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**Report of the Second Negotiation Meeting on the Draft Protocol on Integrated Coastal Zone
Management (ICZM)**



**The Third Negotiations Meeting
on the Text of the Integrated Coastal Zone Management (ICZM) Protocol
of the Nairobi Convention for the Protection, Management and Development of
the Marine and Coastal Environment of the Western Indian Ocean**

Zanzibar Tanzania, 21-24 November 2016.

**REPORT OF THE SECOND NEGOTIATION MEETING ON THE TEXT OF
THE PROTOCOL ON INTEGRATED COASTAL ZONE MANAGEMENT IN
WESTERN INDIAN OCEAN REGION**

I. Introduction

1. In decision CP7/3 on *'Development of a Protocol on Integrated Coastal Zone Management'*, the Contracting Parties to the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean region agreed to negotiate a protocol on integrated coastal zone management and present an agreed text for consideration for possible adoption at the next Conference of Parties serving as the Conference of Plenipotentiaries. The Contracting Parties also requested the Secretariat to facilitate meetings on negotiations on the protocol and the Conference of Plenipotentiaries.
2. In accordance with that mandate, the first negotiation meeting on the text of the Protocol on Integrated Coastal Zone Management in Western Indian Ocean Region was held on 25 and 26 September 2013 in Cape Town, South Africa.
3. In Decision CP8/3: *Development of a Protocol on Integrated Coastal Zone Management*, the Contracting Parties of the Nairobi Convention requested the Secretariat to review the current status of the draft Protocol on Integrated Coastal Zone Management in collaboration with Contracting Parties and other partners and facilitate discussions to

explore other possible options for the effective management of the marine and coastal environment and report back on the options at or before the next Conference of Parties.

4. In accordance with that mandate, the Second Negotiation Meeting on the Text of the First Draft of the ICZM Protocol of the Nairobi Convention was held on the 21-22 March 2016 in Mauritius.

II. Opening of the Meeting:

a) Welcome remarks by the Secretariat of the Nairobi Convention

5. The meeting was called to order at 0915hrs by the Head of the Secretariat of the Nairobi Convention, Mr. Dixon Waruinge who thanked the Government of Mauritius for their hospitality and the Indian Ocean Commission (IOC) for providing support to the Convention and for taking care of the logistics, including support of participants from the IOC states. He thanked the EU supported Biodiversity Project of the IOC for creating linkages between the Biodiversity Project and the decisions of the Contracting Parties to the Nairobi Convention noting that the ICZM protocol was initiated under the IOC's Regional Programme for the Sustainable Management of the Coastal Zone of the Countries of the Indian Ocean, (ReCoMaP 2006-11) funded by the EU. Mr. Waruinge stated that the ICZM protocol would be a legal framework, to discuss and secure the wealth and opportunities generated from the oceans adding that the second negotiation meeting came at an opportune time when countries of the region were initiating policy changes towards Blue Economies. He tracked the progress in the preparation of the ICZM protocol from the year 2010 to the first negotiation meeting in 2013, where a number of articles were not agreed upon, remaining contentious and thus were the focus of the second negotiation meeting. He stated that the expected outcome of the 2nd negotiations meeting was an agreed text of the ICZM protocol ready for submission to the Conference of Parties in 2017.

b) Welcome remarks by the Indian Ocean Commission (COI) Representative

6. The Secretary General of the IOC Mr. Jean Claude de L'Estrac noted that it was a great honour to have been invited by the Nairobi Convention to co-host the second negotiation meeting of the ICZM protocol, the focal points of the Convention's meeting and the IDDRI workshop. He highlighted the synergies and areas of cooperation between the IOC through its past and ongoing projects and the Nairobi Convention. He noted that the experience gained in the implementation of those projects would serve the IOC well in contributing to the development of the ICZM protocol, which when ratified would be of great benefit not only to the Contracting Parties of the Nairobi Convention but also to the IOC and the coastal communities of the Western Indian Ocean whose livelihoods are largely dependent on the ocean.

c) Welcome remarks by Head of the Delegation of the European Union to Mauritius

7. The head of delegation of the European Union (EU) to Mauritius Mr. Eric Vanhalewyn welcomed participants to Mauritius for the second negotiation meeting of the ICZM protocol and confirmed the EU's continued support and commitment to the IOC projects and the ICZM Protocol development process.

d) Welcome remarks by the UNDP Resident Representative

8. The United Nations Resident Coordinator and UNDP Resident Representative Mr. Simon Springett welcomed delegates to the second negotiation meeting of the ICZM protocol lauding the progress made in the negotiation process thus far. He noted the importance that the members states of the Nairobi Convention had placed on the management of the coastal zones in their countries starting from the "Arusha Resolution on Integrated Coastal Zone Management in Eastern Africa including Island States" to the 2009 ReCoMaP Feasibility Assessment on anchoring Integrated Coastal Zone Management into a legally binding protocol, to the Conference of Parties Decision to draft an ICZM Protocol in 2010, to the seven drafting meetings and the first negotiation meeting in South Africa in 2013. He placed emphasis on the issues that required sustained attention and agreement, including but not limited to: Geographical Coverage (Protocol Area), Objectives of ICZM, ICZM Instruments, Conservation and Rehabilitation of Coastal Ecosystems, Biodiversity and Landscapes, and Disaster Risk Management.

e) Welcome Remarks by the Minister of Environment, Energy and Climate Change, Seychelles

