

**The Fourth Negotiation 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**

*Dar es Salaam, Tanzania 25-27 March 2019*

**REPORT OF THE FOURTH 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 (Nairobi Convention) 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 of the Protocol and a Conference of Plenipotentiaries. In accordance with that mandate, the First Negotiations 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.
2. In Decision CP8/3 on ‘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. In accordance with that mandate, the Second Negotiations 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. The Third Negotiation Meeting was held in Zanzibar on the 21-24 November 2016 to discuss the second negotiated draft ICZM Protocol.
3. Pursuant to Decision CP 9/4 of the Ninth Conference of Parties (COP 9) to the Nairobi Convention on the ‘Development of the Protocol on Integrated Coastal Zone Management’, the Fourth Negotiation Meeting was held in Dar es Salaam, United Republic of Tanzania, on the 25-27 March 2019 to discuss the third negotiated draft ICZM Protocol.

**II. OPENING OF THE MEETING AND WELCOME REMARKS**

**a. Welcome Remarks by the Secretariat of the Nairobi Convention**

4. The meeting was called to order at 9.05 am by the head of the Nairobi Convention Secretariat, Mr. Dixon Waruinge who led the participants through a round of introductions. Mr. Waruinge acknowledged the presence of the Contracting Parties, thanking them for making time to address the negotiation of the ICZM Protocol. He thanked the observers and experts including World Wide Fund for Nature (WWF) Tanzania, Western Indian Ocean Marine Science Association (WIOMSA) and the National Environment Management Council (NEMC) (Tanzania), noting that some of the partners had journeyed with the Convention throughout the drafting and negotiation process and it was only fitting that they were involved as the negotiation process enters its final stages.

5. He urged the Contracting Parties to negotiate with the end goal in mind; the completion of the negotiation and adoption processes and the beginning of the ratification process of not only the Integrated Coastal Zone Management (ICZM) Protocol but also the Land Based Sources and Activities (LBSA) Protocol, within the life cycle of the implementation of the Strategic Action Programme for the protection of the Western Indian Ocean from land-based sources and activities (WIOSAP) project which is supporting both processes. Mr. Waruinge noted that the ICZM Protocol remains a relevant tool to assist governments in planning ahead and putting in place measures to mitigate against disasters such as Cyclone Leon- Eline which made landfall in Mozambique in 2000, displacing 70,000 people in XaiXai in the year 2000, Cyclone Favio which hit Madagascar and Mozambique in 2007 and the most recent Cyclone Idai which has claimed more than 800 lives and caused economic destruction in Beira (Mozambique), Zimbabwe and Malawi in March 2019. Lastly, Mr. Waruinge stressed the need for a Protocol that is forward looking and relevant to matters such as coastal setback lines, estuaries, climate change, mariculture, areas beyond national jurisdiction among other issues of priority for the Contracting Parties, and emerging issues envisaged in the future.

**b. Welcome remarks by the Chair of the Bureau of the Nairobi Convention**

6. Mr. Stephen Katua gave a statement on behalf of the Government of Kenya which is the Chair of the Bureau of the Nairobi Convention. He thanked the Government of Tanzania for the warm reception. He expressed his gratitude to the Contracting Parties for their active participation at Ninth Conference of Parties to the Nairobi Convention (COP 9) held in August 2018 in Mombasa, Kenya and for the decisions made, including that relating to the conclusion of the ICZM negotiation process. He noted that the whole process has been going on for over seven years, with eight to nine meetings held for drafting and negotiation and urged the Contracting Parties to focus on the few outstanding articles with the aim of finalizing the process to pave way for the meeting of the Plenipotentiaries and ultimate adoption of the Protocol .

**c. Welcome remarks by the Government of Tanzania**

7. Dr. About Jumbe made a statement on behalf of the host, the Government of United Republic of Tanzania, taking the opportunity to extend an expression of support to the Governments of Mozambique, Madagascar, Zimbabwe and Malawi who are dealing with the aftermath of Cyclone Idai. He noted that there was no greater time to fast track and complete the process of negotiating the ICZM Protocol as it would be a relevant tool for all governments. He added that the Government of Tanzania was keen to finalize and ratify the Protocol to give guidance on the sustainable use and management of coastal and marine resources. He thanked the Nairobi Convention which has provided funding to the process through WIOSAP and the Western Indian Ocean Large Marine Ecosystems Strategic Action Programme Policy Harmonization and Institutional Reforms (WIO LME SAPPHERE) projects.

**III. ORGANIZATIONAL MATTERS**

**a. Election of officers**

8. As the Fourth Negotiations Meeting was a continuation from the Zanzibar meeting held in November 2016, there was no election of officers. As the chair of the technical legal expert working group is Kenya, and the legal expert from Kenya was attending the negotiations meeting for the first time, Ms. Carol Laura Nancy Green Jokhoo from Mauritius was tasked with chairing the meeting and leading Contracting Parties in the negotiations, supported by the legal experts, Mr Robert Wabunoha and Dr Akunga Momanyi from the Nairobi Convention Secretariat.

**b. Adoption of the Agenda**

9. The Chairperson introduced and led the discussion on the adoption of the provisional agenda for the Fourth Negotiations Meeting. The adoption was proposed by South Africa and seconded by Kenya.

#### IV. TECHNICAL PRESENTATIONS

10. On behalf of the Secretariat, Mr. Robert Wabunoha of UN Environment delivered a presentation on negotiation skills and etiquette. The presentation was a refresher on the negotiation and etiquette skills delivered during the Third Negotiations Meeting. The focus of the presentation was on how to conduct treaty negotiation and strategic negotiation issues.
- 11.
12. On behalf of the Secretariat, Dr. Akunga Momanyi of the University of Nairobi gave an overview of the background of the drafting and negotiation process. His presentation focused on the summary of the process and product of negotiation and a summary of outstanding articles of the Protocol and other issues including the annexes of the Protocol.

#### V. NEGOTIATIONS OF THE THIRD NEGOTIATED TEXT OF THE ICZM PROTOCOL

13. The delegates, under guidance of the Chairperson, Ms. Carol Laura Nancy Green Jokhoo proceeded with further formal negotiation of the preamble, the outstanding draft articles, and the annexes of the ICZM Protocol. As a necessary step, the delegates proposed draft clauses in addition to, in 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.

##### a. The Preamble

14. Two alternative paragraphs that were not agreed on in the Third Negotiations Meeting were opened for discussion: [*Concerned further about the inadequate monitoring and enforcement systems within the Western Indian Ocean region.( Seychelles and South Africa)*] and the alternative[*Concerned further about the inadequate sharing of information, enforcement, monitoring and evaluation systems, and [research] (Tanzania) baseline data (Madagascar) within the Western Indian Ocean region. (Seychelles, South Africa, Madagascar and Kenya )*]. During the discussions, Madagascar proposed the following text for consideration “*Concerned further about the inadequate sharing of information, lack of research and baseline data, enforcement, monitoring and evaluation systems within the Western Indian Ocean region*”. It was noted that the proposal by Madagascar changed the intention of the original paragraph where the key idea is concern about the inadequate sharing of information .Kenya, Comoros and South Africa argued that the phrase “lack of research and baseline data” was erroneous since there are several research institutions in the region that are doing research and generating baseline data. They proposed that the phrase is replaced with “inadequate research”. Kenya further proposed that the second alternative is adopted with some modification to read “*Concerned further about inadequate research, sharing of information, baseline data, and enforcement, monitoring and evaluation systems within the Western Indian Ocean region*”. The proposed text was agreed upon.
15. Contracting Parties discussed the paragraph [*Mindful of the environmental and social (TANZANIA) impacts of [socio-economic] developments such as [oil and gas] (KENYA delete) bioprospecting (KENYA add), biofuel, waterfront development (TANZANIA add), as well as other extractive industries on the coastal zone. (KENYA)*]. Somalia noted that it was important to retain the words “oil and gas” since this is a key issue for the Contracting Parties. Kenya supported the inclusion of oil and gas as a new development agenda and proposed the deletion of biofuel since it is not applicable to many of the Contracting Parties. South Africa proposed the deletion of all other terms and retaining “extractive industries” since it is a broad term covering oil and gas, bioprospecting and biofuel however Kenya noted that the replacement of all other terms with extractive industries was limiting and changes the intention of the paragraph as the key issue being discussed are the key drivers, which go beyond extractive industries.
16. Madagascar queried the use of bioprospecting noting that the term could include “marine research” which may not have anything to do with impacts. However, Kenya noted that impacts could be positive or negative therefore it was important to retain bioprospecting.
17. South Africa noted that it was important for the Contracting Parties not to be bogged down by definitions, particularly within the Preamble which is just an introduction to the issues that might be

affecting the realization of what needs to be accomplished. Based on this understanding, the Contracting Parties agreed to the deletion of biofuel and retaining oil and gas, water front development as well as other extractive industries. The modified paragraph “*Mindful of the environmental and social impacts of developments such as bioprospecting, waterfront development, oil and gas, as well as other extractive industries on the coastal zone*” was agreed on.

