

DRAFT REVISED PROTOCOL
CONCERNING PROTECTED AREAS
AND WILD FAUNA AND FLORA
(BIOLOGICAL DIVERSITY) IN
THE EASTERN AFRICA (WESTERN
INDIAN OCEAN) REGION.

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Proposed title amendment: “PROTOCOL CONCERNING PROTECTED AREAS AND WILD FLORA AND FAUNA BIOLOGICAL DIVERSITY IN THE WESTERN INDIAN OCEAN REGION.”

The Contracting Parties to the present Protocol,

Being Parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean Region, done at Nairobi on 21 June 1985 as amended in 2010;

Being deeply concerned at the serious threats to marine and coastal biological diversity caused by factors including physical alteration, destruction and degradation of habitats, pollution, invasion of alien species, and over exploitation of living marine and coastal resources

Conscious of the danger from increasing human activities which is threatening the marine and coastal environment of the Western Indian Ocean region and its rich heritage of biological diversity;

Conscious also of the close and traditional dependency of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components;

Recognizing that natural resources constitute a heritage of scientific, cultural, social, educational, recreational, aesthetic and economic value that needs to be effectively protected;

Stressing the importance of protecting and, as appropriate, improving the state of the biological diversity and natural habitats of the Eastern African Western Indian Ocean region among other means by the establishment of specially protected areas in the marine and coastal environment and also by the protection and conservation of threatened species;

Considering that all Contracting Parties ought to co-operate to conserve, protect and restore the health and integrity of ecosystems and that they have, in this respect, common but differentiated responsibilities;

Considering further relevant international and regional instruments in particular the 1982 United Nations Convention on the Law of the Sea; the 1992 Convention on Biological Diversity and Agenda 21; the 2002 revised African Convention on the Conservation of Nature and Natural Resources (Algiers Convention); the 2004 International Convention for the Control and Management of Ships’ Ballast Water and Sediments, as well as developments in other regional seas programmes;

Reaffirming that states in the Western Indian Ocean region have sovereign rights over their own biological diversity and further that those states are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner;

Aware of the general lack of scientific information and knowledge within the Western Indian Ocean region regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures;

Noting that it is vital to anticipate, prevent and reduce the causes of significant reduction or loss of biological diversity at source;

Desirous of establishing close co-operation among the Contracting Parties in order to achieve the objective of establishing specially protected areas and the protection and conservation of biological diversity,

Have agreed as follows:

PART I: GENERAL PROVISIONS

Article 1:

DEFINITIONS

For the purposes of this Protocol;

“Ballast water” means water used to provide stability to ships and other maritime vessels when they are not carrying a full load of cargo, and is usually taken on board at the beginning of a journey and discharged at the port where the cargo is to be loaded;

“Biofouling” is the process whereby invasive biological communities or species develop on submerged physical structures such as ships’ hulls, propellers, fishing gear, mariculture cages or marine debris;

“Biological diversity” means the variability among living organisms from all sources including, *inter- alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

“Convention” means the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean region];

“Ecosystem” means a dynamic complex of plant, animal and micro organism communities and their non-living environment interacting as functional unit;

“Endangered species,” means any plant or animal species that is in danger of extinction throughout all or part of its range and whose survival is unlikely if the factors jeopardizing them continue unabated;

“Endemic species” means any species whose origin and range is restricted to a limited geographical area;

“Exploitable biological species” means those biological species which have or may have potential exploitable value without endangering their conservation status and which are, *inter alia*, renewable;

“Habitat” means the place or type of site where an organism or population naturally occurs;

“Migratory species” mean and include the following categories:

- (i) Marine species which breed on the shores of coastal states but migrate to sea during adult life such as seals, sea turtles and anadromous fish;
- (ii) Highly migratory marine species which travel between adjacent areas on the exclusive economic zone (EEZ) and high seas, such as tuna and whales;
- (iii) Territorial species with a well established migration pattern, such as ducks and geese; and
- (iv) Territorial or marine species which live in border areas and regularly cross jurisdictional boundaries, such as gorillas and elephants.

“ Marine invasive species” means species, usually alien, non-indigenous or exotic, which proliferate and spread in a manner which threatens ecosystems, habitats or species, and which actually or potentially have deleterious or negative impact, or potentially cause socio-economic and or environmental damage or harm to human health;

“Organization” means the body referred to in paragraph (c) of article 2 of the Convention;

“Protected Area” means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives, including nature reserves and parks;

“Threatened species” means species or their populations:

- (i) that are likely to become endangered within the foreseeable future throughout all or part of their range if the factors causing numerical decline or habitat degradation continue to operate; or
- (ii) that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction;

Article 2

GENERAL OBLIGATIONS

1. The Contracting Parties shall take all appropriate measures to maintain essential ecological processes and life support systems, to preserve genetic diversity, and to ensure the sustainable utilization of natural resources under their jurisdiction. In particular, the Contracting Parties shall endeavour to protect and preserve rare or fragile ecosystems as well as rare, depleted, threatened or endangered species of biological diversity and their habitats in the Western Indian Ocean region.
2. To this end, the Contracting Parties shall develop and adopt national conservation strategies, integrate them into their sectoral and inter sectoral policies and co-ordinate, if appropriate, such strategies within the framework of regional conservation activities.
3. The Contracting Parties shall also endeavour to protect, conserve and manage in a sustainable and environmentally sound way areas of particular natural or cultural value, particularly by the establishment of specially protected areas.
4. The Contracting Parties shall co-operate, directly or through competent international and regional organizations, in the conservation and sustainable use of biological diversity in the area to which this Protocol applies.
5. Each Contracting Party shall regulate and, where necessary prohibit activities having adverse effects on these areas and species. Each Contracting Party shall endeavour to co-operate in the enforcement of these measures, without prejudice to the sovereign rights or jurisdiction of other parties. Any measures taken by a party under this paragraph shall be limited to those within the competence of the respective party and shall be in accordance with international law.
6. The Contracting Parties shall identify, create inventories of and monitor the important components of biological diversity and in this regard identify processes and categories of activities that have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity.

