol area with a view to complying with environmental quality standards and environmental quality objectives as may be established under this Protocol.
1. The Contracting Parties shall ensure that the controls of diffuse sources of land based pollution 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.

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Article 7 : Other harmful activities

1. The Contracting Parties shall endeavour to ensure that activities within their respective territories that cause the physical alteration and destruction of habitats in the marine and coastal environment of the Protocol area and that are not covered under articles 5 and 6 of this Protocol are conducted based on best available techniques and best environmental practices.
1. The Contracting Parties shall, individually or collectively, take mitigation or adaptation measures to enhance the resilience of coastal communities and their preparedness to respond to the impacts of climate change.
1. The Contracting Parties shall take measures to prevent, reduce, mitigate, combat and, to the extent possible, eliminate the effects of activities and other sources of pollution or degradation contemplated under paragraphs 1 and 2 of this article and shall undertake restorative measures.
1. The Contracting Parties shall base the measures contemplated in articles 5, 6 and 7 on the priority substances and activities listed in annex II to this Protocol.
1. Activities or other sources targeted under paragraphs 1 to 4 of this article shall include those that, though socially and economically beneficial, degrade or are likely to degrade the marine and coastal environment of the Protocol area.

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Article 8 : Transboundary pollution

1. Where pollution from land based sources and activities originating from any Contracting Party has affected or is likely to affect the marine and coastal environment of another Contracting Party, the Contracting Party from where the pollution originates shall inform and consult the affected Party and all other interested parties and cooperate in taking measures to reduce or prevent the effects or likely effects of that pollution.
1. Where discharges or releases to a watercourse or body that 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 and coastal environment of the Protocol area, the Contracting Parties shall cooperate to ensure the full application of the Protocol.

1. Each Contracting Party shall endeavour to cooperate with non Contracting Parties to prevent transboundary pollution into the Protocol area to make possible the full application of this Protocol.

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Part III: Provisions for effective implementation

Article 9 : Measures of implementation

In implementing this Protocol, the Contracting Parties shall develop, prioritize and adopt national and regional programmes or plans of actions based on source control and containing measures, designated hot spots and sensitive areas, where appropriate, with time frames for their implementation and completion.

Article 10 : Compliance and enforcement

1. The Contracting Parties shall, within three years of entry into force of this Protocol, develop and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Protocol, including mechanisms for the open exchange of information between the Contracting Parties.
1. Each Contracting Party shall take all measures at its disposal, in accordance with its capacities, and consistent with its obligations under 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.
1. Each Contracting Party shall take all appropriate measures to prevent and if necessary take corrective actions against acts or omissions contrary to the provisions of this Protocol.
1. In pursuance of the obligations set out in article 4 of this Protocol, each Contracting Party shall provide for a system of regular monitoring and inspection by its competent national authorities to assess compliance with authorizations and regulations of substances into water or air, or activities through, among other things, environmental impact assessments and audits as provided for under article 13 of this Protocol.
1. Each Contracting Party shall take appropriate measures to encourage compliance with authorizations and regulations contemplated under paragraph 4 of this article and also ensure effective application and enforcement.
1. The Contracting Parties shall offer advice, assistance or cooperation among themselves or with non contracting parties and relevant international, regional and subregional organizations in the spirit of mutual interest so as to enhance compliance with and enforcement of this Protocol.

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Article 11 : Common guidelines, standards and criteria