9. The Chair of the Bureau of the Nairobi Convention and the Minister of Environment, Energy and Climate Change Seychelles, Mr. Didier Dogley stated that the marine ecosystems of the Western Indian Ocean (WIO) faced a myriad of threats and pressure, many of which could not be addressed at a national level and required common understanding and agreement of the WIO states; such as that provided in an ICZM protocol. Mr. Dogley noted that from the report of the first negotiation meeting, there was consensus on the many principles and key provisions of the draft protocol but that a lot of work remained to be done before the protocol could be adopted. He called for a robust but flexible protocol that could be adapted in the face of changing situations on the ground and one that would make provisions for its review where necessary.

f.) Welcome Remarks by the Minister of Environment, Sustainable Development, Disaster and Beach Management, Mauritius

10. The Honourable Mr. Jayeshwar Raj Dayal, the Minister of Environment, Sustainable Development, Disaster and Beach Management of the Republic of Mauritius officially opened the second negotiation meeting. He said that the WIO region was recognized globally as one of the least ecologically disturbed areas of the global oceans but the extensive concentration and excessive exploitation of natural resources were putting

enormous pressures on the coastal ecosystems leading to biodiversity loss, habitat destruction, pollution and conflict amongst users, not to mention the risks associated with climate change and natural hazards. This necessitates the use of long term management tools such as ICZM. The Minister elaborated the various measures taken by the Government of Mauritius on ICZM and the development of an ocean economy.

II. Organizational Matters

a. Election of Officers

11. In accordance with Rule 16 of the Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Nairobi Convention, members of the Bureau continued to serve in their capacities. The Chair introduced the members of the Bureau of the Nairobi Convention as follows: Chair as Seychelles, Vice-chair (Work Programme) as Kenya, Vice-chair (Resource Mobilization) as Republic of South Africa, Vice-chair (Coordination) as Mozambique, and Rapporteur as Mauritius.

b. Adoption of the Agenda

12. The Chair introduced and led the discussion on the adoption of the provisional and annotated agendas as contained in documents: (a) Provisional Agenda: UNEP/(DEPI)/EAF/NEG2-ICZM/2016/2a; (b) Annotated Agenda: UNEP/(DEPI)/EAF/NEG2-ICZM/2016/2c. These were unanimously adopted without any amendments.

c. Organization of Work

13. The Chair proposed that the meeting work in plenary and establish working groups/drafting committees as needed. The Contracting Parties agreed to the working hours for the meeting.

III: Technical Presentations

a. Negotiators Skills and Etiquette

14. On behalf of the Secretariat, Robert Wabunoha of UNEP delivered a presentation on negotiators skills and etiquette. The presentation was a refresher on the negotiation and etiquette skills delivered in the first negotiations meeting in 2013. The presentation traced the path of where the Contracting Parties were in the drafting of the protocol; continued to prepare members for formal treaty negotiations; dealt with the issues of negotiations (tactical, technical, drafting and strategy); and set the stage for outcome.

b. Guiding Principles for Negotiators of the ICZM Protocol

15. On behalf of the Secretariat, Dr. Akunga Momanyi gave a presentation on the guiding principles for negotiators of the ICZM Protocol. The Guiding Principles Document is meant to offer guidance for both the drafters and the negotiators of the draft ICZM Protocol, by seeking to provide background, more clarity, common understanding and rationale of the

different articles or aspects of the draft ICZM Protocol and was developed in order for the drafters and the negotiators to overcome the challenges that were being experienced in definitions and agreement on terms. Dr. Akunga noted that the guiding principles were based on the protocol and that it was a living document, meant to be used and amended in tandem with the evolution of the Protocol. He urged the Contracting Parties to read the Guiding Principles document in tandem with the most current version of the draft protocol.

16. Dr. Akunga highlighted various global and regional processes and instruments relevant to ICZM, such as UNGA 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs); African Union's Agenda 2063 "The Africa We Want", which emphasizes integration and Africa's Blue Economy as well its first 10-year implementation plan (10 YIP); 2013 Africa Integrated Maritime Strategy 2050; 2015 Paris Agreement on Climate; 2015 Sendai Disaster Risk Reduction Agenda, and requested the Contracting Parties to take those developments into consideration while negotiating. Seychelles proposed that the Samoa Pathway for SIDS be included here.
17. Kenya asked the Secretariat to highlight the issues as pertains to ICZM in the stated reference documents to assist the negotiators in incorporating these in the protocol. The Contracting Parties asked the Secretariat to prepare a short synthesis report on the recent global and regional developments and instruments and their relevance to the ICZM Protocol.

IV Overview of the Text of the First Negotiated Draft of the ICZM Protocol by the Secretariat

18. Robert Wabunoha presented the overview of the text of the First Negotiated Draft of the ICZM Protocol as negotiated by the Contracting Parties in the first negotiations meeting held on 25-26 September 2013 in Cape Town, South Africa and contained in the document: First Negotiated Draft of the Protocol on Integrated Coastal Zone Management in the Western Indian Ocean Region - UNEP/ (DEPI)/EAF/NEG2-ICZM/DOC/3. The presentation highlighted the issues that are yet to be resolved, or that delegates had made comments on in the first negotiation meeting in South Africa.

