

CONCEPT NOTE

Amendment of the Nairobi Convention Protocol concerning protected areas and wild fauna and flora in the Eastern African region

INTRODUCTION

The Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean Region (as amended 2010), together with its Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region and the Protocol concerning Co-operation in combating Marine Pollution in Cases of Emergency (Emergency Protocol) in the Eastern African Region were enacted in Nairobi on 21 June 1985. In 2010 a Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean (LBSA Protocol) was adopted alongside the Amended Nairobi Convention. These instruments collectively constitute the regional legal framework for the protection and conservation of the marine and coastal environment of the Western Indian Ocean (WIO) region. Moreover, the Contracting Parties have since negotiated a Protocol on Integrated Coastal Zone Management in the Western Indian Ocean (ICZM Protocol), which is awaiting adoption by a Conference of Plenipotentiaries.

The 1985 Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region (the **Protocol**) obliges the Contracting parties to take all appropriate measures to maintain essential ecological processes and life support systems, to preserve genetic diversity, and to ensure the sustainable utilisation of harvestable natural resources under their jurisdiction. In particular, the Protocol seeks to protect and preserve rare and fragile ecosystems as well as rare, depleted, threatened or endangered species of wild fauna and flora and their habitats in the Eastern Africa region. The Protocol entered into force on 30 May 1996. The need to amend the Protocol has been stated by the Contracting Parties to the Nairobi Convention on several of the Conference of Parties (COP) to the Convention. These include COP3 (Maputo, 2001), COP4 (Antananarivo, 2004), COP7 (Maputo, 2007), COP8 (Mahe, 2015), COP9 (Mombasa, 2018) and COP10 (Mombasa, 2021). Post 2020 Global Biodiversity Framework adds more impetus to the amendment of the Protocol.

The programme on capacity building related to Multilateral Environmental Agreements (MEAs) in the African, Caribbean and Pacific (ACP) countries (ACP MEAs 3 Programme) results from a partnership between the European Commission (EC), the Secretariat of the African, Caribbean and Pacific Group of States (ACP Secretariat), the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO). The aim of the programme is to empower key stakeholders to address environmental challenges and to reap the benefits of improved environmental management at the national and regional level. In the context of the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (WIO) region, Phase III of the ACP MEAs Programme aims at better management of



coasts and oceans, enhancing ocean governance and supporting effective implementation of the Convention.

The ACP MEAs Programme is supporting a review of the Protocol Concerning Protected Areas and Wild Fauna and Flora of the Eastern African Region in response to the intensification of pressures resulting from both anthropogenic and natural factors in the WIO region. A review of the Protocol is needed to incorporate recent and ongoing global commitments and processes on biodiversity including adoption of an ecosystem-based approach (EBA) to the management of the coastal and marine environment.

MARINE BIODIVERSITY OF THE WESTERN INDIAN OCEAN

The Global Biodiversity Framework under discussion observes that biodiversity is fundamental to human well-being and a healthy planet. It underpins virtually every part of our lives; we depend on it for food, medicine, energy, clean air and water, security from natural disasters as well as recreation and cultural inspiration, among others. More than half of the global gross domestic product (GDP) relies on biodiversity and healthy ecosystems. The Global Assessment Report on Biodiversity and Ecosystem Services issued by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) in 2019,¹ fifth edition of the *Global Biodiversity Outlook*, and many other scientific documents provide ample evidence that, despite ongoing efforts, biodiversity is deteriorating worldwide at rates unprecedented in human history. An average of around 25 per cent of species in assessed animal and plant groups are threatened, suggesting that around 1 million species already face extinction, many within decades, unless action is taken to reduce the intensity of drivers of biodiversity loss. Without such action, there will be further acceleration in the global rate of species extinction, which is already at least tens to hundreds of times higher than it has averaged over the past 10 million years.¹

The Western Indian Ocean (WIO) is renowned for the richness of its marine biodiversity, especially that associated with the region's widespread coral reef systems. The mangroves, seagrasses, rocky and sandy shorelines with associated dune systems and coastal forests, and the deep-sea features such as seamounts, ridges and abyssal plains also contribute substantially to the biodiversity of the region. The innumerable islets and atolls scattered across the WIO also support extraordinary biodiversity, including vast numbers of often rare, endemic and endangered marine species. The unique biodiversity plays an essential role in water quality regulation, coastal protection, carbon fixation and storage, and increased resilience from climate change as well as providing feeding, breeding or nursery grounds of species of commercial interest for fisheries and endangered or threatened species.