18. The meeting considered the inclusion of emerging/current/contemporary issues such as climate change, aquaculture, unsustainable fisheries, acidification, sea level rise etc. in the preamble. Mr Robert Wabunoha on behalf of the Secretariat advised that as the Protocol is a long-term document and emerging issues change over time, it would not be prudent or strategic to include emerging issues in the Protocol. The text was deleted.
19. The Contracting Parties discussed the paragraph [*Aware of existing legally binding and voluntary global and regional instruments relevant to integrated coastal zone management.*] on which South Africa had placed a reservation at the last meeting. South Africa withdrew its reservation and the text was adopted.
20. The Contracting Parties agreed on the text of the preamble on the 25/03/2019.

#### **b. Article 1: Definitions**

21. France proposed the deletion of the text “ecological” in the context of “ecological interactions” in the definition of ICZM as it limits the interactions to just ecological ones. The Contracting Parties agreed to the deletion. The modified paragraph “*Integrated coastal zone management*” is a dynamic and participatory process that involves all relevant stakeholders aimed at planning, managing, conserving and protecting coastal and marine ecosystems and resources; taking into account their fragility and sensitivity, the nature of uses as well as their impacts with a view to ensuring sustainable development” was agreed on.
22. At the last meeting, the Contracting Parties had directed the Secretariat to convene experts to analyse the issue of region and propose text for the next meeting since there was no consensus on the definition. [*“Region” means Western Indian Ocean region.*] The Secretariat reported that the experts proposed that the definition of “Region” is dropped and in lieu thereof retain the agreed definition of “Geographical coverage of the Protocol”. Further, a consequential change is that the reference to the word “Region” in the title of the Protocol should be expunged. The Secretariat also proposed alternative text to be considered by the Contracting Parties “*Region*” means that part of the Western Indian Ocean covered under the geographical coverage of the Protocol as defined in Article 2”. The Contracting Parties agreed that as the definition of region is embedded in Article 2, there is no need for a definition in Article 1 and that it should also be removed from the title of the Protocol.
23. The meeting also considered the inclusion of a definition of the terms “ICZM tools” and “instruments” in Article 1 following the removal of all definitions from Annex XXX and decided not to include these definitions.
24. The text for Article 1 was agreed on 25.03.2019.

#### **c. Article 4 bis**

25. The Contracting Parties considered the proposal for addition of text by Somalia in the last meeting [*“ If coastal border disputes will arise between two Contracting Parties, the dispute shall be settled through amicable negotiations*]. Somalia reiterated its position that the text should be included in the Protocol as border disputes were a reality for Somalia. Madagascar noted that the resolution of disputes is already included in Article 25 of the Amended Nairobi Convention and is applicable to the Convention’s Protocols therefore there is no need to add text about coastal border disputes in the ICZM Protocol and if it must be maintained, then there should be reference to the International Law of the Sea; that is ;“*should coastal border issues arise between two Contracting Parties, the dispute shall be settled through amicable negotiations in accordance/in conformity to international law*”. South Africa noted that the purpose for the development of the ICZM Protocol and any other Protocol is that they are instruments for implementing the objectives of the Nairobi Convention, the umbrella framework under which the Contracting Parties operate. If conflict resolution mechanisms are already covered in

the Convention, it would be redundant and a dangerous precedent to include text about it in the Protocol. The delegations from France, Comoros, Kenya, Mauritius and Seychelles agreed with the position of South Africa. Mozambique and Tanzania noted that if the text is to be included, reference should be made to Article 25 of the Convention and to the relevant 1982 UNCLOS article.

26. Mr Robert Wabunoha on behalf of the Secretariat clarified that Article 28 of the Nairobi Convention dealing with Sovereignty Claims and Rights purposely excluded the resolution of border disputes from the Nairobi Convention and any of its Protocols instead referring them to the Law of the Sea and in particular the 1982 United Nations Law of the Sea Convention. He advised that it would be pointless to include the proposition on border disputes in the Protocol. Somalia noted that the point would be taken back for discussion with their Minister of State. On that basis, the Contracting Parties agreed to the deletion of Article 4 bis.

**d. Article 5: General Obligations**

27. In the Third Negotiations Meeting, the Contracting Parties had agreed to move paragraph 4 of Article 5 to Article 22 . The Contracting Parties looked at the paragraph under Article 22 and agreed to maintain it in Article 5 which reads “*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 compliance and enforcement of the Protocol*”. Article 5 was agreed on the 25.03.2019.

**e. Article 6: Objectives of Integrated Coastal Zone Management**

28. The Contracting Parties reopened discussions on objective (c) which was agreed on in the Second Negotiation Meeting in March 2016, because a change in objective (f) affected it. The term “anthropogenic hazards” was deleted because it is already included in (f) whose focus is on anthropogenic activities while (c) is dealing with natural hazards associated with climate change. The agreed objective (c) now reads “ *provide for monitoring, preparedness, reduction, mitigation and adaptation, and monitoring of the effects of natural risks, especially those associated with climate change*”
29. Parties discussed objective (f) “prevent, avoid, mitigate and, as necessary, compensate harmful effects of anthropogenic activities on the coastal environment” which was not agreed on in the last negotiation meeting. France noted that the term compensate should be retained in the paragraph as it has a different meaning from mitigation and could include several actions including making reparations elsewhere. France also proposed that (c) and (f) could be merged if compensation is taken to point c. In response to France, Kenya noted that if ‘compensation’ is to be retained, then it needs to be in a separate clause because governments cannot compensate for the effects of climate change which is what is being discussed in paragraph (c).
30. Tanzania supported the retention of paragraph (c) noting that it had already been agreed on by the Contracting Parties in March 2016 and as per the rules and procedures of negotiation, only consequential changes can be made to agreed text.
31. South Africa stated that the term ‘compensation’ was a potential grey area as it could be binding to Governments since it could be interpreted as a commitment by states to compensate beach property owners for damages emanating from climate change. On that basis, South Africa proposed its deletion or its retention with the qualifier “environmental compensation”.
32. Mr Robert Wabunoha on behalf of the Secretariat clarified that the focus of Article 6 is on the general objectives of ICZM (the direction in which ICZM should lead) and as such is not binding or does not create an obligation on Contracting Parties. And if there is any obligation, then it is a soft one. He proposed that Contracting Parties consider the term ‘compensation’ as a principle for fulfilling the objectives of ICZM; much in the same way as the polluter pays and precautionary principles.
33. South Africa maintained that the delegation was not comfortable with the term compensation as it opens doors for multiple interpretations including financial compensation; which puts the state at the core of liability.
34. Madagascar proposed alternative text “and where necessary take remedial measures and conservation to counter balance the harmful effects of anthropogenic activities”. In response, South Africa urged the

Contracting Parties to use terms that explicitly state what the Parties mean to say e.g. rehabilitative and restoration measures instead of “remedial measures” which might imply financial compensation.