VI: Negotiations of the Articles of the First Negotiated Text of the ICZM Protocol

19. The delegates, under guidance of the Chairperson, Legal and Technical Working Group, Ms. Irene Kamunge of Kenya, proceeded with further formal negotiation of the draft articles of the ICZM Protocol. As a necessary step, the delegates proposed draft clauses in addition to, amendment of or deletion of some of the existing draft articles. The highlights of these discussions, the decisions made and the rationale for these decisions are highlighted in the sections below.
20. Somali proposed the introduction of a new article on the amicable resolution of disputes arising between Contracting Parties. He provided text as follows for deliberation "If coastal border disputes will arise between two Contracting Parties, the dispute shall be settled through amicable negotiations." The issue was bracketed for deliberation and negotiation

since the Nairobi Convention already provides a mechanism for conflict resolution to handle such disputes.

a. Preamble:

21. Madagascar proposed the inclusion of the Law of the Sea (UNCLOS) as the overarching framework for the Protocol since it is the principal convention governing all activities in the marine sector. The paragraph to the following effect: [*Recalling* the 1982 United Nations Convention on the Law of the Sea...]. South Africa noted that there was already a paragraph in the Preamble that made reference to UNCLOS and therefore a second reference would be repetitive. It states as follows “*Aware* of other existing international legal and policy commitments for the realization of ICZM, including the 1982 United Nations Convention on the Law of the Sea, in particular Part XII thereof...”. Madagascar was asked to provide text for the Contracting Parties to deliberate on.
22. France proposed that the word “healthy” be introduced to the following text “*Conscious* of the socio-economic value and the services rendered by **healthy** coastal and marine ecosystems”. The Contracting Parties agreed to this.
23. France proposed the deletion of “Threats” and replacing it with “current and future potential impacts” *Concerned* about the ~~threats~~ (current and future potential impacts) arising from increased pressures on the fragile coastal and marine areas of the Region, resulting from biodiversity loss, pollution of coastal and associated marine areas, degradation due to growing intensity of human settlement and unsustainable socio-economic activities, risks threatening coastal zones due to natural disasters and climate change including special vulnerability to sea level rise of low lying coastal areas and Small Island States. The Contracting Parties retained the text as is.
24. Seychelles and South Africa proposed the replacement of the Text “*Concerned also* about the lack of or inadequate coordination or integration of various sector activities, programmes and plans affecting the coastal and associated marine areas in the WIO Region” with “Concerned about the inadequate monitoring and enforcement systems within the West Indian Ocean region.” This will be negotiated further at the next meeting.
25. Kenya proposed the addition of text pertaining to emerging issues and provided text to the Secretariat as follows “*Mindful* of the environmental impacts of socio-economic developments such as oil and gas as well as other extractive industries on the coastal zone.” This will be negotiated further at the next meeting.
26. The text on the Preamble was not agreed on and will be negotiated further at the next negotiation meeting.

b. Article 1: Definitions:

27. The Contracting Parties put on hold the discussions on the definitions until the other substantive sections and articles are completed and agreed on.

c. Article 2- Geographical Coverage

28. The Contracting Parties put on hold the discussions on Geographical Coverage until the other sections and articles are completed and agreed on.

d. Article 3: Purpose of the Protocol

29. Madagascar proposed the addition of the term legal in “The purpose of this Protocol is to provide a **[legal]** framework for regional and national integrated coastal zone management”....This was bracketed for further negotiation. (The Protocol is already a legally binding document, it may not therefore be necessary to add the term legal framework.)
30. South Africa proposed the replacement of the term “...within the Geographical Coverage of the Protocol” to “within the geographical coverage of the Western Indian Ocean Region. Seychelles asked that for consistency purposes, the proposal from South Africa is shelved until the Contracting Parties agree on Geographical Coverage in article 2, this would then be revisited. It was so agreed.
31. France noted the need to check the French document translation as it is in some instances inconsistent with the English version. The meeting decided that once the draft was agreed upon and completed, then the official authentic translation work would be undertaken.
32. The text on article 3 was not agreed on and will be discussed at the next negotiations meeting.

e. Article 4: Preservation of Rights

33. Madagascar proposed an addition of text as Point 1 in article 4. **“Nothing in this protocol shall affect a) the sovereignty, sovereign rights and jurisdiction of the Coastal state in areas under its national jurisdiction; b) the rights and obligations of other states in areas under the national jurisdiction of the Coastal state”**. The rationale for the addition is that it is a paragraph of general nature on sovereign rights. The other points in this article are of a specific nature. It also becomes paragraph 1 as it is dealing with sovereign rights. The Proposal by Madagascar was accepted by the meeting.
34. The Contracting Parties agreed on the text for article 4.

f. Article 5: General Obligations

35. South Africa noted that the protocol was inconsistent in the use of “Convention” and “Amended Convention” and that this needs to be harmonized/made uniform in the document. The Secretariat clarified that the term “Convention” had been defined as meaning “Amended Nairobi Convention” in the document therefore it was consistent. Secondly, the Amended Convention has not been ratified by the Contracting Parties- if the protocol is finalized after the ratification, then the text of the Protocol will be changed accordingly,
36. Madagascar led a discussion on the use of the term “shall” as opposed to “may” in point 3 to bring out the aspect of obliging Contracting Parties to cooperate with relevant international, regional and sub-regional and national organizations as the entire article deals with General

Obligations. The Contracting Parties determined that Cooperation is a discretionary and not an obligatory function and therefore the text “may” is retained. Mauritius sought to reconcile paragraph 3, article 5, with paragraph 6, article 19, also on cooperation. On a different vein, the Cooperation as used in Article 19 is an obligation of the Contracting Parties rather than a discretionary function therefore the Contracting Parties retained the text in article 19 as it stands in the current draft.