ARTICLE 2A:

GEOGRAPHICAL SCOPE.

1. The geographical scope of this Protocol is as defined in Articles 1 and 2 of the Convention. It also includes the following:
 - (i) the seabed and its sub-soil;

(ii) the waters, seabed and its subsoil on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of water courses, up to the fresh water limit;

(iii) the terrestrial coastal areas designated by each of the parties, including wetlands.

2. Nothing in this Protocol nor any act adopted on the basis of this Protocol shall prejudice the rights, the present and future claims or legal views of any state relating to the law of the sea, in particular, the nature and the extent of marine areas, the delimitation of marine areas between states with opposite or adjacent coasts, freedom of navigation on the high seas, the right and the modalities of passage through straits used for international navigation and the right of innocent passage in territorial seas, as well as the nature and extent of jurisdiction of the coastal state, island or archipelagic states, the flag states and the port state.

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

PART II: PROTECTION AND CONSERVATION OF SPECIES

Article 3 (Incorporating current Article 4)

NATIONAL MEASURES FOR THE PROTECTION AND CONSERVATION OF BIOLOGICAL DIVERSITY.

1. The Contracting Parties shall take all appropriate measures to ensure the protection of the wild flora species specified in Annex 1. To this end, each Contracting Party shall, as appropriate, prohibit activities having adverse effects on the habitats of such species, as well as the uncontrolled picking, collecting, cutting or uprooting of such species. Each Contracting Party shall, as appropriate, prohibit the possession or sale of such species.

2. The Contracting Parties shall take appropriate measures to ensure the strictest protection of the endangered wild animal species listed in Annex II. To this end, each Contracting Party shall strictly regulate and, where required, prohibit activities having adverse effects on the habitats of such species. In particular, the following activities shall, where required, be prohibited with regard to such species:

- (a) All forms of capture, keeping or killing;
- (b) Damage to, or destruction of, critical habitats;
- (c) Disturbance of wild animal species, particularly during the period of breeding, incubation, rearing and hibernation or migration, or other periods of biological stress;

- (d) Destruction or taking of eggs from the wild or keeping these eggs even if empty;
- (e) Possession of and internal trade in these animals, alive or dead, including stuffed animals and any readily recognizable part or derivative thereof.

3. Each Contracting Party shall formulate and adopt measures and plans with regard to ex-situ reproduction, if at all, and in particular captive breeding, of protected fauna species and propagation of protected flora species.

4. Each Contracting Party shall make provision, where possible, for the return of protected species exported or held illegally. Efforts should be made by concerned parties to re-introduce such species to their natural habitats.

5. Each Contracting Party shall endeavour directly or through the organization, to consult with states that are not parties to this Protocol with a view to coordinating their efforts to manage and protect endangered or threatened species.

ARTICLE 3 B (CURRENT ARTICLE 7)

INTRODUCTION OF ALIEN, INVASIVE, NEW OR GENETICALLY MODIFIED SPECIES.

1. The Contracting Parties shall take all appropriate measures to prohibit the intentional or accidental introduction of alien invasive, new or genetically modified species which may cause significant or harmful changes to the Western Indian Ocean region.
2. Each Contracting Party shall take measures to prevent, control or minimize the spread of marine invasive species, and shall in this regard ensure that bio fouling, ballast water and other means by which marine invasive species are introduced or spread shall not cause undue influence on the waters or environment in its respective areas of jurisdiction. In particular, the Contracting Party concerned shall:
 - a. Prevent or minimize introduction of marine invasive species through the traditional pathways/means including mariculture activities, shipping, oil and gas explorations, tourism and aquarium trade;
 - b. Prevent the establishment and spread of marine invasive species through early detection and rapid response, including treatment;
 - c. Eradicate, where possible, all marine invasive species;
 - d. Contain or control, where possible, all marine invasive species, including those already established.

3. Each Contracting Party shall take measures to reduce, minimize or eradicate any deleterious or negative ecological, economic or public health impacts of marine invasive species, and shall cooperate in this regard with relevant regional and global organizations.
4. Each Contracting Party shall establish and maintain means to regulate manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of its components.
5. Each Contracting Party shall endeavour to implement all possible measures to control and eradicate species that have already been introduced whenever it is apparent that such species cause damage to ecosystems , habitats, or species in the area to which this Protocol applies.

Article 5.

EXPLOITABLE BIOLOGICAL SPECIES

1. The Contracting Parties shall take all appropriate measures to ensure the protection and restoration of the depleted or threatened biological species listed in Annex III. Parties shall specifically be obliged to take measures to restore and regenerate harvestable species.
2. Any exploitation of such ~~wild fauna species~~ biological species shall be regulated in order to restore and maintain the populations at —sustainable levels to maintain wild populations at optimum levels. Each Contracting Party shall develop, adopt and implement management plans for the exploitation of such species which may include:
 - (a) The prohibition of the use of all indiscriminate means of capture and killing and of the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species;
 - (b) Closed seasons and other procedures regulating exploitation;
 - (c) The temporary or local prohibition of exploitation, as appropriate, in order to restore viable population levels;
 - (d) The regulation, as appropriate, of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals;
 - (e) The safeguarding of breeding stocks of such species and their critical habitats in protected areas designated in accordance with article 8 of this Protocol;
 - (f) Exploitation in captivity.

ARTICLE 6

MIGRATORY SPECIES.