1. The Contracting Parties shall, as soon as possible, from the date of entry into force of this Protocol, and in cooperation with competent regional and international organizations, adopt common guidelines, standards or criteria concerning the identification, prevention, reduction, mitigation or, where feasible, elimination of pollution or degradation of the marine and coastal environment of the Protocol area. In particular, and without prejudice to the generality of the foregoing, such common guidelines, standards and criteria may include the following:
 - a. specific requirements concerning the quantities of the priority substances and activities listed in annex II, their effluent concentration and their methods of discharge;
 - a. special requirements for effluent necessitating separate treatment;
 - a. quality of seawater used for specific purposes that is necessary for the protection of human health, living resources and ecosystems;
 - a. design considerations of pipelines for coastal outfalls, taking into account, in

particular, the methods used for treatment of effluent; and

- a. control and progressive replacement of products, installations, industrial and other processes causing significant pollution or degradation of the marine and coastal environment.
1. The Contracting Parties shall within a period of three years from the entry into force of this Protocol establish common emission limits and other values, environmental quality standards or environmental quality objectives, and time frames for implementation.
1. Each Contracting Party shall designate a competent authority or authorities to be responsible for the establishment, review or implementation of national emission limits, values, measures, standards and objectives and shall submit periodic reports in this regard to the Organization.

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Article 12 : Data collection, monitoring and evaluation

1. The Contracting Parties shall carry out monitoring and evaluation programmes and activities, if necessary in cooperation or consultation with competent regional and international organizations, in accordance with annex III to this Protocol.
2. The Contracting Parties shall cooperate and collaborate, if necessary with competent regional, subregional and international organizations, to establish comparable national monitoring and analytical quality control programmes to promote storage, retrieval and exchange of data and information.
3. Each Contracting Party shall establish or designate a national focal institution to coordinate data collection, monitoring and evaluation programmes and activities under this article and, consistent with article 15 of the Convention, to form the nucleus of a regional network of national research centres and institutes. The nucleus of the regional network of national research centres and institutes shall assist in setting standards for data collection, monitoring, evaluation and information exchange.

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Article 13 : Environmental impact assessment and environmental audit

1. Each Contracting Party shall establish by law or other binding procedure, requirements for environmental impact assessment or evaluation on the possible direct, indirect, immediate, long term, cumulative or transboundary effect of the programmes, projects and activities being planned or undertaken, as appropriate, that are likely to pollute or degrade the marine or coastal environment of the Protocol area.
2. Each Contracting Party shall provide for, by law, regular and systematic environmental audits for continuing or existing development programmes, projects and activities with actual or potential polluting or degrading impact on the marine and coastal environment of the Protocol area.
3. The Contracting Parties shall develop technical and other guidelines concerning the environmental assessment or environmental audit of the potential or actual environmental impacts of development programmes, projects and activities referred to in paragraphs 1 and 2 of this article, including the possible transboundary effects, and where feasible, appropriate restorative measures. The environmental assessment or environmental audit guidelines contemplated in this paragraph may as appropriate contain, among other things, matters contained in annex IV to this Protocol.
4. Where the development programme, project or activity contemplated under this article has transboundary effects, the Contracting Parties may seek the assistance of the Organization.

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Article 14 : Scientific and technological cooperation, technical assistance and capacity building

1. Each Contracting Party shall, in conformity with article 15 of the Convention, cooperate in scientific and technological fields related to pollution from land based sources and activities, 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:

- a. exchange scientific and technical information;
- a. coordinate their research programmes of a common nature; and
- a. develop relevant scientific and technical capacities.

2. Each Contracting Party shall, directly or with the assistance of the Organization or other competent regional and international organizations, cooperate with a view to formulating and implementing programmes of assistance, particularly in the fields of training of scientific and technical personnel, acquisition, use, maintenance and production of appropriate equipment and facilities for the purpose of prevention, reduction, mitigation or to the maximum extent possible elimination, of pollution or degradation from land based sources and activities.

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Article 15 : Public participation, educational and awareness programmes

1. Each Contracting Party shall enhance, facilitate and promote, to the widest possible extent, public access to relevant information and documentation concerning pollution and degradation of the Protocol area from land based sources and activities, in addition to the opportunity for public participation in decision making processes concerning the implementation of this Protocol.

2. Each Contracting Party shall provide access to judicial and administrative proceedings, including redress and remedy, for members of the public who are aggrieved by failure to allow them access to information or participation in the decision making processes provided for under paragraph 1 of this article.