37. Paragraph 3- Madagascar proposed the word “promote” to replace “ensure” as it is more realistic and flexible. It now reads “The Contracting Parties may co-operate with competent and relevant international, regional and sub-regional and national organizations, to **ensure** promote effective implementation of this Protocol.
38. Paragraph 4- Madagascar proposed the addition of the text “at the national level”. “The Contracting Parties shall, as soon as possible after entry into force of this Protocol, develop and adopt procedures and mechanisms needed at the **national level** to facilitate assess and promote compliance and enforcement of the Protocol”. This additional text was accepted.
39. Paragraph 4- Kenya proposed that paragraph 4 is moved to article 22 since they are all dealing with the establishment of a coordinating mechanism at the national level. This was agreed upon and paragraph 4 was moved to article 22.
40. Tanzania noted that there was no linkage to the Secretariat in the General Obligations. Kenya explained that the role of the Secretariat was spelt out in Article 19 point 5.
41. The text for Article 5 was agreed on.

g. Article 6: Objectives of ICZM

42. The Contracting Parties had several suggestions, interventions, revisions, additions, merging and deletions pertaining to Article 6.
Some of these suggestions were:
 43. Objective a: promote sustainable management development of the marine and coastal ecosystems **for the benefit of present and future generations**. Comoros proposed the deletion of present and future generations and ending the phrase at Coastal zones. .;
 44. France proposed an additional objective “to guarantee harmonious planning of diverse and multiple activities in the coastal zone”
 45. France proposed the merging of objectives “a” and “d” to read “*promote sustainable development in the use of natural resources and ecosystem services and sustainable development of the coastal zone for the benefit of present and future generations*”
 46. Comoros proposed text on encouraging elaboration of capacity building.
 47. To cater for all the suggestions, the Chair appointed a subcommittee/working group (France, Comoros, Madagascar, Mauritius and Kenya) to work on the objectives of ICZM and submit it to the plenary for discussion and approval. The objectives as presented by the group, the discussions and decisions by the Plenary are listed below:

The objectives of integrated coastal zone management are to:

- i. promote sustainable use and equitable benefit sharing of coastal and marine resources; **(agreed on)**
 - ii. conserve the ecological integrity and value of coastal and marine ecosystems and their valuable ecosystem services ;**(agreed on and retained as is here, after consideration of the alternative “preserve ecological integrity and conserve ecosystems” as proposed by Madagascar)**
 - iii. provide for monitoring, preparedness, reduction, mitigation and adaptation of the effects of natural risks, especially those associated with climate change, as well as anthropogenic hazards, especially those caused by pollution; **(agreed on after the rearrangement of the order of activities)**
 - iv. promote the development and implementation of regional and national integrated coastal zone management frameworks; **(agreed on)**
 - v. encourage involvement of all stakeholders to participate in planning and implementation of ICZM; **(agreed on)**
 - vi. [Prevent, avoid, mitigate and, as necessary, compensate harmful effects of anthropogenic activities on the coastal environment.] **(Bracketed for further discussion since prevent and compensate are directly opposing terms)**
 - vii. [Address the emerging development activities on the coastal zone, including [offshore] oil and gas operations.]- **(this was bracketed for further negotiation).**
48. Overall, some provisions of Article 6 were not agreed on and these elements deferred to the next negotiation meeting.

h. Article 7: Principles of ICZM

49. Delegates deliberated on the issue of principles of ICZM at length. Kenya noted the importance of distinguishing between principles and rights. The delegates went through the proposed principles of ICZM to determine their validity and whether they were appropriate or in line with global principles and processes (polluter pays principle, Rio Declaration, Stockholm Declaration etc)
50. The Contracting Parties talked about the Sustainable Development principles as detailed in this article “In implementing this Protocol the Contracting Parties shall be guided by the following principles of sustainable development”, debating whether it was relevant to list the principles of sustainable development when ICZM in itself was an approach in attaining sustainable development. The delegates determined that the principles of sustainable development are alluded to in the preamble and therefore it is prudent to leave them out and go straight to the principles of ICZM.
51. The Contracting Parties discussed the issue of inclusion of Principles as a general clause in the preamble as opposed to part of the articles. Robert Wabunoha explained that while it was possible to put the principles in the preamble, it limited the implementation of the Protocol because items in the preamble are generally inspirational and not operational or actionable.

Putting the principles in the articles makes them legally implementable. The Contracting Parties agreed to retain the Principles of ICZM as Article 7.

52. The Chair constituted a committee (Seychelles, Mozambique, Somali and Tanzania) to work on the Principles of ICZM, with the guidance to consider that Sustainable Development Principles are applicable across the globe while ICZM Principles are applicable to Coastal States as an approach to managing their coastal zones.

53. The group proposals, plenary discussions and decisions are outlined in the sections below:

- i. The list of Sustainable Development Principles (sub article 1) was deleted. In addition, the introductory text for Article 7 was altered to read “In implementing this Protocol the Contracting Parties shall be guided by the principles of sustainable development.” The Contracting Parties agreed to the deletion of sub article 1 and to the text proposed by the group.
- ii. Sub- article 2 is retained.

54. The principles of ICZM now read as follows:

- (a) adoption of a broad holistic approach, (**agreed on as principle (a)**)
- (b) integration and coordination of management efforts across all sectors and operational levels (**agreed on**);
- (c) use of a combination of instruments; (**agreed on**)
- (d) consideration for local specificities and peculiarities; (**agreed on**)
- (e) ~~securing~~ equitable access to the coastal zone and the opportunities and benefits of coastal resources and services; (**agreed on after replacing securing with equitable**)
- (f) ~~the~~ use of adaptive management; (**agreed on after deleting “the”**)
- (g) ~~the~~ use of participatory approaches; (**agreed on after deleting “the”**)
- (h) environmental stewardship of coastal zone resources; (**agreed on**)
- (i) application of ecosystem based management to the coastal zone; (**agreed on**)
- (j) good governance allowing adequate and timely participation in transparent decision making processes involving all relevant Government and other public line agencies, private sector and civil society stakeholders; (**agreed on**)
- (k) cross sectoral institutional coordination of the administrative services, and national, regional and local authorities in the coastal zone. (**agreed on**)
- (l) ~~Ecological Compensation~~ (**Contracting parties agreed on the deletion**)
- (m) ~~Subsidiarity~~ (**Contracting Parties agreed on the deletion**)

55. The text for article 7 was agreed on.

i. Article 8: National ICZM Frameworks

56. Kenya suggested that the term framework was too broad and should be broken down or further defined into “Legal, Policy and Institutional Frameworks”. The Contracting Parties agreed to retain the title “National ICZM Frameworks” as it is more generic and therefore

makes the scope of its applicability to other sectors flexible. The more specific the terminology is, the more it limits the level of actions. Framework as used here could refer to the legal policies, institutional policies, financial and strategy implementation.