1. The Contracting Parties shall, in addition to the measures specified in articles 3 (incorporating current article 4) and 5, co-ordinate their efforts for the protection of migratory species listed in Annex IV whose range extends into their territories. To this end, each Contracting Party shall ensure that, where appropriate, the closed seasons and other measures referred to in paragraph 2 of article 5 as well as identification and monitoring are also applied with regard to such migratory species.

ARTICLE 6A:

CO-OPERATIVE MEASURES FOR THE PROTECTION AND CONSERVATION OF SPECIES.

1. The Contracting Parties shall adopt cooperative measures to ensure the protection and conservation of the species listed in the Annexes to this Protocol.

2. The Contracting Parties shall ensure the maximum possible protection and recovery of the species of fauna and flora listed in the Annexes, by *inter alia*, adopting the national measures provided for under article 3 A above.

3. The Contracting Parties shall prohibit the destruction of and damage to the habitat of species listed in the Annexes and shall formulate and implement action plans for their conservation or recovery. They shall continue to cooperate in implementing the relevant action plans already adopted.

4. The Contracting Parties, in cooperation with competent regional and international organizations, shall take all appropriate measures to ensure the conservation of the species listed in the Annexes while at the same time authorizing and regulating the exploitation of these species so as to ensure and maintain their favourable state of conservation.

5. When the range area of a threatened or endangered species extends to both sides of a national frontier or of the limit that separates the territories or the areas subject to the sovereignty or the national jurisdiction of two Parties to this Protocol, these Parties shall cooperate with a view to ensuring the protection and conservation and, if necessary, the recovery of such species.

6. Provided that if no other satisfactory solutions are available and that the exemption does not harm the survival of the population or of any other species, a Contracting Party may grant exemption to the prohibitions prescribed for the protection of the species listed in the Annexes to this Protocol for scientific, educational or management purposes necessary to ensure the survival of the species or to prevent significant damage. Such exemptions shall be notified to the other Contracting Parties.

Article 7 (See Article 3 B above).

PART III: PROTECTED AREAS

ARTICLE 8

ESTABLISHMENT OF PROTECTED AREAS

1. The Contracting Parties shall, where necessary, establish protected areas in areas under their jurisdiction with a view to safeguarding the natural resources of the Western Indian Ocean region and shall take all appropriate measures to protect those areas.

2. Such areas shall be established, *inter alia*, in order to safeguard:

- (a) The ecological and biological processes essential to the functioning of the Western Indian Ocean region;
- (b) Representative samples of all types of ecosystems of the Western Indian Ocean region;
- (c) Populations of the greatest possible number of species of fauna and flora depending on these ecosystems;
- (d) Areas having particular importance by reason of their scientific, aesthetic, cultural or educational purposes.
- (e) livelihoods of local populations and communities particularly in improved fisheries, tourism, aesthetics and the like.

a.e.

3. In establishing protected areas, the Contracting Parties shall take into account, *inter alia*, their importance as:

- (a) Natural habitats, and in particular as critical habitats, for species of fauna and flora, especially those which are rare, threatened or endemic;
- (b) Migration routes or as wintering, staging, feeding or moulting sites for migratory species;
- (c) Areas necessary for the maintenance of stocks of economically important marine species;
- (d) Reserves of genetic resources;
- (e) Rare or fragile ecosystems;
- (f) Areas of interest for scientific research and monitoring.

Article 9 – (Moved to Part IV below).

Article 10

PROTECTION MEASURES

The Contracting Parties, taking into account the characteristics of each protected area, shall take, in conformity with international law, the measures required to achieve the objectives of protecting the area, which may include:

- (a) The organization of a planning and management system;
- (b) The prohibition of the dumping or discharge of wastes or other matter which may impair the protected areas directly or indirectly;
- (c) The regulation of pleasure craft activities;
- (d) The regulation of fishing and hunting and of the capture of animals and harvesting of plants;
- (e) The prohibition of the destruction of plant life or animals;
- (f) The regulation of any act likely to harm or disturb the ~~fauna and flora~~biological species, including the introduction of non-indigenous animal or plant species;
- (g) The regulation of any activity involving the exploration or exploitation of the seabed or its subsoil or a modification of the sea – bed profile;
- (h) The regulation of any activity involving a modification of the profile of the soil or the exploitation of the subsoil of the coastal area;
- (i) The regulation of any archaeological object activity and of the removal of any object which may be considered as an archaeological object;
- (j) The regulation of trade in and import and export of animals, parts of animals, plants, parts of plants and archaeological objects which originate in protected areas and are subject to measures of protection;
- (k) Any other measure aimed at safeguarding ecological and biological processes in protected areas.

ARTICLE 10 A:

PLANNING AND MANAGEMENT FOR PROTECTED AREAS.

1. The Contracting Parties shall, in accordance with the rules of international law, adopt planning, management, supervision and monitoring measures for the specially protected areas.

2. Such measures should include for each specially protected areas:

(a) the development adoption and implementation of a management plan that specifies the legal and institutional framework and the management and protection measures applicable;

(b) the continuous monitoring of ecological processes, habitats, population dynamics, landscapes, as well as the impact of human activities;

(c) the active involvement of local communities and populations, as appropriate, in the management of specially protected areas, including assistance to local inhabitants who might be effected by the establishment of such areas;

(d) the adoption of mechanisms for financing the promotion and management of specially protected areas , as well as the development of activities which ensure that management is compatible with the objectives of such areas;

(e) the regulation of activities compatible with the objectives for which the specially protected area was established and the terms of the related permits;

(f) the training of managers and qualified technical personnel, as well as the development of an appropriate infrastructure.

3. The Contracting Parties shall ensure that national contingency plans incorporate measures for responding to incidents that could cause damage or constitute a threat to the specially protected areas.

4. Whenever specially protected areas covering both land and marine areas have been established, the Parties shall endeavour to ensure the coordination of the administration and management of the specially protected area as a whole.