35. Kenya noted that the alternative proposed by Madagascar changed the intention of the original paragraph because “where necessary” is only applicable to “compensation” and not the rest of the sentence. Kenya further noted that the meaning of compensation was clear: restoration or financial compensation and even then, restoration implies that financial resources must be set aside for restoration work (polluter pays principle, precautionary principle or binding developers through environmental bonds). Kenya suggested that the paragraph is recast so as not to lose the original intention of taking action against harmful effects of anthropogenic activities. Lastly, Kenya noted that the use of “conservation, rehabilitation and restoration” in the same sentence as proposed by Madagascar and South Africa did not convey the message well. Kenya proposed the removal of compensation and returning to the original text “*prevent, avoid and mitigate harmful effects of anthropogenic activities on the coastal environment*”.
36. South Africa and France were amenable to the text proposed by Kenya, and France proposed a revision of the text to read “for counterbalancing the effects”. South Africa noted that “counter balancing” still connotes compensation. Mr Robert Wabunoha suggested the use of ‘offset’ to replace ‘counter balancing’.
37. Comoros was also in agreement with the proposal by Kenya and suggested the addition of “marine pollution”, that is, “*to prevent, avoid and mitigate the harmful effects of anthropogenic activities such as marine pollution*”. Mauritius noted that to specifically mention marine pollution would be limiting since there are other critical issues besides pollution and pollution in itself is not an anthropogenic activity but a result of anthropogenic activities.
38. The text was redrafted to read “*prevent, avoid, mitigate and where necessary offset the harmful effects of anthropogenic activities on the coastal environment*”. The “where necessary” was added to remove the sense of obligation. The text was agreed on.
39. The Contracting Parties discussed the text of paragraph (g) “*Address the emerging development activities on the coastal zone, including [offshore] oil and gas operations*” which was not agreed on in the last meeting. Madagascar proposed the deletion of “including off-shore oil and gas operations” as there was no need to specify only off-shore oil and gas operations yet there were other emerging activities e.g. port and harbor development. The Contracting Parties agreed to the deletion. The text for (g) now reads “*address the emerging development activities on the coastal zone*”.
40. The text for Article 6 was agreed on 25.03.2019.

#### **f. Article 10: Coastal development setback lines**

41. The meeting discussed the title of Article 10 [Coastal set back line[s]] for which there was no consensus at the last negotiation meeting. Kenya proposed the addition of “development” and that the text should read “lines”. This was agreed to and the new title now reads “***Coastal Development Setback Lines***”.
42. The text for paragraph 1 “*Each Contracting Party shall establish, in accordance with national laws and regulations, (MADA) [a] coastal setback line [or lines], where developments and other human activities are regulated*” was discussed. Mauritius proposed that “national laws and regulations” be replaced with “national legislation”. Mauritius also expressed reservation on the phrase “where developments and other human activities are regulated” since it implies that there are parts of the shoreline that are not regulated. The Contracting Parties agreed to delete the sentence and to the replacement of text as proposed by Mauritius. The text for Paragraph 1 “***Each Contracting Party shall establish, in accordance with national legislation coastal development setback lines***” was agreed on.
43. The text for the chapeau of paragraph 2 was modified to be consistent with the article title. Grammar editing was also done to replace “their” with “its”. The text “***Each Contracting Party shall determine its own coastal development setback lines taking into account the...***”: was agreed on.
44. 2 (a) (c), (d), (e) and (g) were agreed on with no modifications,
45. 2 (b) “*need to protect coastal ecosystems, habitats and species*” was discussed. France proposed the addition of “coastal landscapes”. Madagascar agreed to the proposal by France but urged the

Contracting Parties to use language that conforms to the international norms. Kenya supported the addition by France and proposed the addition of “seascapes” and “vulnerable ecosystems”. Comoros and France expressed reservation about the use of “vulnerable” stating that Countries were at liberty to decide what ecosystems they will protect e.g. culturally or economically significant but not necessarily vulnerable ecosystems. The text ‘vulnerable’ was expunged. Kenya proposed the introduction of “marine ecosystems” and “within territorial waters”. However, Tanzania stated that Article 10 is about coastal development set back lines and that the focus on integrated coastal management should not be lost. Mauritius noted that term ‘ecosystems’ caters for both the terrestrial and marine components therefore there was no need to add “marine”. Madagascar and South Africa stated that the addition of “within territorial waters” was limiting as it covers only 12 nautical miles from the coast noting that the applicable term should be the “coastal zone” as defined in Article 1. The suggestion of “marine” and “within territorial waters” was expunged. The text for paragraph 2 (b) “needs *to protect landscapes, seascapes, ecosystems, habitats and species within the coastal zone*” was agreed on.

46. 2 (f) “need to preserve the cultural value of the coastal zones”. Kenya proposed the addition of “and aesthetic” which was agreed on. The text now reads “*need to preserve the cultural and aesthetic value of the coastal zones*”.

47. The text for Article 10 was agreed on the 25.03.2019.

**g. Article 13 Awareness, education, and capacity building**

48. The text for paragraph 1 “*Each Contracting Party shall develop and implement ICZM awareness, education and training programmes at all levels of society*” was discussed. Kenya proposed the addition of text “*Each Contracting Party shall develop awareness, education and training programmes on the implementation of integrated coastal zone management plans*” noting that training programs ought to be anchored on a plan. Mauritius noted that the Kenyan proposition would mean that an ICZM management plan would have to be provided for in the text of the Protocol if it is to be included.

49. Mauritius proposed an alternative to be considered as follows “*Each Contracting Party shall undertake to carry out awareness raising activities and to develop education and training programmes on the subject at all levels*”, thus deleting “society”. South Africa supported the alternative proposed by Mauritius stating that introducing the text on planning would have the unintended consequence that the Contracting Parties must have an ICZM management plan before they implement any awareness raising, education or training programs.

50. Mauritius suggested that as the term ‘plan’ has not been used in the Protocol, Contracting Parties could consider using ‘framework’ instead. South Africa noted that Article 13 is about awareness, education and capacity building therefore it would be missing the point to introduce the terms ‘plan’ or ‘framework’ since the focus of the article is on urging the Contracting Parties to raise awareness on ICZM.

51. Kenya reiterated the need to maintain ‘plan’ in the paragraph stating that training or awareness must have an objective it seeks to achieve, e.g. to implement ICZM or to manage coastal resources which need a plan. Kenya proposed a new alternative: *All Contracting Parties shall develop and implement an Integrated Coastal Zone Management Plan as well educate, train and raise awareness at all levels.*” Mozambique and Somalia supported the Kenyan proposal. Comoros also agreed with Kenyan proposal and suggested the addition of the term ‘sensitize’. The Contracting Parties noted that “sensitize” is synonymous with raising awareness. Tanzania noted that the Protocol has made reference to policies and framework but not a plan therefore it ought to not to be used. Kenya then suggested that “framework” is used to replace plan “*The Contracting Parties shall carry out awareness raising activities and develop education and training programmes on the ICZM Framework at all levels*” which was supported by Mauritius, Mozambique, Madagascar, Seychelles, Comoros and France. However, Tanzania noted that Article 3 on the purpose of the Protocol provides a framework for ICZM implementation and therefore it would be redundant to include it in Article 13. Tanzania suggested the phrase “*The Contracting Parties shall carry out awareness raising activities and develop education and training programmes on ICZM at all levels.*”

