



## **REGIONAL LEGAL AND TECHNICAL REVIEW TASK FORCE**

Report of the Inception Meeting prepared by the WIO-LaB  
Project Management Unit

Antananarivo, Madagascar, 24-25 May 2005

for bibliographic purposes this document may be cited as:  
WIO-LaB Report No. **UNEP/GEF/WIOLAB/LTF.1/11**

Cover photo: UNEP

UNEP/GEF/WIOLAB/LTF.1/11

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## **REPORT OF THE MEETING**

### **1. OPENING OF THE MEETING**

The Chair of the Bureau for Nairobi Convention, Mrs. Andrianarivo, who is also the Focal Point for Madagascar called the meeting to order at 9.26 am and welcomed the participants to the meeting.

### **2. WELCOME ADDRESS/INTRODUCTORY REMARKS**

#### **2.1 UNEP-GEF WIO-LaB Project Management Unit**

Mr. Peter Scheren, WIO-LaB Project Manager welcomed the participants to the inception meeting of the Regional Legal and Technical Review Task Force and thanked the Government of Madagascar and ANGAP for agreeing to host the meeting in Madagascar. He also thanked Mrs. Andrianarivo for assisting with the organization of the meeting.

Mr. Scheren briefed the participants on the purpose of the inception meeting noting that the Legal and Technical Review Task Force is part of work plan of the Nairobi Convention. He noted that the main aim is to review the legal and regulatory frameworks, amend the Nairobi Convention and produce a new Land-based Sources/Activities (LBS) protocol for the Convention. He noted that the Task Force would be charged with the responsibility of charting the way for the drafting of the LBS protocol and in ensuring its adoption by the Conference of Parties (COP) to the Nairobi Convention in 2007.

Mr. Scheren also briefed the meeting on the expected output of the Legal and Technical Review Task Force, which includes the review of the Nairobi Convention, drafting of a new LBS protocol; facilitation of the adoption of the LBS protocol in a COP and review of legal and regulatory frameworks.

Mr. Scheren also informed the meeting that the Legal and Technical Review Task Force would be meeting a couple of times throughout the duration of the project as detailed in the work plan presented as Annex 6 of this Report

Mr. Scheren also briefed the meeting on the key issues that the Legal and Technical Review Task would be expected to deal within during the inception meeting.

#### **2.2 UNEP Nairobi Convention Secretariat**

Mr. Dixon Waruinge, the Programme Officer responsible for the Nairobi Convention thanked Mrs. Andrianarivo and the Government of Madagascar for having agreed to host the inception meeting of the Regional Legal and Technical Review Task Force in Madagascar. He observed that one of the objectives of this 1<sup>st</sup> Legal and Technical Review Task Force meeting will be to revise and draft a new protocol on Land based sources/activities (LBS) for the Nairobi Convention.

Mr. Waruinge also briefed the meeting on the role of the Nairobi Convention. He informed the meeting that the Convention came into force in 1986 following its ratification by Western Indian Ocean basin countries in the 1<sup>st</sup> COP meeting held in Seychelles in 1986. In that COP meeting, countries recommended the establishment of the Legal Task Force for the Convention that will offer a platform for the implementation of global environmental

initiatives in the region, noting in particular the need for the Nairobi Convention to deal with other multilateral agreements focused on the coastal and marine environment such as the Convention on Biological Diversity (CBD) and International Maritime Organization (IMO) Conventions.

Mr. Waruinge noted that the process of the review of the Nairobi Convention should be seen in the context of strengthening the convention and emphasized the need in future to also address issues related to river basins, ecosystems management, etc which are not at present dealt with under the Nairobi Convention.

Mr. Waruinge informed the meeting that the review of the Convention under the auspices of the WIO-LaB Project would in fact be the 2<sup>nd</sup> review of the Nairobi Convention. The first review was held in Mauritius in December 1998 where it was proposed that there is a need for a LBS protocol in addition to other protocols.

Mr. Waruinge emphasized the need for the Legal and Technical Review Task Force to come up with a legal instrument that will serve the region for a long time noting that this will indeed be the major challenge of the Regional Legal and Technical Review Task Force.

