

# **Regional Ocean Governance –the Road to a Regional Ocean Governance Strategy for the Western Indian Ocean**

*Paper prepared by the Nairobi Convention Secretariat, WIOMSA<sup>1</sup> and GIZ-WIOG<sup>2</sup>*

## **1. Background and rationale**

The Nairobi Convention has since 1985 provided the legal framework for regional cooperation and coordination among Western Indian Ocean countries to address common challenges such as marine pollution, oil spills and the conservation of marine biodiversity. Human economic activities on the ocean have however increased significantly over the years leading to a rapid decline of coastal and marine resources. These impacts have further been compounded by climate change and associated impacts such as ocean acidification and deoxygenation. Addressing these challenges, therefore, needs integrated approaches of governance that enable collective action and cooperation among all relevant sectors (e.g environment, fisheries, shipping, maritime security, trade) and the involvement of key stakeholders (e.g civil society, private sector). Hence, at the core of ocean governance in the WIO is the need to develop strategies that bring together different governance regimes and organisations operating at sub-regional, regional, continental and global governance levels in a coherent manner, and the involvement of a multiplicity of stakeholders.

The objective of this paper is to share information and context with key stakeholders on the process and discussions to date towards the development a regional ocean governance regime for the Western Indian Ocean (WIO). The paper highlights that WIO Ocean Governance is mainly rooted within the framework of the decisions of the Nairobi Convention Conference of Parties (COPs) and the African Ministerial Conference on the Environment (AMCEN), and is driven by the need to steer collective action for ocean sustainability among different sectors at global, regional and national levels and the inclusion of diverse stakeholders in decision-making. The paper also provides suggested guidance on the way forward in this process based on outputs and recommendations that have come from the various regional discussions so far.

### **Mandate to Develop Ocean Governance Strategy**

The mandate to develop an Ocean Governance Strategy for the WIO is embedded in the decisions of the Nairobi Convention Conference of Parties (COPs) and the African Ministerial Conference on the Environment (AMCEN).

In 2015, AMCEN's Cairo Declaration called for the development of an ocean governance strategy in accordance with the United Nations Convention on the Law of the Sea (UNCLOS), Regional Seas Conventions, the 2050 Africa Integrated Maritime Strategy (AIMS) and the African Union Agenda 2063.<sup>3</sup> AMCEN 2017 (Libreville) further requested UNEP and the secretariats of the Regional Seas Conventions to cooperate with the Regional Economic Communities (RECs) and other regional bodies to develop ecosystem-based approaches to ocean governance.

The Nairobi Convention Conference of Parties at the last two successive COPs (COP 8 and 9 held in 2015 and 2018 respectively) responded by reaffirming the call of AMCEN and instructing the Nairobi Convention Secretariat to take steps to develop a regional ocean governance strategy. Related to this, decision COP8/5 requested the Secretariat, in

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<sup>1</sup> Western Indian Ocean Marine Science Association

<sup>2</sup> WIOGI is the Western Indian Ocean Governance Initiative, a BMZ-funded project, implemented by GIZ

<sup>3</sup> “develop a governance strategy, in accordance with the United Nations Convention on the Law of the Sea and regional seas conventions” AMCEN Cairo Declaration 1.14 (March 2015).

collaboration with the Barcelona Convention, Abidjan Convention, Jeddah Convention, with the support of the United Nations Environment Programme, to contribute to the development of an African strategy on ocean governance in the context of the African Integrated Maritime Strategy 2050 and Agenda 2063.

Further, decision COP.9/6 urged Contracting Parties to work with regional economic communities, regional fisheries management organizations and other appropriate regional initiatives to implement the Cairo Declaration on Managing Africa's Natural Capital for Sustainable Development and Poverty Eradication, adopted by AMCEN in 2015, the 2050 Africa Integrated Maritime Strategy and the provisions of Agenda 2063 on ecosystem-based management approaches for marine resources in the exclusive economic zones and adjacent waters, and to report on progress to the Contracting Parties at their next meeting.