52. Somalia agreed with Tanzania and proposed the addition of text at “*all inter-sectoral institutional levels*”. However, Mr Robert Wabunoha for the Secretariat noted that Integrated Coastal Zone Management implies cross/intersectoral engagement.
53. The Contracting Parties agreed to the text: “***Each Contracting Party shall carry out awareness raising activities on integrated coastal zone management at all levels***”.
54. Paragraphs 2 (*The Contracting Parties shall organize directly, multilaterally or with the assistance of the Organization, educational programmes, training and public education on integrated coastal zone management*), 3 (*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*) as well as the alternate 3 that was proposed by the Secretariat (*Each Contracting Party shall build institutional and public capacity for implementing ICZM at national and local levels [all appropriate levels]*) were discussed.
55. Kenya and Madagascar noted that paragraphs 2 and 3 are more or less speaking to the same thing and are very close to Paragraph 1, with the difference in Paragraph 2 being the addition of “the Organisation”. Madagascar proposed that Paragraph 3 is deleted and the text for Paragraph 2 is improved. Kenya noted that in the original paragraphs, the focus of Paragraph 1 is awareness, Paragraph 2 is training and Paragraph 3 is capacity building. Kenya proposed that 2 and alternative 3 are merged and the original 3 is deleted. Paragraph 3 was deleted.
56. Kenya proposed the text for the merger as follows: “*Each Contracting Party shall organise and strengthen, and where necessary build directly or with the assistance of the Organization and other bodies, educational programmes and capacity building on integrated coastal zone management at all appropriate levels*”. Mauritius agreed to the proposal and suggested the removal of “appropriate”. Madagascar agreed with the proposal by Kenya and suggested the replacement of “where necessary” with “build where none exist” however the meeting noted that “where necessary” was better suited to the paragraph.
57. The text for the new paragraph 2: “***Each Contracting Party shall organize and strengthen, and where necessary build directly or with the assistance of the Organization and other bodies, educational programmes and capacity building on integrated coastal zone management at all levels***” was agreed on.
58. The text for Article 13 was agreed on the 25.03.2019 with any reference to “training” being deleted from the article as a consequential change on the 27.03.2019. This was because South Africa pointed out that ‘training’ should not be included in any of the sub-articles of Article 13 since the title of the article is ‘Awareness, education, and capacity building’.

#### **h. Article 14: Monitoring and Evaluation**

59. Tanzania proposed the change of the title of Article 14 from “Monitoring” to “***Monitoring and Evaluation***” since these two concepts usually go hand in hand. The title was changed and Article 14 agreed to on the 26.03.2019.

#### **i. Article 15: Conservation and Rehabilitation of Coastal Ecosystems**

60. During the last negotiations meeting, France had proposed the addition of text referencing fossil and mineral resources to Paragraph 1 and was to provide the text to the Secretariat for consideration by the Contracting Parties at the Fourth Negotiations Meeting. France withdrew the proposal and the Contracting Parties agreed to the text for Paragraph 1 as follows: “***Each Contracting Party shall ensure that the conservation and sustainable use of biodiversity is integrated into integrated coastal zone management policies, strategies, plans and programmes.***”
61. The text for Paragraphs 2, 3 and 4 were agreed on with no modifications.
62. The meeting discussed Paragraph 5 as there was no consensus at the last meeting on whether to use ‘shall’ or ‘may’; “*Each Contracting Party shall [may] take into consideration the socio- economic value of ecological services, cost of loss and ecosystems degradation prior to undertaking development activities on the coastal zone*”. Kenya, Mauritius, Seychelles, South Africa, Comoros and France preferred the use of “shall”. Tanzania on the other hand stated that considering the



existence of instruments and regulations at the national level that the countries can make use of, there was no need to bind the Contracting Parties by using “shall”. The meeting decided that “shall” was the preferred option.

63. Kenya proposed the replacement of “socio-economic value” with “socio-economic impacts” because it would bring in the aspect of Environmental Impact Assessment (EIA). France objected to the proposal as the term ‘impact’ implies looking at the negative aspects. Mauritius noted that the proposal by Kenya changed the focus of the paragraph as what was being discussed therein was the economic value of ecological services rather than impact. Mauritius added that while the concept of EIA was valid, it needed to be kept separate from ecological value. South Africa supported the view of Mauritius stating that the valuation of ecosystem services is essential and that while EIA is important, it should not be added at the expense of valuation. Tanzania noted that every country has its own mechanisms of doing EIA therefore, if it is added to the paragraph, it then the phrase would need to be changed from ‘shall’ to ‘may’.
64. Madagascar proposed alternative text as follows: “ *In application of the precautionary principle, each Contracting Party shall/may take into consideration the environmental and ecological safeguards including economic value of ecological services, cost of loss and ecosystem degradation prior to undertaking development activities on the coastal zone*” France supported the proposal by Madagascar and proposed the use of ‘shall’ and addition of ‘socio-economic’.
65. Kenya noted that the Madagascar addition changed the context of the sentence as was proposed by Mauritius. Kenya also proposed the deletion of “cost of loss” as it is implied in EIA. However South Africa argued that EIA doesn’t necessarily deal with cost of loss in relation to the value of services therefore it should be maintained. France supported the retention of “cost of loss” which Kenya then agreed to.
66. Tanzania agreed with the proposal by Madagascar but suggested the deletion of “precautionary principle” which is just one of many principles and therefore its specific mention would be limiting the application of the paragraph. Tanzania suggested the addition of “taking into consideration existing principles”. However the meeting agreed to retain the sentence without the reference to existing principles as this would be redundant text since the principles of ICZM are provided for in Article 7.
67. The text for Paragraph 5 was agreed as follows “***Each Contracting Party shall take into consideration the environmental and ecological safeguards including socio-economic value of ecological services, cost of loss and ecosystem degradation prior to undertaking development activities on the coastal zone.***”
68. Article 15 was agreed on the 26.03.2019

**j. Article 16: Climate Change and Variability**

69. The Contracting Parties agreed on the title of the article “***climate change and variability***”
70. In the discussion of paragraph 1: “ *Each Contracting Party shall integrate climate change adaptation and mitigation measures into all integrated coastal zone management frameworks, tools and instruments*”, Mauritius proposed the deletion of “tools and instruments”; however, Kenya thought this should be held in reserve until the annexes on tools and instruments were finalized. Following that discussion, the meeting agreed to the deletion on the 27.03.2019 as a consequential change. Paragraph 1 reads “***Each Contracting Party shall integrate climate change adaptation and mitigation measures into all integrated coastal zone management frameworks. In this regard, each Contracting Party shall:***”
71. The Contracting Parties discussed paragraph 1 part (a) “*take into account all climate change-induced risks the coastal zone faces, such as, increase in sea surface temperature, sea level rise, increase in frequency or intensity of*
72. *extreme weather events, ocean acidification, and their related consequences on ecosystems and coastal populations*”. Kenya proposed the replacement of “coastal zone” with “coastal ecosystems.” However, Comoros indicated that the text “zone” is provided for in the Protocol therefore there was no need to replace it. Mauritius agreed with Comoros stating that coastal zone is broader than ecosystem. The meeting agreed to retain zone. Madagascar proposed the addition of text “coastal erosion” and “human

populations” which was agreed on. The text for 1 (a) ***“take into account all climate change-induced risks to the coastal zone, such as, increase in sea surface temperature, sea level rise, coastal erosion, increase in frequency or intensity of extreme weather events, ocean acidification, and their related consequences on ecosystems and coastal human populations”*** was agreed on the 26.03.2019