ARTICLE 10 B:

ESTABLISHMENT OF LIST OF PROTECTED AREAS OF WESTERN INDIAN OCEAN IMPORTANCE.

1. In order to promote cooperation in the management and conservation of natural areas, as well as in the protection of threatened species and their habitats, the Contracting Parties shall draw up a “ List of Protected Areas of Western Indian Ocean Importance”, hereinafter referred to as the PAWIOI List”.

2. The PAWIOI List may include sites which:

- (a) are of importance for conserving the components of biological diversity in the Western Indian Ocean region;
- (b) are of special interest at the scientific , aesthetic, cultural or educational levels; and
- (c) contain ecosystems specific to the Western Indian Ocean region or the habitats of endangered species.

3. The Parties shall:

- (a) recognize the particular importance of these areas for the Western Indian Ocean region;
- (b) comply with the measures applicable to the PAWIOI and not to authorize nor undertake any activities that might be contrary to the objectives for which the PAWIOIs were established.

ARTICLE 10 C

PROCEDURE FOR THE ESTABLISHMENT AND LISTING OF PAWIOIs

1. PAWIOIs may be established following the procedure provided for in paragraph 2 to 4 of this Article, in (a) the marine and coastal zones subject to the sovereignty or jurisdiction of the Contracting Parties; (b) zones partly or wholly on the high seas.
2. Proposals for inclusion in the List may be submitted:
 - (a) by the Contracting Party concerned, if the area is situated in a zone already delimited, over which it exercises sovereignty or jurisdiction;
 - (b) by two or more neighbouring Contracting Parties concerned if the area is situated, partly or wholly, on the high seas;
 - (c) by the neighbouring Contracting Parties concerned in areas where the limits of national sovereignty or jurisdiction have not yet been defined.
3. A Contracting Party or Parties making proposals for inclusion in the PAWIOIs List shall provide the Organization with an introductory report containing information on the area's geographical location, its physical and ecological characteristics, its legal status, its management plans and means for their implementation, as well as a statement justifying its Western Indian Ocean Importance.
4. Where a proposal is formulated under sub paragraphs 2 (b) and 2 (c) of this Article , the neighbouring Contracting Parties concerned shall consult each other with a view to ensuring the consistency of the proposed protection and management measures, as well as the means for their implementation;

5. Proposals made under paragraph 2 of this Article shall indicate the protection and management measures applicable to the area as well as the means of their implementation.

6. The procedure for inclusion of the proposed area in the List is as follows:

(a) for each area ,the proposal shall be submitted to the National Focal Points , which shall examine its conformity with the common guidelines and criteria adopted by the Contracting Parties in this regard;

(b) if a proposal made in accordance with sub paragraph 2 (a) of this Article is consistent with the guidelines and common criteria, after assessment, the Organization shall inform the meeting of the Contracting Parties, which shall decide to include the area in the PAWIOI List.

(c) if a proposal made in accordance with sub paragraph 2 (b) and 2 (c) of this Article is consistent with the guidelines and common criteria, the Organization shall inform the meeting of the Contracting Parties . The decision to include the area in the PAWIOI List shall be taken by consensus by the Contracting Parties, which shall also approve the management measures applicable to the area.

(d) The Contracting Party or Parties which proposed the inclusion of the area in the List shall implement the protection and conservation measures specified in their proposals in accordance with paragraph 3 of this Article.

(e) The Organization shall inform the competent regional and international organizations of the List and of the measures taken in the PAWIOIs.

ARTICLE 10 D

CHANGES IN THE STATUS OF PAWIOIs

1. Changes in the delimitation or legal status of a PAWIOI or the suppression of all or part of such an area shall not be decided upon unless there are important reasons for doing so, taking into account the need to safeguard the environment and comply with the obligations laid down in this Protocol and a procedure similar to that followed for the creation of the PAWIOI and its inclusion in the List shall be observed.

2. The status of the PAWIOI should be reviewed periodically and other desired changes or modifications to their status be agreed upon by the Contracting Parties.

Article 11(Incorporating current Article 13 and Article 20)

BUFFER AREAS AND FRONTIER PROTECTED AREAS.

1. The Contracting Parties may strengthen the protection of a protected area by establishing, within areas under their jurisdiction, one or more buffer areas in which activities are less severely restricted while remaining compatible with the purposes of the protected area.

2. In the buffer areas, Contracting Parties shall promote environmentally sound and sustainable development with a view to furthering protection of these areas.

3. If a Contracting Party intends to establish a protected area or a buffer zone contiguous to the frontier or to the limits of the zone of national jurisdiction of another Party, the two Parties shall consult each other with a view to reaching agreement on the measures to be taken and shall, *inter alia*, examine the possibility of the establishment by the other Party of a corresponding contiguous protected area or buffer zone or the adoption by it of any other appropriate measures including co-operative management programmes.

4. If a Party intends to establish a protected area or a buffer zone contiguous to the frontier or to the limits of the zone of national jurisdiction of a non-state party to this Protocol, the Party shall endeavour to work together with the competent authorities of that State with a view to holding the consultations referred to in paragraph 2 above.

5. Whenever it becomes known to a Party that a non-Party State intends to establish a protected area or a buffer zone contiguous to the frontier or the limits of the zone of national jurisdiction to a Party to this Protocol, the latter shall endeavour to work together with that non- Party State with a view to holding the consultations referred to in paragraph 2 above.

6. If contiguous buffer zones and/or protected areas are established by one Party and by a non-State Party to this Protocol, the former should attempt, as far as possible to achieve conformity with the provisions of the Convention and its Protocols.

7. Changes in the delimitation or legal status of a protected area, or the suppression of all or part of such an area, shall not take place unless for significant reasons, taking into account the need to protect the environment and according to the rules and obligations provided in this Protocol.

PART IV. PROVISIONS COMMON TO PROTECTED AREAS AND SPECIES.