57. Tanzania queried the use of “Each” arguing that it should be “The Contracting Parties. *Each Contracting Party shall establish and promote a national and, where appropriate, sub-national ICZM frameworks, to guide the implementation of [the Protocol]/ICZM, in particular.* The Secretariat explained that drafting was usually in the singular. The text was retained as is.
58. In the first negotiations meeting, Mauritius had suggested that the term regional is deleted from Paragraph four. “The Contracting Parties shall as soon as possible upon entry into force of this Protocol, establish ~~regional~~ indicators to guide the countries on the elaboration of their national ICZM frameworks”. The deletion was agreed on.
59. In Paragraph 4 Madagascar suggested the replacement of “to guide the countries on the elaboration of their national ICZM Frameworks” with “to monitor the implementation”. The agreed text for paragraph 4 now reads as “**The Contracting Parties shall as soon as possible upon entry into force of this Protocol, establish indicators to monitor the implementation of their national ICZM frameworks**”.
60. In Paragraph 4, the delegates requested the Secretariat to generate indicators to monitor the implementation of national ICZM frameworks and to consider placing the indicators in an annex
61. The text for article 8 was agreed on.

j. Article 9 [Various ICZM Instruments]

62. In the first negotiations meeting, the title for article nine was not agreed on and the Secretariat requested to define the term instrument. The term was defined by Dr. Akunga on behalf of the Secretariat and the term was deemed acceptable.
63. Madagascar suggested the title “tools for implementing ICZM” stating that it seemed more appropriate given the sequencing of articles 8 and 9. That is, article 9 implies tools for implementing the ICZM frameworks referred to in article 8. Kenya agreed with Madagascar stating that what was listed were actually examples of tools – regulatory tools (Strategic Environmental Assessments, Environmental Impact Assessments, Coastal Set Back Lines); Land use planning tools (zonal and spatial planning, coastal set back lines); Economic tools for implementing the ICZM frameworks (Ecosystem valuation, environmental auditing). Both terms “tools” and “instruments” were deemed acceptable and the Contracting Parties agreed to change the title of article 9 to “**Tools/Instruments for Implementation of ICZM**”.
64. The Contracting Parties went through the list of instruments/tools to determine their suitability. Comoros thought the terms Monitoring and Evaluation in the French Context was repetitive. The Parties deemed “Monitoring and Evaluation” a cross cutting issue in all activities and therefore not an ICZM tool, and it was deleted. Comoros suggested “Natural Capital” in place of “Ecosystem valuation” and this was not concluded.

65. France noted that the listing of examples of tools/instruments was too detailed and would make the protocol too bulky and suggested the removal of the entire article or at least the retaining of just the opening statement without the examples “Each Contracting Party shall adopt legal, institutional, administrative and planning instruments to implement the Protocol and the related National ICZM Framework, taking into account the principles set out under Article 7”. Mauritius agreed with France on retaining just the opening statement, and in fact moving it to Article 7 thus deleting article 9 altogether.
66. Madagascar noted that it would be important not to develop a protocol that was ambiguous and that Article 9 was a critical part of the Protocol as these were the tools/instruments that would guide Countries in the implementation of the Protocol. Madagascar suggested that the examples be moved to the annex. France, Mauritius, Kenya and South Africa were in agreement over the moving of the examples to the Annex. France further stated that the listing in the annex should use the key categories/groupings as suggested earlier by Kenya (regulatory tools, land use planning tools etc.) rather than having a detailed list of examples.
67. Mozambique, Somali, Tanzania, Seychelles argued that it was important to retain the examples of tools/instruments within the Protocol rather than in the Annexes stating that the policy makers in their countries would prefer having specific examples of instruments in the protocol and they would give greater weight to what was included in the Protocol over what was in an annex.
68. The Secretariat noted that annexes are part and parcel of the protocol and from a legal perspective, the process of amending an annex is simpler than that of amending a Protocol, the latter would require a meeting of Plenipotentiaries (with a whole new process of ratification) while the former would need just a regular meeting of the Conference of Parties. The Secretariat added that the LBSA Protocol has a number of annexes to which all the Contracting Parties agreed to and the ICZM Protocol should be no different.
69. Based on that explanation, the Parties all agreed to have the full list of examples moved to an annex that would be referenced in Article 9.
70. The opening statement of Article 9 was altered to reflect this as follows: Each Contracting Party shall adopt such [*legal, institutional, administrative and planning instruments*] as contained/provided for in Annexto implement ICZM. There was no agreement on “legal, institutional, administrative and planning instruments” and it was bracketed for further negotiation.
71. The text for article 9 was not agreed on.

k. Article 10 Coastal setback line[s]

72. South Africa noted that Coastal Setback Lines was identified as a tool/instrument for ICZM implementation in Article 9 and queried the necessity of having a full article on Coastal Set Back lines. The Secretariat explained that at the time of drafting of the Protocol, ICZM experts had advised that Coastal Set Back Lines were a critical issue in Integrated Coastal

Management and it would be remiss not to include it in an elaborate form in an ICZM Protocol. The article was retained.