The rich marine biodiversity supports burgeoning coastal populations both directly, through the provision of a variety of marine resources and vital ecosystem services such as coastal protection, and indirectly, through the opportunities it provides for economic growth through sectors such as fisheries, tourism, infrastructure development and others. The combined population for the WIO region is 244

¹ IPBES (2019): *Global Assessment Report on Biodiversity and Ecosystem Services*. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn. 1,148 pages. <https://doi.org/10.5281/zenodo.3831673>.



million, and the ten countries in the region are Contracting Parties to the Nairobi Convention for the protection, management and development of the coastal and marine environment of the WIO region.

The economic value of the WIO ecosystems goods and services is estimated at over USD 20 billion Gross Marine Product per annum and a total asset base of over USD 333.8 billion. With over 30 percent of the WIO population (about 60 million people) living within 100km of the coastline, the coastal and marine ecosystems provide essential sources of livelihoods and income to coastal communities and significantly contribute to national economies. However, the WIO is threatened by ecosystem degradation from rapid urbanization, increased population growth, coastal development, land reclamation and conversion. Impacts of climate change and variability have led to coral bleaching, sea-level rise, flooding and other effects. In response to the emerging natural and anthropogenic challenges, Contracting Parties to the Nairobi Convention are adopting an integrated approach in the management of ocean resources to maintain a balance between conservation and development. The approach aligns with the 2030 Global Agenda for Sustainable Development with Sustainable Development Goal (SDG) 14 focusing on the need to mobilize global effort to conserve and sustainably use the oceans, seas and marine resources for sustainable development.

WHY THE AMENDMENT

There are advantages in a regional approach to addressing some environmental issues such as marine biodiversity. Such regional arrangements facilitate policies and rules appropriate to the needs of the Western Indian Ocean. Secondly, political consensus may be obtainable at a regional level which could sometimes be a challenge at global level, and thirdly, cooperation in enforcement, monitoring and information exchange may be easier to arrange. In relation to national approaches, a regional approach is beneficial as it creates standards to which national frameworks can aspire or adapt. A regional protocol also recognizes the interconnectedness of ecosystems and processes.

The Protocol Concerning Protected Areas and Wild Fauna and Flora of the Eastern African Region as adopted in 1985 “*provided for the protection and rational development of the living resources of the region, which are a natural heritage with important economic and social values and potential, through the preservation of habitats, the protection of species, and the careful planning and management of human activities that affect them.*” The Protocol recognises the “*danger from increasing human activities*” and stresses the importance of protecting and improving the state of the wild fauna and flora and natural habitats of the WIO region “*among other means by the establishment of specially protected areas in the marine and coastal environment.*” However, the Protocol fails to elaborate in detail on the dangers and threats to marine and coastal areas and biological diversity in the region, and the interconnectedness of the habitats, ecosystems and species. The Protocol also fails to acknowledge existing international and regional legal and policy instruments, some of which were developed after the protocol was adopted. The three planetary crises of pollution and waste, climate change and biodiversity loss have further compounded the integrity of coastal and marine resources across the WIO region.



The amendment of the Protocol and its annexes is therefore being developed pursuant to pertinent decisions of the Conferences of Parties to the Nairobi Convention that have recommended that this Protocol be reviewed and amended to strengthen its legal framework for an effective regime for biodiversity conservation, and management of marine and coastal ecosystems across sectors and national boundaries.