Article 9

COMMON GUIDELINES, STANDARDS OR CRITERIA

1. The Contracting Parties shall, at their first meeting, and in co-operation with the competent regional and international organizations, formulate and adopt guidelines, standards or criteria concerning the identification, selection, establishment and management of protected areas.

2. The Contracting Parties may strengthen the protection of a protected area by formulating guidelines, standards or criteria for the establishment within areas under their jurisdiction, one or more buffer areas in which activities are less severely restricted while remaining compatible with the purposes of the protected area.

3. The Contracting Parties shall adopt:

(a) Common criteria for the choice of protected marine and coastal areas that could be included in the PAWIOI List which shall be annexed to the Protocol; and

(b) Common criteria for the inclusion of additional species in the Annexes.

4. The criteria and guidelines to be made under this Article may be amended by the meeting of the Contracting Parties on the proposal of one or more Contracting Parties. Parties shall strive to achieve consensus on any proposed amendments.

Article 12

TRADITIONAL ACTIVITIES

1. The Contracting Parties shall, in promulgating protective measures, take into account the traditional subsistence and cultural activities of their local population in the areas to be protected. To the fullest extent possible, no exemption which is allowed for this reason shall be such as:

- (a) To endanger either the maintenance of ecosystems protected under the terms of the present Protocol or the biological processes contributing to the maintenance of those ecosystems;
- (b) To cause either the extinction of, or any substantial reduction in the number of individuals making up the species of animal or plant population within the protected ecosystems, or any ecologically connected species or populations, particularly migratory, endemic, rare, depleted, threatened or endangered species.

2. Contracting Parties which allow exemptions under paragraph 1 of this article with regard to protective measures shall inform the Organization accordingly.

Article 13 (See Article 11 above, merging also with Article 20)

Article 14

PUBLICITY AND NOTIFICATION

The Contracting Parties shall give appropriate publicity to the establishment of protected areas, in particular to their boundaries and the regulations applying thereto. Such information shall be transmitted to the Organization which shall compile and maintain a current directory of protected areas in the Eastern African region. The Contracting Parties shall provide the Organization with all information necessary for that purpose.

Article 15

PUBLIC INFORMATION AND EDUCATION.

1. The Contracting Parties shall endeavour to inform the public as widely as possible of the significance and interest of protected areas and the protection of biological biodiversity and the scientific knowledge, which may be gained from them. Such information should have an appropriate place in education programmes concerning the environment, archaeology and history. The Contracting Parties should also endeavour to promote the participation of their public and their nature conservation organizations in the protection of the areas and biological species concerned.

2. Each Contracting Party shall co-operate as appropriate, with other states and international organizations in developing educational and public awareness programmes with respect to conservation and sustainable use of biological diversity.

Article 16. (Incorporating current Article 19).

REGIONAL CO-OPERATION AND MUTUAL ASSISTANCE

1. The Contracting Parties shall directly or with the assistance of competent international organizations, establish a regional programme to co-ordinate the selection, establishment and management of protected areas and the protection of biological species with a view to creating a representative network of protected areas in the Western Indian Ocean region. There shall be regular exchanges of information concerning the characteristics of the protected areas and biological diversity, the experience acquired and the problems encountered.

2. Each Contracting Party shall, at the earliest opportunity, communicate any situation that might endanger the ecosystems of protected areas or the survival of protected biological species to the other Contracting Parties, other states which might be affected, and to the Organization.

3. The Contracting Parties shall endeavour directly or through the organization or with the assistance of competent international organizations to engage in programmes of mutual assistance, including public environmental education, the training of scientific, technical and management personnel, scientific research, the acquisition, utilization, design and development of appropriate equipment and transfer of appropriate technology.

4. The Contracting Parties shall, in matters of mutual assistance, give priority to the PAWIOI and the species appearing in the Annexes to this Protocol.

5. **(Current Article 19)** The Contracting Parties shall co-operative, directly or with the assistance of competent regional or international organizations, in the provision to other Contracting Parties of technical, technological and other assistance in fields related to the selection, establishment and management of protected areas and the protection of biological diversity. Such assistance should relate, in particular, to the training of scientific, technical and managerial personnel, scientific research and technology exchange.

Article 17

SCIENTIFIC, TECHNICAL AND MANAGEMENT RESEARCH

1. The Contracting Parties shall encourage and develop scientific and technical research on their protected areas and on the ecosystems, ~~wild fauna and flora biological~~ biological diversity, and the archaeological heritage of the Western Indian Ocean region.

2. The Contracting Parties shall exchange, directly or through the Organization, scientific and technical information concerning current or planned research and their results. They shall, to the fullest extent possible, co-ordinate their research, and define jointly or standardize the scientific methods to be applied in the selection, management and monitoring of protected areas.

3. The Contracting Parties shall encourage and develop research into the sustainable use of protected areas and the management of biological diversity, and in this regard develop mechanisms for the evaluation and assessment of the effectiveness of measures taken to implement management and recovery plans.

4. In technical, scientific and management research, the Contracting Parties shall give priority to the PAWIOs and biological species appearing in the Annexes to this Protocol.

Article 18

EXCHANGE OF INFORMATION

1. In applying the principles of co-operation set forth in articles 16 and 17, the Contracting Parties shall forward to the Organization:

(a) Comparable information for monitoring the biological development of the Western Indian Ocean region;

(b) Inventories, publications and information of a scientific, administrative and legal nature, in particular;

(i) On the measures taken by the Contracting Parties in pursuance of this Protocol for the protection of the protected areas and biological diversity;

(+)(ii) On the biological diversity present in the protected areas listed in the Annexes to this Protocol;

(ii)(iii) On any threats to protected areas or biological diversity especially those threats which may come from sources outside their control;

(ii)(iv) On any changes in the delimitation or legal status of a protected area or the suppression of all or part of such an area.