73. Madagascar proposed the addition of the words “in accordance with national laws and regulations” to paragraph 1 which now reads “**Each Contracting Party shall establish in accordance with national laws and regulations, [a] coastal setback line [or lines], where developments and other human activities are regulated.**”. The addition was accepted.
74. The text was not agreed upon

l. Article 11 (Economic and Financial Instruments)

75. Madagascar suggested replacing the statement “The Contracting Parties shall take appropriate measures” with “The Contracting Parties shall whenever appropriate take measures to put in place.....” in paragraph 1. This was agreed on.
76. France suggested the merging of points 1 and 3 and this was supported by Kenya. The newly merged paragraph 1 now reads as follows “**The Contracting Parties shall whenever appropriate take measures to put in place market-based policy instruments such as taxes, subsidies, and tradable permits, deposit refund systems to support local, national and regional efforts for sustainable coastal management**”.
77. The first negotiation meeting had suggested the removal of paragraph 2 “*The Contracting Parties shall eliminate, phase out or review economic and financial incentives such as taxes and subsidies that are harmful to sustainable coastal development*” as it was more or less the same as paragraph 1. The Parties agreed to retain Paragraph 2 following the merge between paragraphs 1 and 3.
78. Article 11 was agreed on.

m. Article 12 Information, participation and access to justice

79. Seychelles proposed the addition of sharing to the title which now reads as “information sharing, participation and access to justice”. This was agreed on.
80. Madagascar proposed the text “within the framework of national legislation” as an addition to point (a). The new text reads as follows “enhance, facilitate and promote, within the framework of national legislation, public access to relevant information concerning ICZM in the Region”. This was accepted.
81. Mauritius suggested the addition of the text “as appropriate” to paragraph c. “provide access to judicial and administrative proceedings, **as appropriate**, including redress and remedy, for members of the public who are aggrieved by failure to allow them access to information or participate in the processes provided for under paragraphs (a) and (b) above. The text was accepted.
82. Tanzania had proposed the addition of a text to Article 12 in the first negotiation meeting. The purpose of the introduced text was to enhance the idea of information sharing. The proposed text was added as point (d) “[participate in the sharing of information experiences, lessons learnt and best practices for the successful implementation of this protocol]. The text

was accepted with a few modification as follows: “contribute to the sharing of information, experiences, lessons learnt and best practices for the successful implementation of this Protocol”

83. Somalia suggested the merging of points (a) and (d) but the Parties decided to retain (d) as proposed above.

84. The text for Article 12 was agreed on.

n. Article 13 Awareness, education, and capacity building

85. Comoros noted that informal education training Programmes (civic education programs) were not captured in Article 13. Paragraph 1 was modified to cater for this by adding “all levels of society”. It now reads “Each Contracting Party shall develop and implement ICZM awareness, education and training programmes at all levels of society”.

86. Point 2 was modified - “in” was replaced with “on integrated coastal zone management”; and “.....coastal zones with a view of ensuring their sustainable development” was deleted, because sustainable development is already implied in integrated coastal zone management. The text for paragraph 2 reads as follows “The Contracting Parties shall organise directly, multilaterally or with the assistance of the Organisation, educational programmes, training and public education on integrated coastal zone management”.

87. The text for paragraph 3 remained contentious with Madagascar and Kenya not agreeing on the use of the terms ‘National’, ‘Central’ and ‘Local’ levels each arguing that these meant different things to different countries of the region. **“Each Contracting Party shall ensure that capacity for implementing ICZM is built at the national, [central] and local levels both at institutional and individual levels.”** Alternate text was proposed by the Secretariat as follows “Each Contracting Party shall build institutional and public capacity for implementing ICZM at national and local levels [all appropriate levels].” This will be discussed at the next meeting.

88. Mauritius noted that in the document, integrated coastal zone management was used interchangeably with integrated management of coastal zones and that there was need for consistency. This will be revisited once the article on definitions is finalized.

o. Article 14 Monitoring and Reporting

89. Tanzania proposed the addition of Evaluation to the title because monitoring and evaluation go hand in hand. France noted that reporting is already captured in a regular monitoring system and is therefore redundant. The proposed title of Article 14 is “Monitoring and [Evaluation]. The text Evaluation was not agreed on and was bracketed for discussion at the next meeting.

90. Madagascar proposed the addition of ‘and where appropriate’ to sub-article 1, in addition to accepting Tanzania’s proposal to add the text “strengthen” from the last negotiation meeting. Both propositions were accepted. The words “various aspects” were replaced with “provisions” and the text for sub article 1 now reads “Each Contracting Party shall establish

and where appropriate strengthen or provide for a system of regular monitoring, evaluation, inspection, control and surveillance by its competent national authorities to assess compliance with and enforcement of the provisions of this Protocol”.

91. At the last negotiation meeting, Seychelles had proposed the replacement of sub-article 2 “Each Contracting Party shall ensure continuous assessment of the state of the coastal zone and production of regular state of the coast reports” with the following text “Each Contracting Party shall establish a mechanism to ensure continuous assessment and management of data on the state of the coastal zone with provision for reporting.” Kenya supported the addition noting that in the Kenyan experience, their national state of the coast report gave them good baselines for the development of the Kenyan ICZM Action Plan. France stated that adding this statement put unnecessary pressure on the Parties to produce too many reports. The parties agreed to delete the reference to the State of the Coast Report in this article since it was already part of the Nairobi Convention which requires that states produce state of the coast reports. Sub-article 2 was deleted.
92. The text for article 14 was not agreed on.

p. Article 15 Conservation and Rehabilitation of Coastal Ecosystems, Biodiversity and Landscapes