73. The text for 1 (b) and (c) was agreed on with no modifications.
74. The text for Paragraph 2 ***“Each Contracting Party shall enhance consultation and coordination between government sectors and other relevant stakeholders for the elaboration and implementation of relevant climate change and variability adaptation and mitigation measures and strategies at national and regional levels*** was agreed on after some discussion on whether to use “elaborate” or “mainstream” and the Contracting Parties agreed to retain elaborate.
75. The text for Paragraph 3 ***“Each Contracting Party shall develop and reinforce scientific and technical knowledge and include indigenous and traditional knowledge on climate change and variability, its impacts and response strategies, and shall cooperate for this purpose with other Contracting Parties”*** was discussed. Comoros proposed the replacement of “indigenous” with “local communities” which was agreed to by the Contracting Parties. Kenya suggested the replacement of “reinforce” with “strengthen” which was also agreed to. Tanzania noted that the use of “shall” in the context of cooperation should be modified to “shall consider to cooperate” as one cannot compel the countries to cooperate. Mr Robert Wabunoha for the Secretariat explained that Article 7 of the Paris Agreement recognizes the need for international cooperation on climate change adaptation efforts, particularly for the developing countries where it is an obligation for countries to cooperate to support the capacity of developing countries on a voluntary basis. He concluded therefore that the use of “shall” is apt. He added that Articles 9, 10 and 11 of the Paris Agreement speak to the NDCs and to capacity building (in terms of capacity building for the implementation of adaptation and mitigation actions, for technology development and financing for the facilitation of technology development).
76. Somalia proposed the addition of “and other international organizations in the phrase *“ shall cooperate for this purpose with other Contracting Parties and other international organizations”*”; however, this was not agreed on.
77. Kenya suggested the addition of “institutions” to the paragraph noting that institutions must exist to address knowledge gaps, climate change variability and to share best practices. Madagascar and Tanzania noted that the focus of the paragraph is knowledge and that the establishment of institutions does not have a place within the article unless the article was redrafted. Mauritius suggested that “institutions” is added in the context of “strengthening institutions for scientific and technological knowledge”.
78. The Chairperson tasked Kenya, Madagascar, Mauritius and Tanzania to form a working group to discuss and agree on text to be considered by the Contracting Parties. The developed text for paragraph 3: ***“Each Contracting Party shall establish or strengthen institutions for scientific and technical knowledge, and promote local community knowledge on climate change and variability, its impacts and response strategies”*** was agreed on.
79. The meeting discussed Paragraph 4 ***“Each Contracting Party shall ensure that all public decisions and measures related to adaptation to climate change and variability that are implemented (TAN) contribute to sustainable coastal management, and should not increase, directly or indirectly, the pressures on the coastal and marine environment, its resources and services”***. In the last meeting, Tanzania had proposed the addition of text “that are implemented” and Comoros had promised to provide alternative text to be considered at the Fourth Negotiations Meeting. Comoros reported to the Contracting Parties that the former Focal Point had not provided the text and requested for extra time to contact him which was granted by the Chair. However, at the appointed time, no proposition was forthcoming and therefore Comoros withdrew the proposal to provide alternative text.
80. Kenya proposed the replacement of “public decisions” with “policy decisions” which was agreed to. Madagascar suggested the addition of “mitigation” which was accepted by the Contracting Parties.
81. South Africa proposed the deletion of text ***“and should not increase, directly or indirectly, the pressures on the coastal and marine environment, its resources and services”*** as there is no way of

ensuring this outcome. Kenya and Mauritius supported the deletion with Mauritius stating that “sustainable coastal management” as a principle implies that there is reduced pressure on the marine and coastal environment and therefore to include any reference to reduce pressure would amount to redundancy. France and Madagascar expressed reservation about the deletion stating that ‘reduced pressure’ is the desired result or end goal of the paragraph therefore it would be remiss to omit it. Kenya noted that there are instruments that deal with climate change in detail and that focus of the ICZM Protocol should not be on climate change but rather sustainable coastal management. Kenya added that good climate change policies should ideally not increase pressure particularly if they are contributing to sustainable management therefore there was no need to belabor the point of reducing pressure.

82. Madagascar proposed a modification of the original paragraph as follows “*In order to contribute to sustainable coastal management, each Contracting Party shall ensure that all policy decisions and measures related to adaptation and mitigation to climate change and variability that are implemented do not increase directly or indirectly the pressures on the coastal and marine environment, its resources and ecological services.*” Kenya expressed reservation about the proposal by Madagascar reiterating the point that the ICZM Protocol is guided by the principle of sustainability and therefore paraphrasing the sentence to include both “sustainable management” and “reducing pressures” amounts to the same redundancy. Comoros agreed with the assessment made by Kenya and France. Madagascar conceded the point and the meeting agreed to the text for Paragraph 4 as follows: “***Each Contracting Party shall ensure that all policy decisions and measures related to adaptation and mitigation to climate change and variability that are implemented contribute to sustainable coastal management.***”
83. The text for paragraph 5 “*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*” was considered by the meeting. Tanzania noted that most of the Contracting Parties were less developed countries with different economic strengths, therefore the countries should not be obligated to set aside resources to deal with climate change adaptation. Tanzania proposed the addition of text “within available resources” and “may” instead of “shall”. The Chair explained that putting commas before and after “within the available resources,” removed the notion of obligation and so the use of “shall” was appropriate. Madagascar agreed with the chair noting that “within available resources” gave the countries a measure of flexibility as far as allocation of financial resources is concerned.
84. Mauritius proposed the alternative text “*Each Contracting Party may take measures to adopt relevant economic, financial and fiscal instruments intended to support initiatives for adaptation to climate change and variability in the implementation of integrated coastal zone management at national and regional level*”. Tanzania agreed with the proposal by Mauritius. However, Kenya noted that in the proposal made by Mauritius, the original intent of the paragraph, which is a “synergy between ICZM and climate adaptation and variability”, is lost. Kenya proposed that the “within available resources” and “shall” are maintained adding that climate change is a reality that the countries have to deal with and if there is no obligation created, then there is no point of including paragraph 5 in the article. Madagascar noted that the alternative proposed by Mauritius reduced the obligation and minimized the seriousness of climate change. Madagascar advocated for the retention of the original text with the addition of “within available resources”. Kenya supported Madagascar adding that climate change is mentioned in the preamble of the Protocol therefore available resources must be set aside to deal with it. Mozambique supported the original paragraph 5 with the addition of ‘within available resources’ stating that climate change is Goal 13 of the Sustainable Development Goals (SDGs), therefore there has to be commitment from the Contracting Parties to deal with it.
85. Tanzania maintained its stance that the coastal environment is faced with numerous challenges, climate change being just one of these and therefore national priorities and capacities must be considered. Tanzania added that Article 21 deals with financial resources based on national priorities therefore there is no need to be specific by obliging countries to set aside funds to specifically address climate change.

86. Mr Robert Wabunoha on behalf of the Secretariat provided guidance that when the ICZM Protocol was being drafted, the Paris Agreement had not been mooted but it is now a reality that countries must deal with; particularly Article 4 of the Agreement on nationally determined contributions (NDC) which calls for countries to ‘prepare, communicate and maintain successive NDC that they intend to achieve’. Mr Robert Wabunoha added that Article 4 of the Paris Agreement obligates Parties to pursue domestic mitigation and adaptation measures with the aim of achieving the objectives of such contributions. He suggested that the Contracting Parties discuss Paragraph 5 with that understanding.
87. Mozambique and Tanzania moved for the deletion of Paragraph 5 as it is dealt with in Article 21 of the ICZM Protocol. However South Africa noted that Article 21 is about general provisions for financial allocations while Article 16 is about climate change and paragraph 16 (5) is specifically talking about financing climate change adaptation and mitigation and must be retained in the light of NDC. South Africa added that climate change is a priority for all countries therefore it is practical to have financing provided for it.
88. The Contracting Parties agreed to the modified text for Paragraph 5 as follows: ***“Each Contracting Party based on national capabilities shall, ensure that adequate financial provision is made for climate change and variability adaptation measures for implementation of integrated coastal zone management frameworks at national and regional levels.”***
89. The meeting discussed the text for Paragraph 6 *“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.”* Kenya proposed the replacement of ‘may’ with ‘shall’. However, Tanzania argued that ‘may’ is appropriate since cooperation is based on the will of the countries and cannot be an obligation. Mauritius agreed with Tanzania stating that the use of “may” created cohesion with Article 19 of the Protocol. France, Mozambique and Somali supported the use of “may”. Madagascar preferred the use of “shall” because in international law it is an obligation to cooperate and secondly, the seriousness of climate change merits the use of “shall”
90. Comoros provided alternative text for consideration *“Each Contracting Party shall cooperate with other parties directly or through the sub-regional and international organizations to develop and implement climate change adaptation and mitigation measures”*. South Africa, Tanzania, Kenya and Seychelles preferred the original option as it mentions the organization through which all the communication is undertaken.
91. Mauritius suggested the replacement of “each Contracting Party” with “the Contracting Parties” as ‘each’ implies that each Contracting Party was collaborating with itself. This was agreed on.
92. Tanzania proposed the addition of “shall consider to collaborate” and Madagascar suggested “shall endeavour to cooperate and collaborate directly with each other”. In response to these two suggestions, the Secretariat referred the meeting to Article 15 and Article 12 of the amended Nairobi Convention which gives guidance on scientific and technical cooperation and stated that the language used therein is “shall”. Based on this, the Contracting Parties agreed to use ‘shall’ for Article 16 and to decide on the appropriate term to be used for Article 19 when the article was being discussed. The text for Paragraph 6 ***“The Contracting Parties shall cooperate and collaborate directly with each other, or through the Organization and relevant international, regional and sub-regional organizations, to develop and implement where appropriate climate change adaptation and mitigation measures’*** was agreed on.
93. Article 16 was agreed on 26.03.2019 with a consequential change being made to Paragraph 1 on 27.03.2019.