### **2.3 UNEP-GPA**

The Chairman invited Ms. Isabel Martinez to brief the meeting on the role of UNEP-GPA. Ms. Isabel Martinez, Programme Officer, UNEP/ Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA), showed a short video on GPA- related issues worldwide. She also provided a brief overview on the objectives of the GPA and the link with the Nairobi Convention and the process toward the development of the LBS Protocol.

Ms. Martinez also highlighted the importance of linking freshwater and coastal management. She explained how the LBSA Protocol can benefit from the guidance and instruments outlined in the text of the GPA and how the LBSA Protocol further supports the implementation at the regional level.

### **2.4 Official opening (Host Country)**

Mrs. Andrianarivo presented apologies of the Minister of Environment and Forestry who could not officiate the opening ceremony as envisaged due to other official commitments. She however passed the message of the Minister that Madagascar will fully support the implementation of WIO-LaB Project activities.

Ms. Andrianarivo, on behalf of the Chair of the Bureau for the Nairobi Convention who is also the Minister of Environment and Forestry in Madagascar read the official speech of the Minister. The Minister welcomed the delegates of the participating countries to the inception meeting of the Legal Task Force noting that the meeting is an important step towards the development of the Nairobi Convention on the protection and management of the Coastal and Marine environment. The Minister also noted that the coastal and marine environment in the Western Indian Ocean Basin has been neglected over the years. He informed the meeting that the coastal and marine environment in the Western Indian Ocean is vulnerable noting in particular the effects of climate Change on the state of the coral reefs in the region.

The Minister also emphasized the importance of achieving targets set in the work plan of the Nairobi Convention that was adopted by the Conference of Parties (COP) to the Nairobi Convention in Madagascar in July 2004. The Minister expressed his appreciations to the donors, COP and Nairobi Convention for having continued to support implementation of

projects in the region. The Minister wished the delegates good deliberations in the inception meeting of the Regional Legal and Technical Review Task Force.

### **3. ORGANIZATION OF THE MEETING**

Ms Andrianarivo, the Chair of the Bureau of the Nairobi Convention introduced the above agenda item and brought to the attention of the delegates the requirement for the Task Force to elect the officials who will preside over the inception meeting of the Regional Legal and Technical Review Task Force. She welcomed members to present their proposals for the position of Chairperson and Rapporteur of the inception meeting.

For the Chairmanship, Mauritius nominated Madagascar and this proposal was seconded by Tanzania. However, Ms. Andrianarivo noted that Madagascar had chaired the WIO-LaB Project Steering Committee meeting that was held in Dar es Salaam in April 2005 and suggested another country to chair the Legal and Technical Review Task Force inception meeting.

The Regional Legal and Technical Review Task Force decided that Mrs. Andrianarivo be the ad hoc Chairman of the present inception meeting, pending the election of the substantive Chairman later in the day. Mauritius was elected as the ad hoc Rapporteur of the Legal and Technical Review Task Force inception meeting.

### **4. ADOPTION OF THE AGENDA**

The Chairperson, Ms. Andrianarivo requested the delegates of countries to introduce themselves after which there followed a table de tour in which all the participants introduced themselves stating the countries and institutions, which they represented. The list of participants is presented in this Report as Annex 2.

The Chairperson then introduced the above agenda item and requested members of the Task Force to suggest any necessary proposals for the amendments of the draft provisional agenda that was prepared by the UNEP-GEF WIO-LaB Project Management Unit. The delegates reviewed the provisional agenda and adopted it with no amendments. The approved agenda is presented in this Report as Annex 1.

### **5. CONTEXT OF THE LEGAL TASK FORCE**

#### **5.1 Outline and objective of the UNEP-GEF WIO-LaB Project**

The Chairperson introduced the above agenda item and invited the WIO-LaB Project Manager, Mr. Peter Scheren to present the outline and objectives of the UNEP –GEF WIO-LAB Project.

Mr. Scheren, in his presentation on the WIO-LaB Project, briefed the Task Force on what the project entails and how the Legal and Technical Review Task Force fits within the whole scope of the WIO-LaB Project. He briefed the participants on the overall goals of the project and expounded on the three broad goals of the project.

Mr. Scheren also presented the different work packages / modules of the UNEP-GEF WIO-LaB Project and elaborated the various activities that will be undertaken in each of the main work packages of the Project.