2. The Contracting Parties shall designate persons responsible for protected areas. Those persons shall meet at least once every two years to discuss matters of joint interest and especially to propose to the Contracting Parties recommendations concerning the scientific, administrative and legal measures to be adopted to improve the application of the provisions of this Protocol.

Article 19 (See Article 16 para 5, merging)

Article 20 (See Article 11 above, merging)

~~Article 20 A~~ Article 20 A:

ENVIRONMENTAL IMPACT ASSESSMENT/ENVIRONMENTAL ASSESSMENT

In the planning process leading to decisions on industrial and other projects and activities that could significantly affect protected areas and biological species and their habitats, the Contracting Parties shall evaluate and take into consideration the possible direct or indirect, immediate or long-term, environmental impact, including the cumulative impact of the projects and activities being contemplated.

PART V: INSTITUTIONS & FINAL PROVISIONS

Article 21

MEETINGS OF THE PARTIES

1. Ordinary meetings of the Contracting Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to article 17 of the Convention. The Contracting Parties to this Protocol may also hold extraordinary meetings provided for in article 17 of the Convention.

2. It shall be the function of the meetings of the Contracting Parties to this Protocol, in particular:

- (a) To keep under review the implementation of this Protocol;
- (b) To consider the efficacy of the measures adopted and to examine the need for other measures, in particular in the form of annexes in conformity with the provisions of Article 20 of the Convention;

- (c) To adopt, review and amend as required any annex to this Protocol;
- (d) To monitor the establishment and development of the network of protected areas referred to in Article 16, to adopt guidelines to facilitate the establishment and development of that system, including the PAWIOI, and to increase co-operation among the Contracting Parties;
- (e) To consider the recommendations made by the meetings of the persons responsible for the protected areas, including national focal points, as provided by Article 18, paragraph 2;
- (f) To consider, as appropriate, information transmitted by the Contracting Parties to this Protocol to the Organization under Article 23 of the Convention.

ARTICLE 21 A:

NATIONAL FOCAL POINTS AND CO-ORDINATION

1. Each Contracting Party shall designate a National Focal Point to serve as liaison with the Organization on the technical and scientific aspects of the implementation of this Protocol. The National Focal Points shall meet periodically to carry out the functions deriving from the Protocol.

2. The Organization shall be responsible for coordinating the implementation of this Protocol. In this regard the Organization shall be responsible for the following functions, among others: -

- (a) Assisting the Contracting Parties, in cooperation with competent regional and international, inter-governmental and non-governmental organizations, to establish and manage protected areas in the area to which this Protocol applies; to conduct programmes of technical scientific and management research; to prepare management plans for protected areas and biological species; to develop cooperative programmes and prepare educational materials designed for various groups;
- (b) Convening and organizing the meetings of the National Focal Points and providing them with secretariat services;
- (c) Formulating recommendations on guidelines and common criteria under [Article 9] of the Protocol;
- (d) Creating and updating databases of specially protected areas, biological species and other matters relevant to this Protocol;
- (e) Preparing reports and technical studies that may be required for the implementation of this Protocol;

- (f) Elaborating and implementing the training programmes under Article 16 of this Protocol;
- (g) Cooperating with regional and international inter- governmental and non-governmental organizations concerned with the protection of areas and biological species, provided that the specificity of each organization and the need to avoid the duplication of activities are respected;
- (h) Carrying out the functions assigned to it in the action plans adopted under the framework of this Protocol;
- (i) Carrying out any other functions assigned to it by the Contracting Parties or which is incidental to the carrying out of the foregoing functions.

ARTICLE 22

RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

1. The provisions of the Convention relating to its Protocols shall apply with respect to this Protocol.
2. The rules of procedure and the financial rules adopted pursuant to article 21 of the Convention shall apply to this Protocol, unless the Contracting Parties to this Protocol agree otherwise.

ARTICLE 22A:

RELATIONSHIP BETWEEN THE PROTOCOL, DOMESTIC LEGISLATION AND THIRD PARTIES

1. The provisions of this Protocol shall not affect the right of the Contracting Parties to enact relevant stricter domestic measures for the better implementation of this Protocol.
2. The Contracting parties may invite non-States Parties to this Protocol, regional and international inter-governmental and non –governmental organizations to cooperate in the implementation of this Protocol.
3. The Contracting Parties shall adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity which is inconsistent with, contrary or prejudicial, to the principles or purposes of this Protocol.

ARTICLE 22 B.

SIGNATURE, RATIFICATION, ACCESSION, AMENDMENTS AND ENTRY INTO FORCE

1. The provisions of the Convention as to signature, ratification, accession, acceptance, approval, amendments review, depositary, and entry into force shall apply *mutatis mutandis* to this Protocol.

2. From the date of its entry into force this Protocol shall repeal and replace the Protocol Concerning Protected Areas and Wild Flora and Fauna in the Eastern Africa Region of 21st June 1985.

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

DONE at **Nairobi** this **twenty-first** day of **June one thousand nine hundred and eighty five** in a single copy in the English and French languages, the two texts being equally authentic.

AS AMENDED at _____ this _____ day of _____ in a single copy in the English and French languages, the two texts being equally authentic.

GENERAL NOTE ON ANNEXES TO THE PROTOCOL:

There should be a general review of the existing annexes to this Protocol in the following general terms.(No substantive proposals at this stage)

Annex I: Protected Species of Wild Flora

As suggested elsewhere this list of species is perhaps too brief and obsolete. Based on current scientific knowledge, more species could be added and others removed if the factors which led to their being listed in the first place have changed. It is also necessary to adopt the ecosystem based approaches as opposed to species specific approaches.

Annex II: Species of Wild Fauna requiring Special Protection.