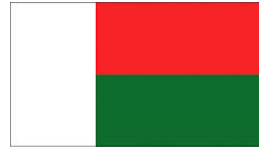
The amendments also aim to provide a stronger framework for addressing current and emerging threats to the coastal and marine biodiversity from threats such as anthropogenic pressures (growing intensity of human settlements and unsustainable socioeconomic activities, coastal development, habitat degradation), natural disasters and climate change. The review of the Protocol and its annexes shall be informed by science, taking into account the latest scientific information available in the region such as from the Marine Protected Areas Outlook, Critical Habitats Outlook, and the Sharks and Rays Review Report. The amendment must also take cognizance of the post 2020 global biodiversity framework discussions and anticipated targets. The amendments require involvement of relevant stakeholders.

In preparation for negotiations of the Protocol, the Nairobi Convention developed a report highlighting justification for review and amendment of the Protocol in 2021 and shared for further technical review by the Focal Points to the Nairobi Convention in February 2022. The report took note of new and emerging environmental issues as well as ongoing global and regional discussions that should be considered in the review of the Protocol. The report elaborated on the justification for amending the Protocol including the why and the how of amending specific articles.

The justification was cognizant of emerging reports on the state of critical habitats, species, and ecosystems of the Western Indian Ocean, and recent global instruments including CITES, CBD, CMS and ongoing discussions on protected areas, wild fauna and wild flora, Sustainable Development Goals, Aichi Biodiversity Targets, CBD post 2020 Global Biodiversity Framework, the Paris Agreement, African Union Agenda 2063, and on negotiations for biodiversity conservation in areas beyond national jurisdiction. Potential areas for review and proposed amendments were made directly on the 1985 Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region. The proposed amendments to the Protocol and its annexes are being presented for the first negotiation by the Ad hoc Legal and Technical Working Group as nominated by the Contracting Parties.

NEGOTIATION SKILLS

Experience and knowledge in negotiation skills are a prerequisite for effective participation at negotiations for amending the Protocol. For a sustained impact, capacity building is an important trigger for developing and increasing negotiation skills and technical knowhow that is needed for amending the Protocol and for fostering national, regional and global objectives on marine biodiversity. In addition to building national and regional negotiating skills, effective negotiations require relevant available information prior to meetings on issues of the Protocol. Negotiators require up to date information on the state of marine biodiversity to respond effectively in the negotiations. A short training on negotiation skills and etiquette will be offered at the first negotiations meeting. Technical documents have been shared at this [link](#).

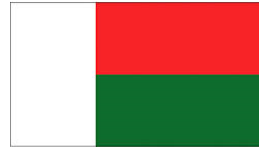


It will be important to reflect further on some key questions related to Protocol at the national level. What are the conservation gains since the Protocol was enacted in 1985 and what contemporary processes are in place to guide future conservation policy and actions at national and regional level? What has been the progress to (i) reduce loss of critical habitats, (ii) to increasing protected area coverage and their representation for ecological connectivity. (iii) What efforts have been made to minimize threats to ecosystems, ensure genetic diversity, and maximise conservation and socioeconomic outcomes. What is the national biodiversity status of Marine Protected Areas in supporting conservation strategies that promote persistence of species population, offshore habitats such as seamounts, Key Biodiversity Areas (KBAs), and Important Bird Areas? What percentage of larval fish dispersal corridors and spawning sites of transient reef fish species are protected by each Contracting Party? What is the status of locally managed marine areas that support successful socioeconomic outcomes and sustainable fisheries? What is the extent and status of the marine ecosystems including fisheries in the areas beyond the national jurisdiction (ABNJ)? What is the significance of the ABNJ on the governance of the marine and coastal resources of a given Contracting Party?

Other areas of consideration prior to the negotiations would include a look at pressures and drivers prevalent in the Western Indian Ocean. For example, what are the impacts of climate change, sea level rise, damming and water abstraction on the coastal and marine ecosystems and livelihood of coastal communities in the WIO? How is overharvesting of most of the coastal natural resources impacting on the critical coastal and marine ecosystems? How does the major shift of emphasis on the Blue Economy and infrastructure development projects by a number of Contracting Parties relate with the coastal and marine ecosystems and livelihoods?