3. Each Contracting Party shall develop and implement, if necessary in cooperation with other Contracting Parties, 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 pollution or degradation of the Protocol area from land based sources and activities, and shall, to this end, promote the training of individuals and the development of awareness materials in the most appropriate manner.

4. Each Contracting Party shall encourage the participation of local communities and civil society in the process of making decisions that affect the marine and coastal environment or human livelihoods.

5. Each Contracting Party shall make available to civil society and local communities information on the status of the marine and coastal environment of the Protocol area and on the measures adopted or about to be adopted to prevent, control, reduce, mitigate and remedy the adverse effects from land based sources and activities, including the effectiveness of such measures.

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Article 16 : Reporting, exchange of and access to information

1. Each Contracting Party shall, every two years, and in accordance with article 24 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.
1. The Contracting Parties at their regular meetings shall determine the nature of the

information to be included and the collection, presentation and timing of the reports that shall be made available to the public with the exception of information deemed or classified as confidential under paragraph 5 of this article. The Organization shall circulate the reports received under this paragraph to all Contracting Parties.

1. The reports contemplated under paragraph 1 of this article shall include the data and information described under article 12 of the Convention and annex III to this Protocol, and particularly:
 1. to the extent possible, data on the quantities of priority substances discharged from the territory of the respective Contracting Party;
 1. data resulting from monitoring programmes and activities under this Protocol;
 1. information on legal and regulatory measures, programmes, action plans and other steps taken for the implementation of this Protocol and other recommendations or actions adopted thereunder;
 1. information on results achieved in the prevention, control, reduction or elimination, as appropriate, of any hot spots and sensitive areas in the territory of the respective Contracting Party;
 1. information on priority substances and activities altering or destroying the coastline or habitats within marine and coastal areas and related watersheds; and
 1. information on general results achieved and, as the case may be, difficulties encountered in the implementation of this Protocol.
1. The Organization shall, based on the information and reports provided by the Contracting Parties as described in paragraphs 1, 2 and 3 of this article, prepare and disseminate periodic reports on the general implementation of this Protocol, including on the state of the marine and coastal environment and baseline data from the most current and updated assessments.
1. Where a Contracting Party designates a report, data or information or part thereof as confidential, the same shall be used in such a manner as to ensure its confidentiality. Nothing in this Protocol shall require a Contracting Party to provide information the disclosure of which is contrary to the interests of its security.
1. Each Contracting Party shall, directly or through the Organization, regularly exchange information with other Contracting Parties and, in this regard, develop systems and networks for the exchange of information to facilitate implementation of this Protocol.
1. Each Contracting Party shall facilitate public access to information concerning conditions of the marine and coastal environment of the Protocol area, measures undertaken or planned to be undertaken to prevent, control, reduce, mitigate or eliminate, to the maximum extent possible, pollution or degradation, taking into account existing regional and international agreements concerning public access to environmental information.

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Part IV: Institutional and financial arrangements

Article 17 : Secretariat and coordination mechanisms

The Contracting Parties shall, consistent with article 17 of the Convention, designate the Organization to carry out the following secretariat functions, among others:

- (a) to convene and service meetings of the Contracting Parties;
- (b) to assist in raising funds for the implementation of this Protocol;
- (c) to provide such guidance and assistance to national focal points, national focal institutions or research institutions, any committee, group or task force established under this Protocol or by the Contracting Parties;
- (d) to 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) to formulate draft recommendations or common guidelines, standards and criteria under

article 11 of this Protocol for consideration by the Contracting Parties;

(f) to provide appropriate assistance as may be identified by the Contracting Parties to facilitate the:

(g) development and implementation of plans, programmes and measures necessary to achieve the objectives of this Protocol, including the development of procedures and mechanisms for compliance and enforcement;

(h) development of incentive programmes to encourage the Contracting Parties to implement this Protocol;

(i) development of information systems and networks for exchange of information for purposes of facilitating the implementation of this Protocol; and

(j) development and implementation of environmental education, training and public awareness and participation programmes and activities, including cooperative educational and training materials designed for various groups.