**k. Article 17 : Disaster Risk Management**

94. The Contracting Parties discussed the title of Article 17 which was bracketed during the 3<sup>rd</sup> negotiations meeting. The Parties agreed to retain the title ***“Disaster Risk Management”***.
95. Mauritius proposed the addition of “anthropogenic activities” to Paragraph 1 which was agreed to. The paragraph now reads: ***“The Contracting Parties shall collaborate, where appropriate, in the***

*development of coastal disaster risk management procedures and mechanisms for extreme natural phenomena and anthropogenic activities.”*

96. Kenya suggested the addition of ‘with relevant stakeholders’ to Paragraph 2 (a) which was agreed to. The text for Paragraph 2 (a) now reads: “***strengthen collaboration with relevant stakeholders on risk identification and assessment***”
97. Madagascar suggested the addition of ‘best practice’ and Kenya proposed the addition of ‘with other Parties’ to Paragraph 2 (b). The text for Paragraph 2 (b) ‘***share national experiences and best practice with other parties regarding risk mitigation and reduction***’ was agreed.
98. Kenya proposed the addition of text ‘standards that will enable’ which was agreed on. The text for Paragraph 2 (c) now reads: “***develop operational procedures and standards that will enable regional cooperation in disaster responses.***”
99. Madagascar proposed the replacement of ‘establish and maintain’ with ‘***strengthen and where necessary establish early warning and adaptive measures in cooperation and collaboration with other states in the Region***’ in Paragraph 2(d) which was agreed.
100. Somalia proposed the addition of “emergency” to early warning systems; however the Contracting Parties agreed to maintain the original form as it is what is conventionally used. Kenya proposed that “with other states in the region” is replaced with “Contracting Parties”. However the Secretariat advised that the early warning could come from a non-Contracting Party. Kenya noted that the ICZM Protocol is not binding for non-Contracting Parties and suggested the use of “stakeholders” but the Contracting Parties concluded that states were different from stakeholders and agreed to the text for Paragraph 2 (d) as follows: “(d) ***strengthen and where necessary establish early warning systems and adaptive measures in cooperation with all Contracting Parties and in collaboration with other states***”.
101. Comoros proposed the amendment of Paragraph 2 (e) to be consistent with Paragraph 2 (d) “strengthen and where necessary establish”. Tanzania proposed the addition of “at national level”. The text for Paragraph 2 (e): “***strengthen and where necessary establish committees or other bodies at national level to address disaster risk management***” was agreed on.
102. Kenya suggested that the Secretariat, in finalizing the draft Protocol, should look at the logical flow or sequence of the sub-articles of Article 17.
103. Article 17 was agreed on 26.03.2019

#### **I. Article 19: Bilateral and Multilateral Cooperation**

104. The Contracting Parties agreed to the title of Article 19: ‘***Bilateral and Multilateral Cooperation***’ which had been bracketed in the last meeting.
105. The Contracting Parties discussed the use of “may” or “shall” in the chapeau of the Article which reads: “*The Contracting Parties may cooperate bilaterally or multilaterally, to implement this Protocol, where necessary*”. Mauritius proposed the use of “may” which was supported by Madagascar, France and South Africa who noted that since the chapeau has 3 sub-articles that are bound to it, “may” was more appropriate. This was agreed on.
106. Sub- articles 19 (a) and (b) were agreed on with no modifications.
107. The Contracting Parties discussed sub-article (c) ‘*[management] [monitoring] of resources and ecosystems [beyond national jurisdiction/that might affect the coastal zone]*’ which was not agreed on at the last meeting. Mauritius asked the Secretariat to provide guidance on the issue of areas beyond national jurisdiction (ABNJ). Mr Dixon Waruinge noted that while the outcome of the global discussions on ABNJ is not yet known, it was reasonably safe to assume that the Regional Seas Conventions would be involved and it would therefore be prudent for the Contracting Parties to be forward looking and decide on how to engage with whatever body is mandated to deal with matters of ABNJ. Within the context of the ICZM Protocol, he added, there is a provision for countries to collaborate to manage ABNJ while respecting the sovereignty of states as provided for in international law.
108. In light of the guidance from the Secretariat, Mauritius proposed the addition of text “in line with international law” to the sub-article as a safe guard.

109. Madagascar noted that the scope of the ICZM Protocol is within the areas of national jurisdiction. Madagascar therefore proposed that on this basis, the reference to ABNJ should be expunged. Mr Robert Wabunoha for the Secretariat advised the Contracting Parties that Article 1 of the Protocol makes reference to shared resources and in particular large marine ecosystems. He added that ABNJ should be discussed in the context of activities/issues taking place outside national jurisdiction but affecting the management and sustainable use of resources within national jurisdiction e.g. marine litter, connectivity etc. Kenya suggested the redrafting of the sub-article to reflect the guidance from the Secretariat, considering the fact that many countries do not have the capacity to monitor or manage ABNJ.
110. Madagascar proposed text as follows: *“Management and monitoring of resources and ecosystems beyond natural jurisdiction that might adversely affect the coastal zone in cooperation with competent regional and international organisations in accordance with international law”*. France suggested the deletion of “regional” since it is encompassed in global agreements. South Africa noted that the chapeau of the article already includes bilateral or multilateral cooperation which makes the text *“in accordance with international law”* redundant. South Africa noted that cooperation with regional and international organisations is also captured in the Amended Nairobi Convention therefore there was no need to repeat it in sub-article (c). South Africa suggested that the paragraph ends at coastal zone: *“management and monitoring of resources and ecosystems beyond natural jurisdiction that might adversely affect the coastal zone.”* Kenya agreed with South Africa and proposed the insertion of the term ‘activities’ to the paragraph as follows: *“management and monitoring of activities that affect the resources and ecosystems beyond natural jurisdiction that might adversely affect the coastal zone”*. France however noted that if the South African proposition were to be adopted, it would exclude collaboration with international frameworks or regional bodies since the context of multilateral and bilateral collaboration as expressed in the chapeau is specifically dealing with other Contracting Parties.
111. France suggested the addition of the terms ‘biodiversity’, ‘conservation’ and ‘adjacent areas’ (in the context of connectivity). However, France cautioned that the term ‘adjacent’ does not exist in legal text and would therefore need to be considered by the Secretariat when cleaning up the document. Tanzania supported the proposal by France and suggested text as follows *“Conservation of marine biodiversity in adjacent areas taking into account of matters of connectivity”*.
112. Kenya proposed the modification to Tanzania’s text as follows *“management and monitoring of marine biodiversity in adjacent areas taking into account matters of connectivity of activities that affect resources and ecosystems beyond national jurisdiction that might adversely affect the coastal zone”*.
113. Madagascar proposed the addition of the term “high seas”; however South Africa noted that ABNJ does not always necessarily refer to the high seas but could also include transboundary shared resources e.g. between South Africa and Namibia. He added that high seas was limiting as it excludes terrestrial and coastal components. Kenya supported the view of South Africa. Madagascar maintained that the issue of shared resources should be dealt with between the relevant coastal states. He noted that Article 19 sub article (c) is specifically dealing with the resources in the high seas that have bearing on the management of the coastal zone and that the issue of shared resources is dealt with in Paragraph (a) (shared ecosystems). Mr Robert Wabunoha for the Secretariat noted that matters dealing with ABNJ generally refer to marine rather than the terrestrial component. He advised that the best way to deal with the issue would be to have two separate sub-articles; one dealing with the high seas and the other with shared resources in the terrestrial space. The Parties noted that to add a sub-article (d) do address the concern raised by South Africa would make Article 19 too longwinded and complicated.
114. The Secretariat, following the request by governments, proposed an alternative sub-article (c) for consideration *“management or monitoring of natural resources and ecosystems, marine biodiversity, taking into account matters of connectivity, and activities that may have adverse impacts on the coastal environment in areas beyond national jurisdiction”*. which was supported by Mauritius and France.
115. Madagascar maintained that the text should contain a reference to “management being done by competent regional and global bodies, in line with existing conventions.” Mauritius stated in response to Madagascar, that the Article 11 of the 1982 UNCLOS provides for the cooperation of states in the

- management of the shared resources beyond national jurisdiction and because the Nairobi Convention is a regional sea, subject to 1982 UNCLOS, it would be redundant to mention existing conventions.
116. France agreed with Mauritius on the expunction of “existing conventions” from the text and agreed with Madagascar on the addition of “cooperation with competent international bodies”.
117. Kenya noted that a domestic framework cannot be applied to ABNJ and proposed the deletion of “national ICZM Frameworks” from the chapeau which was agreed as follows: ***“The Contracting Parties may cooperate bilaterally or multilaterally, to implement this Protocol, where necessary, in....”***
118. The Contracting Parties agreed to the text for sub- article (c) as follows ***“areas beyond national jurisdiction to manage or monitor marine biodiversity, taking into account matters of ecosystem connectivity, and activities that may have adverse impacts on the coastal environment in cooperation with competent international organizations.”***
119. Article 19 was agreed on 26.03.2019.