### **Progress made in Development of Ocean Governance Strategy**

The Nairobi Convention Secretariat in implementing decision COP 8/5 and COP 9/6 has advanced the process of regional ocean governance through three technical dialogues:

- (i) **RECs dialogue.** As a first step, in early 2019, the Nairobi Convention Secretariat organised a partnership meeting with the regional economic communities (RECs), the Indian Ocean Commission and other key partners, including stakeholders from ocean science and shipping to develop collaboration on ocean governance and the blue economy.<sup>4</sup>
- (ii) **Analytical dialogue.** A Special Session on Ocean Governance in the Western Indian Ocean Region was hosted by the Nairobi Convention and other partners in July 2019 at WIOMSA's 11<sup>th</sup> Scientific Symposium. Participants outlined several priorities, challenges, and recommendations for the development of a regional ocean governance strategy.
- (iii) **Broad-based stakeholder dialogue.** A workshop on Ocean Governance for the Western Indian Ocean (WIO) region was held in September 2019 in Seychelles which further advanced the discussions and in particular, identified possible next steps and options for further cooperation.

## **2. Linking the Ocean Governance Strategy to regional and global processes**

### ***International ocean governance framework***

**International law, policies and norms.** Ocean governance is framed by: (i) state's rights and obligations under international law, under regional agreements and national law; (ii) the related policies, plans and norms (e.g., Rio+20, AU policies); and (iii) international codes, guidelines and approaches (e.g., the Code of Conduct for Responsible Fisheries and various International Maritime Organisation guidelines).

- i. **Law of the Sea.** The United Nations Convention on the Law of the Sea (UNCLOS) is the cornerstone of ocean governance at national, regional and global levels and sets out the legal framework under which all activities in the ocean must be carried out. It anchors numerous other conventions on shipping, marine conservation, fisheries, maritime security, use of the seabed and the high seas and agreements on maritime boundaries. Under article 197 of UNCLOS, States are encouraged to cooperate "as appropriate, on a regional basis, directly or through competent international organisations for the

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<sup>4</sup> See: Report of the Partnership Meeting with Regional Economic Communities and Commissions in the Western Indian Ocean (WIO) Region 11 – 12 April 2019, Durban, South Africa.

protection and preservation of the marine environment, taking into account characteristic regional features". All AU countries are party to UNCLOS. The Nairobi Convention and other Regional Seas Conventions<sup>5</sup> are also anchored by UNCLOS.

- ii. **Maritime security.** A number of UN General Assembly and Security Council resolutions have enabled international efforts to address piracy and a range of international initiatives are addressing maritime trafficking in people, drugs and arms. These UN resolutions have underpinned international cooperation in the Horn of Africa and Gulf of Guinea.
- iii. **Climate change.** Physical changes to the oceans (sea-level rise, ocean warming, and ocean acidification and deoxygenation) are receiving attention and are being discussed within the United Nations Framework Convention on Climate Change (UNFCCC), but ocean-specific mitigation measures are not addressed in the Paris Agreement.<sup>6</sup>
- iv. **Marine pollution.** Marine pollution from shipping is the subject of globally agreed rules monitored through the International Maritime Organisation. These include conventions on hazardous waste, oil pollution, dumping at sea and certain toxic chemicals<sup>7</sup>. However, the more serious marine pollution from land-based sources is not subject to a global agreement and relies on soft law such as the Global Programme of Action for the Protection of the Marine Environment from Landbased Activities (GPA) and national actions and protocols developed by the Regional Seas Conventions. These protocols are generally weak and lack mechanisms to ensure compliance, even though there is a growing awareness of pollution from land based sources and activities.
- v. **Fisheries.** The United Nations Fish Stocks Agreement (UNFSA) encourages States to cooperate directly or through subregional or regional fisheries management organisations or arrangements (RFMO/As), taking into account the specific characteristics of the subregion or region within their respective jurisdictions. Further cooperation aspects of fisheries are highlighted in the FAO Code of Conduct for Responsible Fisheries.
- vi. **Living natural resources.** A wide range of conventions govern sustainable use and conservation of biodiversity, endangered and migratory species and endeavour to protect threatened habitats such as coral reefs, mangroves or coastal wetlands. These international agreements include the Convention on Biodiversity, Convention on Migratory Species, the Convention on International Trade of Endangered Species, and many others.
- vii. **Ocean science and knowledge.** A number of UN entities play an important role in collecting, analysing and disseminating ocean scientific knowledge and contribute to the UN 'regular process' on the oceans. African countries and organisations participate in these efforts to in varying degrees.

**In summary,** ocean governance covers a wide range of subjects and themes beyond those directly addressed by AMCEN, or the Nairobi Convention. However, effective ocean governance needs to take due account of the diverse stakeholders engaged in these different sectors and activities and their often competing aims and objectives.

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<sup>5</sup> Abidjan (West Africa), Barcelona (Mediterranean) and Jeddah (Red Sea) Conventions.