(k) to prepare common formats as directed by the Contracting Parties to be used as a basis for reports and other communication to the Organization;

(l) to establish, maintain and update databases on national, subregional and regional measures adopted for the implementation of this Protocol, including any other pertinent information;

(m) to compile and make available to the Contracting Parties and other relevant parties, including upon request by the Contracting Parties, reports and studies that may be required for the implementation of this Protocol;

(n) to prepare, for meetings of Contracting Parties, regular reports that shall include a draft budget for the forthcoming annual, biannual or other period together with an audited revenue and expenditure statement for the preceding annual, biannual or other period as may be agreed by the Contracting Parties;

(o) to enter into any administrative and financial arrangements as may be required for the effective discharge of Secretariat functions;

(p) to assist Contracting Parties, in cooperation with competent regional and international intergovernmental 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 or degradation from land based sources and activities in the Protocol area;

(q) to undertake programmes of technical, scientific and management research, and prepare management plans;

(r) to convene, coordinate and organize meetings of national focal points and provide the said focal points with secretariat services;

(s) to cooperate with regional, international, intergovernmental and non governmental organizations concerned with the prevention, control, reduction, mitigation or elimination of pollution or degradation of the marine and coastal environment of the Protocol area from land based sources and activities, provided that the specificity of each organization and the need to avoid the duplication of activities and roles are respected; And

(t) to perform all other functions as specified under article 17, paragraph 1, and article 18 of the Convention; and to carry out any other functions assigned to the secretariat by the Contracting Parties.

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Article 18 : Meetings of the Contracting 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

18 of the Convention.

2. The Contracting Parties to this Protocol may hold extraordinary meetings provided for in paragraph 3 of article 18 of the Convention.

3. The meetings of the Contracting Parties to this Protocol shall:

(a) consider the efficacy of the measures adopted and examine the need for other measures in conformity with the provisions of this Protocol;

(b) adopt, review and amend as required any annex in accordance with article 21 of this Protocol;

(c) consider the recommendations of meetings of national focal points as established under article 19 of this Protocol;

(d) consider, as appropriate, information transmitted by Contracting Parties to the Organization under article 16 of this Protocol and article 24 of the Convention; and

(e) perform all other functions and exercise such powers as specified under article 18 of the Convention as appropriate.

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Article 19 : National focal points

1. Each Contracting Party shall designate a national focal point or points, consistent with those appointed under the Convention, to liaise with the Organization on technical, scientific and legal aspects under this Protocol.

2. The national focal points shall communicate regularly and meet periodically to carry out the functions deriving from this Protocol.

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Article 20 : Financial arrangements

1. Each Contracting Party shall, taking into account its capabilities and in accordance with its obligations under article 22 of the Convention, 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.

2. The financial resources may include voluntary contributions for the achievement of specific objectives of this Protocol made by the Contracting Parties, other Governments or government agencies, international organizations, non governmental organizations, the private sector and individuals.

3. In particular, each Contracting Party shall:

(a) promote and facilitate the mobilization of substantial financial resources, including national budgetary allocations, grants and concessional loans from bilateral and multilateral funding sources and mechanisms;

(b) commit and raise sufficient domestic and external financial resources based on both assessed and voluntary contributions, grants, donations and loans; and

(c) explore innovative methods and incentives for mobilizing and channelling resources, including those of foundations, non governmental organizations and other private sector entities.

4. In addition to the financial contributions by the Contracting Parties provided for under this article, 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, including 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.

5. For funding purposes, each Contracting Party shall endeavour to prioritize national policies, strategies, plans, programmes, measures and activities related to this Protocol.

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Part V: Final provisions

Article 21 : Annexes

1. The provisions as to adoption, amendment, status and relationship of annexes as set out in article 21 of the Convention shall apply mutatis mutandis to the annexes to this Protocol.