#### **m. Article 20: Secretariat and Coordination Mechanisms**

120. The Contracting Parties agreed on the text for sub-articles 1 and 2 with no modifications.
121. The Contracting Parties agreed to paragraphs (a), (b), (c), (d) and (e) of sub-article 3 with no modifications.
122. During the Third Negotiations Meeting, Madagascar had provided text for paragraph (f) of sub-article 3 for consideration by the Contracting Parties which was not agreed on. The proposal by Madagascar was discussed and agreed on at the Fourth Negotiations Meeting. Paragraph (f) now reads: ***“Assist Contracting Parties, upon request, to facilitate/coordinate in capacity-building needs of contracting parties”***.
123. Kenya proposed the addition of text ‘that may be’ to paragraph (g) of sub-article 3 which was agreed. Paragraph (g) now reads: ***“carry out any other functions that may be assigned to it by the Contracting Parties.”***
124. Article 20 was agreed on 26.03.2019

#### **n. Article 21: Financial Arrangements**

125. The Contracting Parties discussed the title [Financial Arrangements] over which France had placed a reservation at the last negotiations meeting. France withdrew the reservation stating that the reservation had been made when countries were not paying their contributions in a timely manner and that situation has since changed. With the withdrawal, the title was agreed.
126. Sub- articles 1 and 2 were agreed with no modifications.
127. Kenya suggested the addition of ‘other’ to sub- article 3 paragraph (a) which was agreed on. The paragraph (a) now states ***“promote and facilitate the mobilization of financial resources, including national budgetary allocations, grants and concessional loans from bilateral and multilateral funding sources and other mechanisms.”***
128. Kenya proposed the change of the order of words in sub-article 3 paragraph (b) from ‘commit and raise’ to ‘raise and commit’ which was agreed to by the Contracting Parties. Sub-article 3 paragraph (b) now states: ***“raise and commit domestic and external financial resources based on both assessed and voluntary contributions, grants, donations and loans;”***
129. Sub-article 3 paragraph (c) was agreed with no modification.
130. Madagascar suggested the replacement of text ‘for activities related to’ with ‘in implementing the activities related to’ for sub- article 4 which was agreed. The modified sub-article 4 states ***“In addition to the financial contributions by the Contracting Parties provided for under this Article, the Organization may, in response to a request from any of the Contracting Parties, or on its own motion, seek additional funds or other forms of assistance in implementing the activities related to this Protocol, including voluntary contributions for the achievement of specific objectives of this Protocol made by the Contracting Parties, other governments and government agencies, international organizations, non-governmental organizations, private sector entities and individuals.”***

131. In relation to sub-article 5, '*For purposes of mobilizing funds, each Contracting Party shall endeavour to prioritize national policies, strategies, plans, programmes, measures and activities related to this Protocol*', Kenya proposed that the issue of mobilizing funds is deleted from the paragraph and taken to sub article 3 paragraph (c) so that sub- article 5 deals exclusively with prioritizing national policies, strategies. Kenya added that "shall endeavor to prioritize" creates an obligation and proposed its deletion. In response to Kenya, Mr Robert Wabunoha for the Secretariat explained that there is a precedent in the LBSA Protocol where the same paragraph has been used.

132. Based on the explanation by the Secretariat, Tanzania proposed that "endeavor to *prioritize*" is maintained in the sub-article and this was agreed to by the Parties. South Africa noted, in response to Kenya's proposal to delete "mobilizing funds", that Article 21 is about financial arrangements, therefore, to delete 'mobilizing funds' makes sub-article 5 null and void. Kenya conceded the points and sub-article 5 was agreed to with a minimal modification to the original clause as underlined "***For purposes of mobilizing funds, each Contracting Party shall endeavour to prioritize national policies, strategies, plans, programmes, measures and activities related to this Protocol.***"

133. Article 21 was agreed on 26.03.2019

**o. Annex XXX: Instruments and tools for implementation of Integrated Coastal Zone Management**

134. Dr Akunga Momanyi, on behalf of the Secretariat, presented the annexes for consideration by the Contracting Parties. He noted that during the 3<sup>rd</sup> negotiations meeting, the Contracting Parties tasked the Secretariat to develop an Annex for Article 9 to cover the following elements: Definition of ICZM tools and instruments with alternatives, a broad categorization of the ICZM tools (planning tools, implementation tools, etc.), and ICZM instruments and indicators. He presented each of the elements of the annex and the Contracting Parties made the following decisions in relation to the annexes:

- There will only be a single annex for both tools and instruments.
- Madagascar suggested that the annexes should not have chapeaux or narrative text, instead, the annexes should be a simple listing of tools and instruments with the narrative, including definitions being moved to the Protocol. The Parties agreed to the proposal and the definitions were deleted.
- In keeping with the point that any narrative text should be moved to the Protocol, the following paragraph was moved from the Annex to Article 9 of the Protocol "***A Contracting Party may choose to apply any instruments and tools or indicator categories singularly or in combination, and individually or in collaboration with other contracting parties.***"

135. The text for Annex **XXX** was agreed as follows on the 27.03.2019: "***In accordance with Article 9, the list of instruments and tools are as follows***":

**I. Instruments**

- i. Legal and policy instruments, including but not limited to laws and regulations; ( the Contracting Parties agreed on the use of the term "including but not limited to" to indicate that this is not a exhaustive list)
- ii. Institutional and administrative instruments, including national, and other level institutions and bodies;
- iii. Planning instruments including strategic environmental planning, marine spatial planning, land-use planning, urban and regional planning , disaster and risk planning at national and all levels
- iv. Financial and market based instruments including environment deposit bonds, blue bonds and green bonds. (The Contracting Parties debated the inclusion of part iv since it is mentioned in Article 11 (4) and could be considered redundant. It was nonetheless retained because the Contracting Parties concluded that since Annex is a list of ICZM instruments it should include all the ICZM instruments, regardless of where these may have been mentioned in the Protocol)

**II. Tools**

- i. Legal, institutional and administrative tools such as licenses, permits and guidelines;
- ii. Planning tools including strategic environmental assessment, coastal setback lines, zoning and spatial planning, sensitivity mapping, vulnerability assessment, , coastal strategies, national oil spill response contingency plans marine and protected areas; disaster risk management , geographical information systems; remote sensing.



- iii. Assessment tools, including socio-economic assessment tools, feasibility studies, cost benefit analysis, scenario planning and forecasting modelling.
- iv. Environmental assessment tools, including environmental impact assessment, environmental auditing, ecosystem valuation; integrated assessment.
- v. Financial and market based tools including valuation taxes, subsidies, tradable permits, deposit refund systems.

**p. AnnexXXX Integrated Coastal Zone Management Frameworks: Categories of Indicators**

136. The Contracting Parties agreed that there will be a second annex to support Article 8 (4) titled *“Integrated Coastal Zone Management Frameworks: Categories of Indicators”* in relation to Article 8 (4). The text for the annex was agreed as follows: *“In accordance with Article 8.4 the following are the categories of the indicators:*

- a. environmental indicators;
- b. socio-economic indicators;
- c. monitoring and evaluation indicators;
- d. integration indicators;
- e. awareness, education and capacity building indicators.