This list, although much longer than the list in annex I should also be reviewed with a view of updating and enhancing it as necessary. It is also necessary to adopt the ecosystem based approaches as opposed to species specific approaches.

Annex III: Harvestable Species of Wild Fauna Requiring Protection.

This list is clearly short. It may be that based on current scientific knowledge, the list could be enhanced or even shortened further. It is also necessary to adopt the ecosystem based approaches as opposed to species specific approaches.

Annex IV: Protected Migratory Species

This is also a short list and should be reviewed like the other annexes. As for the other annexes, it is also necessary to adopt the ecosystem based approaches as opposed to species specific approaches.

Annex IV (A) Common Criteria for the choice of Protected Marine and Coastal Areas that could be included in the List of Protected Areas of Western Indian Ocean Importance (PAWIOI).

This is a proposed new annex based on the Mediterranean SPA Protocol model. It should contain, *inter- alia*:

- (i) General principles to guide the parties in the establishment of the List of PAWIOI.

- (ii) General features of the areas that could be included in the List, such as uniqueness, diversity, naturalness, cultural and natural representativeness;
- (iii) The legal status of the protected areas to guarantee them of long- term protection; and
- (iv) Protection, planning and management measures.

Annex IV (B) List of PAWIOI

This additional annex should provide a list of PAWIOI and other protected areas generally. The list should be part of general public information and subject to notification to all Contracting Parties as well as concerned non-Parties.

ANNEX 1

PROTECTED SPECIES OF WILD FLORA

Uvariiodendron gorgonis Verdc. (Kenya)
Grevia madagascariensis Baill. subsp. *Keniensis* Verdc (Kenya)
Saintpaulia rupicola B.L Burt (Kenya)
Beccariophoenix madagascariensis Jumelle & Perr. (Madagascar)
Crinum mauritianum Lodd. (Mauritius)
Tetraxis salicifolia (Thouars ex Tul.) Baker (Mauritius)
Zanthoxylum paniculatum Balf. f. (Mauritius , Rodrigues)
Hibiscus liliiflorus Cav. (Mauritius , Rodrigues)
Lodoicea maldivica (J.F. Gmelin) Pers. (Seychelles)
Toxocarpus schimperianus Hemsly (Seychelles)
Peponium sublitorale C. Jeffery & J.S Page (Seychelles, Aldabra)

ANNEX 11

SPECIES OF WILD FAUNA REQUIRING SPECIAL PROTECTION.

MAMMALS

Zanzibar red colobus (*Colobus badius kirkii*)
Zanzibar suni (*Neotragus mochatatus moschatus*)
Mauritius fruit bat (*Pteropus niger*)
Rodrigues fruit bat (*Pteropus rodricensis*)
Dugong (*Dugong dugon*)
Humpback whale (*Megaptera novaengelicae*)
Blue whale (*Balaenoptera musculus*).
Lemurs (*Lemur spp*)
Nosy Be sportive lemur (*Lepilemur dorsalis*)
Cosquerel's mouse lemur (*Microcebus coquereli*)
Aye aye (*Daubentonia Madagascariensis*)

BIRDS

Sokoke pipit (*Anthus sokokensis*)
Sokoke scops owl (*Otus irenae*)
Amani sunbird (*Anthreptes pallidigaster*)
East Coast akalat (*Sheppardia gunningi gunningi*)
Pemba scops owl (*Otus rutilus pembaensis*)
Wattled crane (*Bucconas carunculatus*)
Clarke's weaver (*Ploceus golandi*)
Spotted ground thrush (*Turdus fisheri fisheri*)
Aldabra white-throated rail (*Dryolimnas cuvieri aldabranus*)

Aldabra brush warbler (*Nesillas aladabranus*)
Aldabra sacred ibis(*Threskiornis aeethiopica*)
Aldabra kestrel(*Falco newtoni aladbranus*)
Mauritius kestrel(*Falco punctatus*)
Seychelles magpe robin (*Copsychus sechellarum*)
Seychelles fody (*Foudia flavicans*)
Rodriquez fody (*Foudiaflavicans*)
Seychelles brush warbler (*Acrocephalus sechellensis*)
Sychelles turtle dove (*Streptopelis picturata rostrata*)
Madagascar fish eagle(*Haliaeetus vociferoides*)
Reunion cuckoo-shrike(*Coracina newtoni*)
Madagascar heron(*Ardea humbloti*)
Grand Comoro scops owl (*Otus pauliani*)
Grand Comoro flycatcher(*Humblotia flabirostris*)
Mount Karthala white-eye(*Zosterops mouroniensis*)
Grand Comoro drongo (*Discrusis fuscipennis*)
Mayotte drongo (*Discrurus waldeni*)
Mascarane black petrel (*Pterodroma aterrima*)
Taita thrush (*Turdus helleri*)
Hinde's pied babbler(*Trudoides hindei*)
Papyrus yellow warbler (*Chloropeta gracilirostris*)
Tana river cistocola (*Cisocola restricta*)
Turner's eremomela (*Eremomela turneri*)
Chapin's flycatcher(*Muscicapa lendu*)
Madagascar little grebe (*Tachybaptus pelzelni*)
Alaotra grebe(*Techybaptus rufolavatus*)
Madagascar teal (*Anas bernierri*)
Madagascar pochard(*Aythya innotata*)
Madagascar serpent eagle (*Euriorchis astur*)
White-breasted mesite (*Mesoenas variegata*)
Brown mesite (*Mesoenas unicolor*)
Subdesert mesite (*Monia benschi*)
Slender-billed flufftail(*Sarothrura watersi*)
Sakala varail (*Amauornis olivieri*)
Madagascar plover (*Charadrius thoracicus*)
Snail-eating coua (*Coua delalandei*)
Madagascar red owl (*Tryto soumagnei*)
Short-legged ground-roller(*Brachypteracias leptosomus*)
Scaly ground-roller (*Brachypteracias-squamiger*)
Roufous-headed ground-roller(*Atelornis crossleyi*)
Long-tailed ground-roller (*Uratelornis chimaera*)
Yellow-bellied sunbird-asity (*Neodrepani hypoxantha*)
Appert's greenbul (*Phyllastrephus apperti*)
Dusky greenbul(*Phyllastrephus tenebrosus*)
Grey-crowned greenbul (*Phyllastrephus cinereiceps*)
Van Dam's vanga (*Xenopirostris damii*)
Pollen's vanga(*Xenopirostris poleni*)
Benson's rockthrush(*Monticola bensoi*)
Madagascar yellow brow(*Crossleyia xanthophrys*)
Red-tailed newtonia(*Newtonia fanovanae*)