Negotiators will be interested to identify key strategies that are in place for achieving national and regional biodiversity conservation and sustainable development. Also, it will be important to reflect on the roadmap for developing and achieving marine biodiversity targets and indicators, socioeconomic objectives and complementary policies for climate change adaptation and sustainable development goals. What national goals are aligned to the emerging marine biodiversity indicators and targets in post-2020 Global Biodiversity Framework, such as the WIO ecosystems indicator monitoring framework - to support mainstreaming of biodiversity conservation at national level?

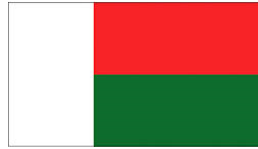
Some final thoughtful questions: Does amending the Protocol require a regional governance framework to integrate national initiatives, goals, and objectives into broader regional and global goals? Which transboundary conservation initiatives between countries are required to facilitating equitable protection efforts? What areas of cooperation within the WIO region are needed to ensure a better representation of biodiversity and ecosystem processes? Which quality and sustainable development targets are needed to better harmonise regional goals and national initiatives such as the blue economy and marine spatial planning? Which common indicators are needed for conservation, sustainable development, and climate change adaptation at national and regional level? What capacity needs and precautionary measures are needed for achieving biodiversity conservation and sustainable development in the region? What will be the reporting mechanisms by the Parties on progress in the implementation of the Protocol?



It is envisaged that the negotiations and resultant amendments will effectively lead in the conservation and sustainable utilisation of the region's coastal and marine resources, strengthen the resilience of ecosystems supporting a healthy and productive ocean, and halt biodiversity loss. It is planned that the texts for the amendment to the Protocol and its Annexes will be negotiated, and later presented for consideration and possible adoption at a Conference of Plenipotentiaries.

OBJECTIVES OF THE FIRST NEGOTIATIONS MEETING

- a. To introduce negotiations skills and etiquette for amending the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, including Strategic negotiations issues
- b. To justify the amendment of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
- c. To give technical observations, analysis and review of the draft Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region addressing coherence, redundancies, consistency, and ease of communication including identifying potential areas of technical solutions
- d. To successfully hold the First negotiation meeting of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region



PROVISIONAL PROGRAMME

The First Negotiation Meeting for amending of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region

Date: 15-18 November 2022
Antananarivo, Madagascar

1. Opening Addresses
 - a. Nairobi Convention Secretariat
 - b. Representative of the Government of Madagascar
 - c. Chair of Bureau - Government of Madagascar
2. Introductions
3. Organizational matters
 - a. Election of officers
 - b. Adoption of the agenda
 - c. Organization of work
4. Negotiation skills and etiquette
5. Overview of the justification for amending of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
6. Overview of proposed revision on articles of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
7. Introduction to the draft ICZM Protocol; setting dates for the Conference of Plenipotentiaries
8. Negotiations on articles of the proposed draft Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
9. Closure of the Meeting.

DELIVERABLES

1. Capacity building on negotiation skills
2. Consensus on the observations, analysis and review of the draft Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
3. Confirmed dates for adoption of the ICZM Protocol
4. First negotiated draft of the amended articles of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region