**q. Annex XXX Draft Terms of Reference of National Focal Points**

137. The Contracting Parties discussed Annex XXX on the Draft Terms of Reference of the National Focal Points in relation to Article 22 (2). The Contracting Parties noted that the administrative structure/arrangement of the operations of the national Focal Points is done at the national level therefore there is no need to draft TORs for the national Focal Points. The Annex was therefore expunged and the reference to it in Article 22 (2) deleted.

138. Following the conclusion of the annexes, the Contracting Parties discussed the related Articles 8, 9 and 22.

**r. Article 8: Integrated Coastal Zone Management Frameworks**

139. Sub-articles 1, 2, 3 were agreed on with no modifications.

140. The text for sub article 8 (4) was modified to initiate some action in relation to the indicators on the part of the Contracting Parties. The text: *“The Contracting Parties shall, as soon as this Protocol enters into force develop indicators based on the categories provided for in Annex XXX to this Protocol, to monitor the implementation of their national integrated coastal zone management frameworks”* was agreed on.

141. The text for Article 8 (5) which was not agreed on because Mauritius had placed a reservation on the term ‘network’ as it was not mentioned anywhere in the Protocol. (*“The Contracting Parties shall establish a [Regional integrated coastal zone management network] (MAU seeks clarity on definition) shall, under the guidance and facilitation of the Organization, promote the implementation of the Protocol, and in particular”*).

142. Mauritius reiterated the reservation noting that the network had still not been discussed, its functions were not clear and its mode of operation was unknown. Kenya however noted that there was added value in retaining the network since it could be an important avenue for sharing information and best practices among Contracting Parties. South Africa supported Mauritius’ proposal noting that there are regional partner organisations that are already doing the tasks of the proposed network and there is no need for duplication of effort. Mr Dixon Waruinge weighed in for the Secretariat, advising the Contracting Parties that should the network be established, the countries would be responsible for financing its maintenance with the Nairobi Convention just playing a facilitation role for the network. Mauritius moved for the expunction of sub-article 5 given that there is no clear mechanism for the functioning of the network. Mauritius also noted that Article 18 (b) ‘*establish or strengthen regional networks of research centres and institutions*’ alludes to a network and Article 19 whose focus is on collaboration has elements of networking therefore there is no need to include sub-article 5. Based on that argument, the Contracting Parties agreed to delete Article 8 sub article(5).

143. The text for Article 8 was agreed on the 27.03.2019

**s. Article 9: Instruments and Tools for Implementation of Integrated Coastal Zone Management**

144. The Contracting Parties agreed on the title of Article 9 “*Instruments and Tools for Implementation of Integrated Coastal Zone Management*”

145. The text for sub-article 1 ‘*Each Contracting Party shall adopt such [legal, institutional, administrative and planning instruments] as contained/provided for in Annex XXX to implement ICZM*’ was modified to reflect the changes made in relation to the annex as follows: “*Each Contracting Party shall adopt such instruments and tools as provided for in Annex XXX to this Protocol to implement integrated coastal zone management*”

146. As discussed in point 132 above, a new sub-article 2 was added to Article 9 as follows: “*The Contracting Parties shall apply any instrument or tool, singularly or in combination, individually or in collaboration with other Contracting Parties*”.

147. The text for Article 9 was agreed on 27.03.2019

**t. Article 22: National Focal Points**

148. France had placed a reservation on the title of Article 22 in the last negotiation meeting which was withdrawn following the conclusive discussion on the deletion of the annex pertaining to Article 22 (2). Based on the withdrawal by France, the title for Article 22: “*National Focal Points*” was agreed on.

149. Article 22 (1) was agreed on without modification

150. Following the deletion of the annex on the draft terms of reference for the National Focal Points, the reference to the annex was deleted from 22 (2) which now reads “*The national focal points shall meet as appropriate to carry out the functions derived from the Protocol as provided for in the Terms of Reference for the focal points of the Convention.*”

151. The text for Article 22 was agreed on.

**u. Consequential changes numbering of Articles 24 (Meeting of Parties), 25 (Relationship with the Convention), 26 (Relationship with Third Parties) and 27 (Signature, Ratification, Accession, Amendment, Depository, Entry into Force)**

152. Following the deletion of Article 22 bis and deletion of 23 during the Third Negotiations Meeting, the numbering of articles was changed as follows *Article 23: Meeting of Parties, Article 24: Relationship with the Convention, Article 25: Relationship with Third Parties and Article 26: Signature, Ratification, Accession, Amendment, Depository, Entry into Force.*

153. Madagascar suggested the addition of “depository” in Article 25 which was agreed to by the Contracting Parties.

**v. Agreement on the Text of the Draft Integrated Coastal Zone Management**

154. Following the agreement on the Preamble, all the outstanding articles and the annexes of the Draft Protocol, the Chair declared that the text for the Integrated Coastal Zone Management Protocol was agreed and the negotiations closed on the 27.03.2019.

## **VI. CLOSING OF THE MEETING**

**(a) Closing remarks by the Chair of the Bureau**

155. Mr. Stephen Katua gave brief closing remarks on behalf of the Government of Kenya. He thanked the Chair Ms. Jokhoo for leading the proceedings and negotiations with a firm but fair hand. He appreciated the work of the former chair Ms. Irene Kamunge who led the negotiations during the First, Second and Third Negotiation Meetings of the Protocol. He also thanked the Government of Tanzania for hosting the meeting and the Contracting Parties for their active participation in the negotiations. He concluded his remarks by stating that he was looking forward to the next steps in the process.

**(b) Closing remarks by the Head of the Nairobi Convention**

156. Dixon Waruinge thanked all the participants for being patient and remaining dedicated to the cause until the conclusion of the negotiations. He noted that as the next step, the Secretariat would be cleaning up the document and translating it to French. He requested the Mozambique delegation to provide the names of reliable translators to translate the document to Portuguese. He noted that a Conference of Plenipotentiaries would be organised soon for adoption of the Protocol. Mr Waruinge added that the ratification of the Protocol would be anchored to the Amended Nairobi Convention and urged the Contracting Parties which had not ratified the Amended Nairobi Convention to do so to enable the ICZM Protocol to be anchored to a living Amended Nairobi Convention. Lastly he thanked the host Tanzania, the chair of the Bureau, Kenya, the chair of the meeting Ms. Jokhoo, the Focal Points of the Nairobi Convention, the Secretariat, partners and experts.

**(c) Closing remarks by Tanzania**

157. Dr. Aboud Jumbe made closing remarks on behalf of the Government of the United Republic of Tanzania. He thanked the chair of the Bureau, the chair of the meeting, the legal experts- Dr Akunga Momanyi and Mr Robert Wabunoha, Mr Dixon Waruinge and the Secretariat as well as the Contracting Parties for staying focused through the three days of intense negotiations. He noted that it was no mean feat putting together a document that reflects the needs and concerns of all the Contracting Parties. He thanked the partners for their contributions and concluded the meeting by wishing the participants well on their return journeys home.

158. There being no other business, the meeting was concluded at 1700 Hours on 27.03.2019.

## ANNEXES

### ANNEX 1: Provisional Agenda

#### **The Fourth Negotiation Meeting on the draft Integrated Coastal Zone Management (ICZM) Protocol on the Nairobi Convention for the Protection, Management and Development of the marine and Coastal Environment of the Western Indian Ocean**

**Date: 25-27 March 2019  
Dar es Salaam, Tanzania**

#### **PROVISIONAL AGENDA**

1. Opening Addresses
  - a) Nairobi Convention Secretariat
  - b) Chair of Bureau - Government of Kenya
  - c) Representative of the Government of Tanzania
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 3<sup>rd</sup> Negotiated Draft of the ICZM Protocol
5. Negotiations on articles of the 3<sup>rd</sup> Negotiated text of the ICZM Protocol
6. Closure of the Meeting.

### ANNEX 2: List of Participants

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