Pink pigeon (*Nesoenas mayeri*)
 Mauritius parakeet (*Psittacula eques*)
 Mauritius cuckoo-shrike (*Coracina typica*)
 Mauritius black bulbu (*Hypsipetes bulbul olivaceus*)
 Rodrigues warbler (*Arcrocephalus rodericanus*)
 Mauritius olive –white -eye (*Zosterops chlororonthus*)
 Mauritius fody (*Foudia rubra*)
 Cape vulture (*Gyps coprotheres*)
 Swynnerton’s forest robin ((*Swynnertonia swynnertoni*)
 Dappled mountain robin(*Modulatrix orostruthsus*)
 Thyolo elethe(*Alethe choloensis*)
 Long –billed appalis (*Apalis moreaui*)
 Seychelles kestrel (*Falco araea*)
 Seychelles scops owl (*Otus insularis*)
 Seychelles swiftlet (*Collocalia elaphra*)
 Seychelles black paradise fly catcher (*Terpsiphone corvina*)
 Seychelles white-eye (*Zosterops modestus*)
 Somalia pigeon (*Columba oliviae*)
 Ash’s lark (*Mirafrasi*)
 Somali long- clawed lark (*Hateromirafrasi archeri*)
 Warsangali linnet (*Acanthis johannis*)
 Shoebill(*Blaeniceps rex*)
 Nduk eagle owl (*Bubo vosseleri*)
 Uluguru bush-shrike (*Malaconotus alius*)
 Usambara ground robin (*Dryocichloides montanus*)
 Karamoja apalis (*Alalis Karamojae*)
 Iringa ground robin (*Drycichloides lowei*)
 Karamoja apalis (*Apalis Karamojae*)
 Kungwe Apalis (*Alalis argentea*)
 Mrs . Moreau’s Warlber (*Bathmocercus winifredae*)
 Banded green sunbird (*Anthreptes rubritorques*)
 Rufous- winged sunbird(*Nectarinia rufipennis*)
 Tanzanian mountain weaver (*Ploceus nicolli*)

REPTILES

Olive redley turtle (*Lepidochelys olivacea*)
 Logger head turtle(*Caretta caretta*)
 Leatherback turtle(*Dermochelys coriacea*)
 Serpent island gecko (*Cyrtodacylus serpensin sula*)
 Round island day gecko(*Phelsuma guentheri*)
 Round island skink (*Leiopisma telfairii*)
 Skink (*Gongylomorphus bojerii*)
 Round island boa (*Bolyeria multocarinata*)
 Round island keel-scaled a (*Casarea dussumieri*)
 Aldabra giant tortoise (*Dipsochelys elephantina*)
 Madagascar tortoise(*Geochelone yniphora*)

MOLLUSCS

Triton's trumpet (*Charonia tritonia*)
Commercial trochus(*Trochus niloticus*)
Fluted giant clam (*Tridacna squamosa*)
Small giant clam(*Tridacna maxima*)
Horse's hoof clam(*Hippopus hippopus*)
Pearl oyster (*pinctada* spp.).

CRUSTACEANS

Coconut crab (*Birgus latro*)

CNIDARIANS

Black coral (*Antipathes dichotoma*)
Whip Coral(*Cirripathes* spp.)

INSECTS

Tenebrionid beetle (*Pulposipus herculeanus*)
Comoro graphium butterfly (*Graphium levassari*)

ANNEX III

Harvestable species of wild fauna requiring protection

Cane rates (*Thryonomys* spp)
African Elephant (*Loxodonta Africana*)
Rock hyrax –(*Procavia capensis*)
Yellow –spotted hyrax (*Heterophyrax brucei*)
Tree hyrax (*Dendrohyrax arboreus*)
Burchell's zebra (*Equus burchelli*)
Hippopotamus(*hippopotamus amphibious*)
Warthog (*Phacochoerus aethiopicus*)
Bush pig (*Potamochoerus porcus*)
Lesser kindu (*Tragelaphus imberbis*)
Common waterbuck(*Kobus ellipsiprymmus*)
Topi (*Damaliscus korrigum*)
Lichtenstein's hartebeest (*Alcepaphus lichtensterni*)
Wildebeest (*Connonchaetes taurinus*)
Impala (*Aepyceros melampus*)
Grimm's duiker (*Sylvicapra grimmia*)
Buffalo (*Syncerus caffer*)
Spiny lobsters (*Pamulirus* spp.)
Green turtles (*Chelonia mydas*)
Hawks bill turtle (*Eretmochelys imbrocata*)

ANNEX IV

Protected migratory species

MAMMALS

Dugong (*Dugong dugon*)
Humpback whale (*Megaptera novaengelicae*)
Blue whale (*Balaenoptera musculus*)

REPTILES

Green turtle (*Chelonia mydas*)
Hawksbill turtle (*Eretmochelys imbricata*)
Olive ridley turtle (*Lepidochelys olivacea*)
Loggerhead turtle (*Caretta caretta*)
Leatherback turtle (*Dermochelys coriacea*)