<sup>6</sup> Oceans are included in the Preamble

<sup>7</sup> These include: International Convention for the Prevention from Ships 1973 as modified by MARPO Protocol of 1997; Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972 (and the 1996 London Protocol)

### ***African ocean governance policy framework***

The African Union (AU) Agenda 2063 emphasises sustainable use of natural resources, development of offshore energy, ports and shipping and envisages a blue/ocean economy as a major contributor to continental growth and transformation. It calls for climate resilient coastal communities, eco-friendly tourism and industries, and conservation of coastal and marine areas. Agenda 2063 advocates regional cooperation and identifies the Regional Economic Communities (RECs) as the fulcrum for cooperation, policy coherence and strategic alignment among their members. Governance is guided by AU principles and a wide range of measures, including the African Peer Review Mechanism.

The aim of the 2050 Africa's Integrated Maritime Strategy (AIMS), adopted by the AU in 2014, is "to foster increased wealth creation from Africa's oceans and seas by developing a sustainable thriving blue economy in a secure and environmentally sustainable manner". Its primary focus is on shipping, ports, the related blue economy and maritime security. The AIMS is a wide-ranging strategy that also refers to development of regulatory regimes, sustainable use of natural resources and capacity building. The AIMS has underpinned important advances in maritime security and fisheries,<sup>8</sup> but its scope is essentially economic rather than social, environmental or the provision of an ocean governance platform.

African environmental policy is guided by AMCEN. The Cairo Declaration states that African States will develop an ocean governance strategy in accordance with UNCLOS, Regional Seas Conventions, the AIMS and Agenda 2063.<sup>9</sup>

Numerous other African instruments influence ocean governance including:<sup>10</sup> the Africa Mining Code which influences development of offshore hydrocarbons; declarations and initiatives on the blue economy; the Revised African Maritime Transport Charter (1994, revised 2012) and associate Plan of Action endorsed by an AU transport ministers in 2009; Abuja Declaration on sustainable fisheries (2005); African Continental Free Trade Area (AfCFTA) Agreement; African Convention on the Conservation of Nature and Natural Resources (1968); the Decade of African Seas and Oceans (2015-2025); and arrangements on maritime security, notably the Lomé Declaration and the Djibouti Code of Conduct. In addition, several other processes related to advancing Blue Economy ambitions, that are intrinsically linked to Ocean Governance frameworks have been ongoing. These are captured within the recent Africa Blue Economy Strategy launched by the AU in 2020.

### ***Western Indian Ocean regional ocean governance framework***

The mandate of the Nairobi Convention is to protect, manage and develop the marine and coastal environment of the WIO region and covers issues such as prevention and elimination of pollution, oil spills and the conservation of marine biodiversity in the Exclusive Economic Zones (EEZs) of member states. Contracting Parties. The Secretariat acts as a regional facilitator for the broader ocean governance dialogue among the ten (10) Contracting Parties. This engagement arises from the Convention's mandate as well as periodic decisions by the Conference of the Parties.

In addition to the Nairobi Convention, the regional ocean governance framework involves several groups of regional actors (i.e. in addition to national governments and their agencies

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<sup>8</sup> In particular the African Charter on Maritime Security, Safety and Development (Lomé Charter) on Maritime Security, Safety and Development and the Djibouti Code of Conduct, revised by the Jeddah Amendment (2017).

<sup>9</sup> The Cairo Declaration on Managing Africa's Natural Capital for Sustainable Development and Poverty Eradication (Cairo Declaration) (2015).

<sup>10</sup> Refer to the Background Document for more detail.

who have made progress to different extents within their national jurisdictions) that are of relevance in regional ocean governance, notably:

- (i) **RECs.** The four RECs (SADC, IGAD, EAC, COMESA) and the Indian Ocean Commission, all of which exercise an important coordinating role on oceans and have policies that influence national ocean governance and coordination between countries. These policies and related programmes may not always be aligned.
- (ii) **Maritime security.** The Contact Group on Piracy off the Coast of Somalia (CGPCS), established in 2009 has no formal membership or secretariat but engages with all WIO countries, the RECs, the IOC and the private (shipping) sector. CGPCS's success in combatting piracy and in the on-going enforcement activities have been largely underpinned by external support, notably from the EU.
- (iii) **Fisheries.** The regional fisheries organisations include non-AU countries fishing in the region (particularly for tuna) both on the high seas and through access agreements with AU member countries.
- (iv) **Private sector.** A number of regional organisations represent private sector shipping, port authorities, tourism, trade, fisheries, offshore hydrocarbons, telecommunications (undersea cables) and other sectors where international cooperation is of importance.
- (v) **NGOs.** The NGO community predominantly involves national, regional and international organisations dedicated to promoting environmental conservation, protection or sustainable use in relation to habitats (e.g., coral reefs), endangered species (e.g. turtles) or areas of high biodiversity (e.g., the Northern Mozambique Channel) They have an important role in supporting and executing projects, in capacity building and in raising political awareness and will. Other organisations represent women, fishers or groups locally active in coastal zone management.
- (vi) **Knowledge management.** The Western Indian Ocean Marine Science Association (WIOMSA) has a comprehensive suite of regional activities and networks on ocean literacy, knowledge exchange, targeted research, a science to policy interface and liaison with NGOs. The Nairobi Convention Clearinghouse Mechanism pools coastal and marine environment information held by numerous institutions in the region in support of policy and management decision-making. Knowledge management and associated capacity building relies heavily on external support.
- (vii) **External actors.** These include the international financial institutions, private and state investors, major donors and a wide range of cooperating institutions, including in the areas of port infrastructure, ocean science, environmental sustainability, maritime trade facilitation, capacity building and many other areas.

### 3. Current situation

Before considering the options for enhanced regional cooperation on ocean governance it is of value to briefly outline some of the challenges facing the region. These include: diversity of membership of regional organisations; diversity of sectors, issues and capabilities; capacity and resources deficit; poor enforcement and compliance; the rapid rate of change in the ocean and coastal environment, economy and dependent populations; maritime security, maritime boundary disputes<sup>11</sup>; rapid development of strategic corridors and maritime trade; activities in Areas (Biodiversity) Beyond National Jurisdiction; the poor state of natural resources; marine pollution; unequal distributional issues related to stresses on communities; and effective knowledge management.

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<sup>11</sup> There are eight maritime boundary disputes in the WIO as reported to the UN. In addition, a large number of maritime boundaries have not been agreed (i.e., but they are not currently subject to disputes).

In relation to governance, the lack of common principles, common criteria and common evidentiary standards for conservation measures between different sectoral organisations and processes hinders broader efforts for comprehensive management and sustainable use of the marine environment. In this regard, the three Nairobi Convention dialogues conducted to date revealed a broad stakeholder consensus in several areas, namely:

- (i) A shared long-term vision on the broad objectives of regional ocean governance
- (ii) The need for enhanced policy alignment and cooperation within and between WIO countries; and
- (iii) The need for inclusive and enhanced cooperation among regional organisations.

**Shared vision.** The vision is for a peaceful, politically stable region; an environmentally healthy ocean; and a blue economy based on the protection and conservation of natural resources that delivers sustainable benefits with due regard to equity and wellbeing of people. This vision may be stated in different ways by different stakeholders and regional organisations. Stakeholders may give different emphasis to environmental, economic and social dimensions of the vision.

**Multi-stakeholder cooperation.** There is a shared understanding that effective cooperation between key stakeholders is required in order to achieve this vision, including private sector and communities. This is founded not only on the recognition that countries are legally required to cooperate on ocean governance as part of their obligations under UNCLOS, but also because many, if not all of the regional organisations have been established to ensure such cooperation.

- ***Enhanced cooperation within and between countries.*** Stakeholders recognised the encouraging level of existing cooperation but acknowledged that cooperation within and between WIO countries could be improved along three main axes. The first is that all WIO countries would ideally adhere to and implement all key international conventions and take measures to resolve any maritime boundary disputes. The second is that countries could take steps to prepare or update national oceans policies and to ensure effective coordination between ministries and agencies implementing national oceans policies and strategic plans through national oceans task forces, or other appropriate means. The third is to take further steps to align policies and plans with other WIO countries at the sector level as these opportunities arise.
- ***Enhanced cooperation between regional institutions and organisations.*** Stakeholders recognised the wide diversity of regional organisations; that different groups of countries are party to different regional organisations; that their objectives and mandates differ and may overlap, or even conflict; and that their decision-making processes and decision timetables vary. Stakeholders recognised that building effective coordination between the diverse regional organisations and their programmes would require a concentrated and prolonged effort. The dialogues considered a range of options to advance regional cooperation on ocean governance and improve connectivity.