93. Kenya noted that Coastal ecosystems encapsulate biodiversity and landscapes. These were deleted from the title.
94. France proposed the addition of text to sub-article 1 to reference fossil and mineral resources. France will provide the alternative text to be considered at the next meeting.
95. In the 1st negotiation meeting, Tanzania had proposed the maintenance of projects and programs in paragraph 1. Madagascar proposed that strategies and plans are added to the text. Seychelles noted that planning is already implied in programs and wanted the text to remain as proposed by Tanzania. However Comoros argued that the plans referred to here are action plans, operational plans. The parties agreed to include all the terms. Sub article 1 of Article 15 now reads “Each Contracting Party shall ensure that the conservation and sustainable use of biodiversity is integrated into ICZM policies, strategies, plans, and programmes”.
96. France, Comoros and Madagascar, stated that “prioritizing” had a different implication in French where one thing is prioritised over another- in this case asking for rehabilitation to be prioritised over what? The parties agreed that priority was being given to the rehabilitation of degraded ecosystems over all other ecosystems. In addition, ‘prioritise” was replaced by “give priority to”. The text now reads as follows “Each Contracting Party shall give priority to restoration or rehabilitation, in so far as practicable, of degraded coastal ecosystems”.
97. Kenya had proposed the addition of text to sub-article 5 in the last negotiation meeting. The Parties agreed to change the entire sub-article 5 to read as follows “The Contracting Parties shall [may] take into consideration the economic value of ecological services, cost of biodiversity loss and ecosystems degradation prior to undertaking management or

development activities on the coastal zone”. The “shall” or “may” will be determined at the next meeting.

98. The text for article 15 was not agreed on.

q. Article 16" Climate Change and Variability in the Coastal Zone

99. “Sea surface temperature” was added to the text in part (a) which now reads “take into account all climate change-induced risks that the coastal zone faces, such as increase in sea surface temperature, sea level rise, increase in frequency or intensity of extreme weather events, ocean acidification, and their related consequences on ecosystems and coastal populations”.

100. “With each other” was added to the text in part (c) which now reads “cooperate with each other to ensure that where there are transboundary dimensions of climate change and variability, collective regional interventions are made”.

101. Sub article 4 had a number of changes proposed to it. These included: (a) the addition of “all” in the statement; (b) Tanzania proposed the addition of “are implemented” but this was bracketed for further discussion. (c) Comoros questioned the use of the term “sustainable” in regard to public **decisions and measures related to climate change adaptability and variability being sustainable**. Comoros was asked to provide alternative text for this part and the text as it stands currently reads “Each Contracting Party shall ensure that all public decisions and measures related to adaptation to climate change and variability [are implemented] contribute to sustainable coastal management, and should not increase, directly or indirectly, the pressures on the coastal and marine environment, its resources and services.

102. Sub article 5 had editing changes made to it. It now reads “Each Contracting Party shall also ensure that financial instruments and resources related to adaptation to climate change and variability synergize with the implementation of ICZM at national and regional levels.”

103. Sub article 6 had changes made to it. “and collaborate directly with each other” and “sub-regional” were added . “The Contracting Parties may cooperate and collaborate directly with each other, or through the Organization and relevant international, regional and sub-regional organizations, to develop and implement climate change adaptation and mitigation measures.

104. In general, some of the provisions of Article 16 were not agreed on and will be negotiated further at the next meeting.

r. Article 17 Disaster Risk Management

105. In the first meeting, France had been requested to provide alternative text for article 17 and the text in the article was to be elaborated to capture the objective of the article. France noted that after consultation with experts their proposal was to remove Article 17 altogether and move some of the elements to other articles related to the subject such as Article 16 dealing with Climate Change and Article 19 on Cooperation (countries collaborating to

manage natural disasters). Further, some of the extreme natural phenomena such as tsunamis and cyclones occur in or originate from the sea and should not be included in an ICZM Protocol but rather were an issue for the entire Nairobi Convention. France also suggested that sub-article 2 is moved to article 19 on cooperation/collaboration.

106. The Small Islands Developing States (Comoros, Mauritius, Madagascar and Seychelles) and coastal states (Somali) however maintained that disaster risk management is a very important aspect for their countries and people who live along the coast are greatly impacted by extreme natural phenomena. Further their governments have invested heavily in early warning systems as part of disaster risk management. They maintained that article 17 should be retained in the protocol.
107. The Secretariat noted that the experts had recommended that 3 key pillars of ICZM are included in the protocol: disaster risk management, climate change vulnerability and bio diversity and ecosystems. Further, while tsunamis and cyclones do not originate from the beach there are certain management measures that can be provided for in a Coastal Zone Management protocol. France respected the views of the other Contracting Parties but maintained their earlier stance. The entire article was bracketed to allow for consultations and further negotiation.
108. The text for sub-article 1 was left as follows “ The Contracting Parties shall, at regional and national levels, coordinate and collaborate, where appropriate, through the development of ~~the Organization~~ in coastal disaster risk management procedures and mechanisms ~~for providing, inter alia, risk management measures~~ for extreme natural phenomena. , ~~such as tsunamis, volcanic eruptions, cyclones and floods.~~” This will be revisited at the next meeting.
109. The text for article 17 was not agreed on.

s. Article 18 Research and Innovation

110. Madagascar noted that marine science research was founded under the umbrella of UNCLOS and since the Nairobi Convention falls under the Regional Seas Program of UNEP which is anchored in the Law of the Sea, Article 18 should be anchored on the UNCLOS Research Framework. The Contracting Parties determined that the meeting should not lose sight of the fact that the ICZM Protocol is being negotiated under the Nairobi Convention which has a provision for scientific and technical research and innovation (Article 15) therefore there was no need to reference UNCLOS which is already included in the preamble. If special mention is made of UNCLOS here, then all other protocols relevant to ICZM would have to be referenced in the Protocol- CBD, Tokyo Protocol, Sendai Framework etc.).
111. Mauritius had proposed replacing “may” with “shall” in the 1st paragraph and South Africa proposed the addition of “within available resources”. The delegates retained the original “may”, agreed to “within available resources” and replaced “with the cooperation of” with “through”. Thus the new paragraph reads “The Contracting Parties may, within available resources, directly or through competent regional and international organizations...”