2. The Contracting Parties may, in an evolutionary and progressive manner, develop such additional annexes as they deem appropriate and the provisions of article 21 of the Convention shall apply mutatis mutandis.

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Article 22 : Settlement of disputes

The provisions of article 25 of the Convention regarding the settlement of disputes shall apply mutatis mutandis to this Protocol.

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Article 23 : Relationship between this Protocol and the Convention

1. The provisions of article 26 of the Convention relating to its relationship with protocols shall apply with regard to this Protocol.

2. The rules of procedure and the financial rules adopted pursuant to article 22 of the Convention shall apply to this Protocol, unless the Contracting Parties to this Protocol agree otherwise.

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Article 24 : Relationship between this Protocol, domestic legislation and third parties

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

2. The Contracting Parties may invite non Contracting Parties to this Protocol, regional and international, intergovernmental and non governmental organizations to cooperate in the implementation of this Protocol.

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

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Article 25 : Sovereignty claims and rights

1. Nothing in this Protocol or 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 Convention on the Law of the Sea, 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, together with the nature and extent of jurisdiction of the coastal State, island or archipelagic States, flag States and port States.

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

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Article 26 : Signature, ratification, accession, amendments, depositary and entry into force

1. This Protocol shall be open for signature from the first day of April 2010 to the first day of April 2011 by any Contracting Party to the Convention.

2. This Protocol shall be open for accession by any non Contracting Party to the Convention or organization contemplated by article 29 of the Convention, and in accordance with the provisions of article 31 of the Convention, provided that such acceding State or organization has been duly invited by the Organization upon prior approval by the Contracting Parties.

3. The provisions of the Convention concerning ratification, acceptance, approval, amendments, review, depositary, withdrawal and entry into force shall apply mutatis mutandis to this Protocol.

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

DONE AT Nairobi, Kenya on this first day of April two thousand and ten in a single copy of the English and French languages, the two texts being equally authentic.

ANNEX I: Best Available Techniques and Best Environmental Practice

In accordance with article 5 (1) of this Protocol, the Contracting Parties shall use or promote the application of the following Best Available Techniques (BAT) and Best Environmental Practice (BEP).

A. Best Available Techniques

1. The use of the best available techniques shall emphasize the use of non waste technology, if available.

2. In determining whether a set of processes, facilities and methods of operation constitute the best available techniques in general or specific cases, special consideration shall be given to:

- (a) comparable processes, facilities or methods of operation that have recently been successfully applied;
- (b) technological advances and changes in scientific knowledge and understanding;
- (c) economic feasibility of such techniques;
- (d) time limits for installation in both new and existing plants;
- (e) nature and volume of the discharges and emissions concerned; and
- (f) precautionary principle.

3. If the reduction of waste discharges and emissions resulting from the use of best available techniques does not lead to environmentally acceptable results, additional measures should be applied.

B. Best Environmental Practice

1. In making a selection for individual cases, at least the following graduated range of measures should be considered:

- (a) provision of information and education to the public and to users about the environmental consequences of a choice of particular activities or products, their use and ultimate disposal;
- (b) development and application of codes of good environmental practice that cover all aspects of the activity in the product's life;
- (c) mandatory application of labels informing users of environmental risks related to a product, its use and ultimate disposal;
- (d) conservation of resources, including energy;
- (e) making collection and disposal systems available to the public;
- (f) avoiding the use of hazardous substances or products and the generation of hazardous waste;
- (g) recycling, recovery and reuse;
- (h) application of economic instruments to activities, products or groups of products; and
- (i) establishing a system of licensing, involving a range of restrictions or a ban.

2. In determining what combination of measures constitute best environmental practice, in general or individual cases, particular consideration should be given to:

- (a) environmental hazard of the product and its production, use and ultimate disposal;
- (b) substitution by less polluting activities or substances;
- (c) scale of use;
- (d) potential environmental benefit or cost of substitute materials or activities;
- (e) advances and changes in scientific knowledge and understanding;
- (f) time limits for implementation;
- (g) social and economic implications; and
- (h) precautionary principle.