#### **4. Options to consider in moving towards the development of a Regional Ocean Governance Strategy**

The options identified for enhanced regional cooperation on ocean governance were informed by three main factors:

- (i) a recognition of the diversity of national, sectoral and thematic objectives across the region
- (ii) the nature, role and membership of the existing institutions that facilitate regional cooperation

- (iii) the 'open' nature of the WIO as a loosely defined area, interconnected both environmentally and economically to adjacent seas and regions.

The process of developing an Ocean Governance Strategy for the WIO should therefore provide an integrated framework to improve strategic alignment, coordination, and cooperation among actors and stakeholders and to promote integrated and harmonised implementation of sectoral policies to address common environmental, economic, and social challenges. Three options may be considered towards this end:

**a) Establish a joint REC ocean governance task force.**

This option received broad support. The 2019 Nairobi Convention/ RECs dialogue<sup>12</sup> proposed the establishment of a Core Group to advance the cooperation agenda. While the focus of discussions around Ocean Governance in the WIO have often been primarily environmental, in line with the mandate of the Nairobi Convention, the inclusion of blue economy and maritime security stakeholders would provide a valuable starting point for a cooperative ocean governance mechanism. The suggestion is that the activities would initially be 'auto financed with the Nairobi Convention Secretariat providing limited support services.'<sup>13</sup>

Discussions to date envisage the Task Force or Core Group as an informal mechanism. This is both a strength and a weakness. If it were to be institutionalised, questions of representation, participation, decision-making, financing and reporting would arise. By remaining informal, members could advocate for agreed ocean governance measures in a manner targeted at the specific needs of a particular REC and could jointly help access available regional funds. Its effectiveness would depend largely on the ability of its members to create space on the agendas of the RECs and the AU and to resource targeted actions.

One variant of this approach was for individual RECs to champion different governance domains where the REC may have a strategic advantage or special interest. This is the arrangement currently used in the EU-funded MASE maritime security project, where, for example, building regional law enforcement capacity is coordinated by EAC, at-sea activities are coordinated by the IOC, and other thematic activities coordinated by other RECs.

**b) Structure an adaptable open dialogue, or ecosystem-based management (EBM) approach.**

This is referred to as an EBM approach because it gives a loose structure to the dialogue on cooperation for the entire 'ecosystem' of institutions engaged in ocean governance. The idea is to be inclusive of all key stakeholders and facilitate their cooperation to the extent that each institution is capable. The following paragraphs illustrate how this approach might work through four clusters. However, it is stressed that these suggestions are only an example of many possible arrangements and that considerable discussion on any such ecosystem-based management approach would be required.

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<sup>12</sup> UNEP, Nairobi Convention, GEF. 2019. Report of the Partnership Meeting with Regional Economic Communities and Commissions in the Western Indian Ocean (WIO) Region. Durban, April 2019.

<sup>13</sup> For example, meetings would be held on the margins of the existing meetings of the Nairobi Convention, the RECs, or the AMCEN. The Indian Ocean Commission would be included in the Core Group. The Nairobi Convention could establish a specific regional ocean governance information repository within its existing Clearinghouse Mechanism to ensure timely exchange of information.

**c) Dialogue clusters.**

For example, the regional ocean governance 'ecosystem' could be structured into four (or more) clusters or pillars. The clusters would provide a space for information exchange, sharing of lessons learned, and development of policy and strategic advice for governments, RECs and the AU through multi-disciplinary and cross-sectoral analyses, reviews or discussion papers.

**5. Conclusions and recommendations:**

Based on the above options the following immediate way forward could be considered with support from various regional structures, initiatives and projects:

1. Request the Nairobi Convention Secretariat to facilitate, together with partners, continued dialogue with the RECs in the WIO and other stakeholders on the establishment of a regional Ocean Governance Taskforce or Coordinating Structure, and develop a roadmap towards Strategy development;
2. Building on previous COP decisions around Ocean Governance, request the Nairobi Convention Secretariat to facilitate a process led by the RECS to develop a regional Ocean Governance Strategy for the WIO by March 2022.

It is recommended that the above processes should:

3. Align ocean governance engagement with RECs to their Blue Economy Strategy and Policy development processes and continental processes under the AU;
4. Align support for this process among regional structures, initiatives and projects including Regional Fisheries Bodies in the WIO;
5. Link discussions around ABNJ/BBNJ connectivity and related area-based management to national EEZs, into the ocean governance dialogues;
6. Link discussions around private sector engagement to the ocean governance dialogues;
7. Strive to draw the environmental and fisheries sectors within the WIO closer together in an Ecosystems Based Approach to enhance regional ocean governance.