PROVISIONAL AGENDA

Day/Time	Session	Responsible
Day 1		
8:30-9:00	Registration	
9:00-9:30	SESSION I: Opening of the Meeting	NCS
	<ul style="list-style-type: none"> Welcoming remarks by NC Secretariat 	NCS
	<ul style="list-style-type: none"> Introductions by Country 	
	<ul style="list-style-type: none"> Welcome by the Government Madagascar 	Madagascar
	<ul style="list-style-type: none"> Opening statement by the Chair of the Bureau of the Nairobi Convention 	Madagascar
9:30-10:30	SESSION II: Organization of matters	Chair of Bureau
	<ul style="list-style-type: none"> Presentation of letters of accreditation 	
	<ul style="list-style-type: none"> Election of Officers 	
	<ul style="list-style-type: none"> Adoption of the Agenda 	
10:30	<i>Break and group photo</i>	
	SESSION III: Technical presentations	Chair of Bureau
11:00-11:20	<ul style="list-style-type: none"> Negotiation skills and etiquette 	NCS
11:20-11:40	<ul style="list-style-type: none"> Justification for amending Protocol 	NCS
11:40-12:30	<ul style="list-style-type: none"> Overview of proposed articles for revision 	NCS
12:30-13:00	<ul style="list-style-type: none"> Discussions 	
13:00-14:00	<i>Lunch break</i>	
	SESSION IV: Draft ICZM Protocol	NCS
14:00-14:30	<ul style="list-style-type: none"> Overview of finalised text 	NCS
14:30-14:45	<ul style="list-style-type: none"> Date for adoption of ICZM Protocol 	
	SESSION V: Negotiations - Part I	Elected Chair
14:45-15:15	<ul style="list-style-type: none"> The Preamble 	
15:15-15:45	<ul style="list-style-type: none"> Article 1 	
15:45-16:15	<ul style="list-style-type: none"> Article 2 	
16:15-4:30	<i>Health break</i>	
16:30-17:00	<ul style="list-style-type: none"> Article 2A 	
	End of Day 1	
Day 2		
9:00-9:05	Recap of Day 1	Elected Chair
	SESSION VI: Negotiations - Part II & III	
9:05-9:35	<ul style="list-style-type: none"> Article 3 	
9:35-10:05	<ul style="list-style-type: none"> Article 3B 	
10:05-10:30	<ul style="list-style-type: none"> Article 5 	
10:30-11:00	<i>Health Break</i>	
11:00-11:30	<ul style="list-style-type: none"> Article 6 	
11:30-12:00	<ul style="list-style-type: none"> Article 6A 	
12:00-12:30	<ul style="list-style-type: none"> Article 7 	
12:30-13:00	<ul style="list-style-type: none"> Article 8 	
13:00-14:00	<i>Lunch break</i>	
14:00-14:30	<ul style="list-style-type: none"> Article 10 	
14:30-15:00	<ul style="list-style-type: none"> Article 10A 	

Day/Time	Session	Responsible
15:00-15:30	• Article 10B	
15:30-16:00	• Article 10C	
16:00-16:30	• Article 10D	
16:30-16:45	<i>Health Break</i>	
16:45-17:15	• Article 11	
	End of Day 2	
Day 3		
9:00-9:05	Recap of Day 2	Elected Chair
	SESSION VI: Negotiations - Part IV	
9:05-9:35	• Article 9	
9:35-10:05	• Article 12	
10:05-10:30	• Article 14	
10:30-11:00	<i>Health Break</i>	
11:00-11:30	• Article 15	
11:30-12:00	• Article 16	
12:00-12:30	• Article 17	
12:30-13:00	• Article 18	
13:00-14:00	<i>Lunch Break</i>	
14:00-14:30	• Article 20	
14:30-15:00	SESSION VII: Negotiations - Part V	Elected Chair
15:00-15:30	• Article 21	
15:30-16:00	• Article 21A	
16:00-16:30	• Article 22	
16:30-16:45	<i>Health Break</i>	
16:45-17:15	• Article 22A	
17:15-17:45	• Article 22B	
	End of Day 3	
Day 4		
9:00-9:05	Recap of Day 3	
	SESSION VIII: Technical - ANNEXES	Elected Chair
9:05-9:35	• Annex I and discussions	
9:35-10:05	• Annex II and discussions	
10:05-10:30	• Annex III and discussions	
10:30-11:00	<i>Health Break</i>	
11:00-12:30	• Annex IV and discussions	
	Closing of the negotiation meeting	
12:30-12:40	Closing remarks by the Head of the Nairobi Convention secretariat	NCS
12:40-12:50	Closing remarks by Madagascar	Government of Madagascar
12:50-13:00	Closing remarks by the Chair of the Bureau	Madagascar
13:00-14:00	<i>Lunch break</i>	
14:00-16:00	Meeting of the focal points	NCS