112. The delegates merged elements of the original points (a), (b) and (e) into a new point (a) as follows: (a) promote co-operation among all relevant institutions including research institutions on scientific information, technological innovation and exchange of data relating to ICZM.
113. The original point (c), (now point (b)), was retained with a few modifications – Tanzania proposed the addition of “strengthen” stating that in certain countries the networks already exist. The proposal was accepted. “(b) establish or strengthen regional networks of research centres and institutes dealing with ICZM”.
114. The original point (d), (now point (c)) was retained with modifications. “Technological innovation” was deleted as it is already included in point (a). Point (c) now reads promote exchange of best practices, indigenous and local knowledge on ICZM.
115. With the above modifications, the text of Article 18 was agreed to.

t. Article 19 Bilateral and Multilateral Cooperation

116. The delegates deleted sub articles 2-6 of article 19, incorporating some of the points in sub-article 1 as shown below.
1. The Contracting Parties may cooperate bilaterally or multilaterally, to implement, where necessary, their National ICZM Frameworks in:
 - a) joint management of shared ecosystems and transboundary ICZM programmes and projects
 - b) scientific and technical assistance and exchange of information to promote compliance and enforcement
 - c) [management] [monitoring] of resources and ecosystems [beyond national jurisdiction/that might affect the coastal zone]
117. However, not all of the clauses were agreed on and were bracketed as shown above. These will be renegotiated at the next meeting.

VII Summary and Closing of the Meeting

118. The rapporteur of the meeting gave a summary of the 2-day negotiation meeting noting that delegates had reached agreement on most of the articles subject to final editorials by the Secretariat. However, some of the provisions on which there was no agreement were bracketed and delegated to contact groups to work on inter-sessionally.

Status of the Negotiation of Articles:

119. The following draft articles were agreed on: Article 4, Article 5, Article 7, Article 8, Article 11, Article 12 and Article 18.
120. The Preamble, Article 1, Article 2, Article 3, Article 6, Article, Article 9, Article 10, Article 13, Article 14, Article 15, Article 16, Article 17, Article 18 and Article 19 had

outstanding issues and were held over for the next negotiation meeting to be discussed with Articles 20-27 that were not dealt with at the 2nd negotiation meeting.

Annexes

121. The meeting identified the need for some annexes to help provide details contemplated in the articles, or to de-congest some of the articles as currently drafted. It was noted that while annexes are part and parcel of the Protocol, the benefit of having them include: having more concise protocol articles, and the relative ease or flexibility of amending annexes as opposed to articles once the protocol is adopted. In particular the following articles may require annexes:

- i. Article 8, paragraph 4: Establishment of indicators to monitor implementation of national ICZM frameworks. To consider placing the indicators in an annex.
- ii. Article 9: Use of “Instruments” or “Tools”. Need to substantially reduce the details in the article or perhaps place the details in Annex. It was agreed to place the list of instruments in an annex.

Next Steps/Way Forward

122. The Secretariat will undertake editorial work on the draft ICZM Protocol to generate a Second Negotiated Draft ICZM Protocol which will be translated and transmitted to the Contracting Parties ahead of the next negotiation meeting.

123. The Secretariat to prepare draft(s) of annex(es) and report(s) as directed, and report on this at the next negotiation meeting+

124. There will be another negotiation meeting that will address all outstanding issues, with sufficient time given to any article that may not have been discussed

Closing of the meeting

The Second Negotiation Meeting of the draft ICZM Protocol to the Nairobi Convention ended at 18h30 on 22 March 2016 and was officially closed by the Minister of Environment, Sustainable Development, Disaster and Beach Management of the Republic of Mauritius who noted that he was happy with the tangible progress made in the draft protocol and that there was need for urgency to conclude the process, ratify the protocol so that the focus could turn to its implementation and results.

ANNEX I

**LIST OF PARTICIPANTS, 2ND NEGOTIATION MEETING OF DRAFT ICZM PROTOCOL
21-22 MARCH 2016, HENNESSY PARK HOTEL, EBÈNE, MAURITIUS**

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ANNEX II AGENDA

UNITED
NATIONS

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UNEP/DEPI/EAF/NEG ICZM/2016/2a



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The Second Negotiations Meeting on the Integrated Coastal Zone Management (ICZM) Protocol of the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean

Ebene, Mauritius, 21-22 March, 2016.

Provisional Agenda

1. Opening Addresses
 - a) Nairobi Convention Secretariat
 - b) Representative of the Indian Ocean Commission
 - c) Representative of the European Union - Mauritius
 - d) United Nations Resident Representative – Mauritius
 - e) Chair of Bureau - Government of Seychelles
 - f) Representative of the Government of Mauritius
2. Organizational matters:
 - a. Election of officers;
 - b. Adoption of the agenda;
 - c. Organization of work.
3. Draft Guidelines for Drafters and Negotiators; and Negotiation Skills
4. Overview of the Text of the 1st Negotiated Draft of the ICZM Protocol
5. Negotiations on articles of the 1st Negotiated text of the ICZM Protocol
6. Closure of the Meeting.