3. Best environmental practice for a particular source may change with time in the light of technological advances, economic and social factors, together with changes in scientific knowledge and understanding.

4. If the reduction of inputs resulting from the use of best environmental practice does not lead to environmentally acceptable results, additional measures may be applied and best environmental practice redefined.

ANNEX II

Priority substances and activities

1. The Contracting Parties shall base measures contemplated in articles 5–7 of this Protocol on the priority substances and activities listed under items 3–5 of this annex.

2. Priority substances and activities shall be determined by assessing the relative importance of impacts upon public health, marine and coastal resources, ecosystem health, social and economic benefits including cultural values.

A. Categories of priority substances

3. In the preparation of action programmes, plans and measures, the Contracting Parties shall use as guidance the following categories of substances identified on the basis of their

hazardousness or other harmful characteristics:

- (a) organohalogen compounds and substances that may form such compounds in the marine and coastal environment. Priority will be accorded to aldrin, chlordane, DDT, dieldrin, dioxins and furans, endrin, heptachlor, hexachlorobenzene, mirex, polychlorinated biphenyls and toxaphene;
- (b) organophosphorus compounds and substances that may form such compounds in the marine and coastal environment;
- (c) organometallic compounds and substances that may form such compounds in the marine and coastal environment;
- (d) polycyclic aromatic hydrocarbons;
- (e) heavy metals and their compounds;
- (f) used lubricating oils;
- (g) radioactive substances;
- (h) biocides and their derivatives;
- (i) pathogenic micro organisms;
- (j) endocrine disrupting substances;
- (k) crude oils and hydrocarbons of petroleum origin;
- (l) cyanides and fluorides;
- (m) non biodegradable detergents and other non biodegradable surface active substances;
- (n) nitrogen and phosphorus compounds and other substances that may cause eutrophication;
- (o) litter (including any persistent manufactured or processed solid material that is discarded, disposed of, or abandoned in the marine and coastal environment);
- (p) thermal emissions;
- (q) acid or alkaline compounds that may impair water quality;
- (r) non toxic substances that have an adverse effect on the oxygen content of the marine and coastal environment;
- (s) non toxic substances that may interfere with any legitimate use of the sea;
- (t) non toxic substances that may have adverse effects on the physical or chemical characteristics of seawater;
- (u) other substances that may be assessed, including lindane, endosulfan, atrazine, organic tin compounds, organic mercury compounds, chlorinated paraffins and polybrominated diphenyl ethers;
- (v) substances that are only moderately persistent but that have been continuously released in large quantities; and
- (w) any other substances regulated under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

B. Characteristics of substances

4. In the preparation of programmes, action plans and measures, the Contracting Parties shall take into account, where relevant, the following characteristics and factors:

- (a) persistence;
- (b) toxicity or other noxious properties (e.g., carcinogenicity, mutagenicity or teratogenicity);
- (c) bioaccumulation;
- (d) radioactivity;
- (e) ratio between observed concentrations and no observed effect concentrations;
- (f) potential for causing eutrophication;
- (g) health effects and risks;
- (h) transboundary significance;
- (i) risk of undesirable changes in the marine ecosystem and irreversibility or durability of effects;
- (j) negative impacts on marine life and the sustainable use of living resources or another legitimate uses of the sea;
- (k) effects on the taste or smell of marine products intended for human consumption;
- (l) effects on the smell, colour, transparency or other characteristics of seawater; and
- (m) distribution pattern (i.e., quantities involved, use patterns and probability of reaching the marine environment).

C. Priority activities

5. The following activities and their associated facilities or components shall be considered when setting priorities for the preparation of action programmes, plans and measures:

- (a) agriculture;
- (b) animal husbandry;
- (c) aquaculture and mariculture;
- (d) automobile industry and automobile workshops activities;
- (e) beverages industry;
- (f) cement production;
- (g) disposal of sewage;
- (h) waste management activities;
- (i) incineration of waste and management of its residues;
- (j) management of municipal solid waste;
- (k) dredging;
- (l) electrical and electronics industry;
- (m) energy production;
- (n) fertilizer production;
- (o) food processing;
- (p) extraction of forest products;
- (q) paper and paper pulp industry;
- (r) wood and timber products industry;
- (s) leather tanning industry;

- (t) metal industry;
- (u) mining including sand and gravel extraction;
- (v) petroleum refining;
- (w) oil exploration and exploitation;
- (x) petroleum and gas pipelines;
- (y) pharmaceutical industry;
- (z) production and formulation of biocides;
- (aa) other sectors and activities of the inorganic and organic chemical industry;
- (bb) ports and harbour development and operations;
- (cc) recycling industry;
- (dd) rubber and plastic industry;
- (ee) shipbuilding and repairing industry;
- (ff) iron and steel industry;
- (gg) textile industry;
- (hh) tourism;
- (ii) transport; and
- (jj) other works or activities that cause physical alteration of the natural state of the coastline or destruction of habitats.

ANNEX III

Data collection, monitoring and evaluation

In accordance with article 12 of this Protocol, the Contracting Parties shall carry out monitoring programmes and evaluation activities as follows:

- (a) collect data on the conditions and features of the marine and coastal environment of the Protocol area as regards its physical, biological and chemical characteristics;
- (b) collect data, prepare and regularly maintain an inventory of inputs of priority substances and activities including information on distribution of sources and activities and the quantities and qualities of such substances and activities introduced into the marine and coastal environment;
- (c) systematically assess the levels of pollution or other degradation in the internal and territorial waters of the Contracting Parties, in particular with regard to substances that may have a potentially significant impact on the marine and coastal environment and, in this respect, periodically report to the Organization;
- (d) systematically assess the state of the marine and coastal environment;
- (e) evaluate the effectiveness of action plans, authorizations, measures and activities adopted and implemented to prevent, reduce, control, mitigate or eliminate to the maximum extent possible, pollution or degradation of the marine and coastal environment from land based sources and activities;
- (f) develop measurable indicators to assess the effectiveness of the measures under paragraphs (c)–(e) of this annex; and
- (g) evaluate the effectiveness of any other measures taken to meet the various environmental objectives set out in this Protocol.

ANNEX IV Environment Impact Assessments, Evaluation and Audit Guidelines

1. In accordance with article 13 of this Protocol, the Contracting Parties shall develop technical and other guidelines concerning environmental impact assessments, evaluations and audits that should include the following:

- (a) description of the geographical location of development activities, programmes and projects ;
- (b) description of the initial ecological state of the marine environment and the coastal areas that may be affected by development programmes, projects and activities;
- (c) indication of the nature, aim and scope of development programmes, projects and activities;
- (d) description of the methods, installations and other means to be used or being used;
- (e) description of the foreseeable direct and indirect long term and short term effects of the activities on the marine and/or coastal environment, including biological diversity;
- (f) statement setting out the measures proposed to reduce or mitigate to the minimum the risk of pollution or degradation as a result of development programmes, projects and activities, and in addition, possible process, pollution and degradation abatement alternatives, including restorative measures, where feasible;
- (g) indication of measures to be taken, or being taken for the protection or restoration of the marine and/or coastal environment from pollution or degradation during and throughout the life cycle of development programmes, projects and activities;
- (h) description of commitments to continuing environmental management and monitoring activities;
- (i) cost benefit analysis as appropriate; and
- (j) brief summary of the environmental assessment, evaluation or audit, as appropriate.

2. Each Contracting Party shall exchange data and information with all Contracting Parties on reports and results of environmental assessments, evaluations or audits with a view to enabling the Contracting Party or Parties that may be affected by the environmental impacts of the development activity, programme, project or activity and consult with the Contracting Party concerned.

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