Mr. Scheren also presented the overall work plan of the project and noted the reasons for starting work on the review of LBS protocol early. He noted that this is mainly due to the fact

there will be a COP meeting in 2007 where the protocol will be expected to be adopted by the participating countries.

Mr. Scheren also reported that WIO-LaB Project Management Unit (PMU) that is located at Secretariat of the Nairobi Convention at UNEP in Nairobi, Kenya. He briefed the Task Force on the composition of the staff at the WIO-LaB PMU noting that the staff of the project includes himself as the Project Manager and Dr. Johnson Kitheka as the Project Scientist. He also informed the Task Force that the WIO-LaB Project Management Unit is assisted when necessary by Mr. James Leten, a Junior Programme Officer at the UNEP Regional Office for Africa. At the moment there is no secretary, but an intern by the name of Ms. Neeyati Patel is assisting the PMU on part-time basis.

## **5.2 Presentation on the Basics of Review of Nairobi Convention, its Protocol and development of LBS Protocol, and other legal outputs.**

The Chairperson, Ms Andrianarivo introduced the above agenda item and invited Mr. Akunga, the legal Consultant of the Nairobi Convention to make a presentation on the basics of the review of the Nairobi Convention and its protocol and the development of LBS protocol and other legal outputs.

Mr. Akunga elaborated on the rationale for review of existing legal framework noting that subsequent Conference of Parties (COP) since 1999 have called for the development of a new LBS protocol as an annex to the Nairobi Convention. He also presented the rationale for other relevant legal documents. Mr. Akunga furthermore presented the summary of achieved outputs and elaborated on the achievements made so far which includes the zero draft of the Nairobi Convention, zero draft of the Protocol to the Nairobi Convention on the Protected areas and wild fauna and flora.

Following the presentation by the Legal Consultant, the Chairperson opened the floor for discussions on the presentation on the basics of Review of Nairobi Convention, its Protocol and development of LBS Protocol, and other legal outputs.

Mr. Waruinge emphasized on the linkage between Nairobi Convention text and the proposed instruments. He noted that the instruments are usually seen as separate instruments but there is need to change this perception so that the Nairobi Convention is seen in totality. He noted that the ratification of the convention is important and due regard should be given to the ratification process. He noted that the convention should not be looked at in isolation of the other two protocols and emphasized the need to ensure there is a synergy between them and the new LBS Protocol.

## **6. CONSIDERATION OF THE DRAFT TERMS OF REFERENCE FOR THE WIO-LAB REGIONAL AND NATIONAL LEGAL AND TECHNICAL REVIEW TASK FORCES**

The Chairperson introduced the above agenda item. The members of the Task Force were informed of the relevant documents containing detailed Terms of Reference of the Regional and National Legal and Technical Review Task Forces.

The Chairperson then invited Mr. Akunga, the legal Consultant to present to the Legal and Technical Review Task Force the draft Terms of Reference of the Regional and National Legal and Technical Review Task Forces as prepared by the WIO-LaB Project Management Unit in collaboration with the Legal Consultant for the Nairobi Convention. Mr. Akunga then presented the draft Terms of Reference of the Regional and National Legal and Technical Review Task Forces.

Mr. Akunga furthermore presented the rationale and purpose of the Regional Legal and Technical Review Task Force as well as modalities of constituting its membership. The Task Force members were also briefed on the detailed terms of reference of the regional and National Legal Task Forces.

Following presentation by the Consultant, the Chairperson opened the floor for discussions.

Mr. Scheren, the WIO-LaB Project Manager emphasized on the need for the delegates to diligently review the tasks detailed in the Terms of Reference in order to ensure ownership by the Task Force that will be established under the auspices of the project.

Ms. Magabe, the delegate of Tanzania wondered whether the Chairperson and the Rapporteur of the meetings of the Regional Task Force will be chosen during the meetings of the Task Force. She noted that if each meeting of the Regional Legal and Technical Review Task Force will be choosing different Chairpersons, the Task Force may end up with several Chairpersons who will be required to represent it in the Steering Committee. She noted that this will only be possible if there is one Chairperson of the Regional Task Force.

Mr. Scheren noted that it is understood that the Chairperson of the Regional Legal and Technical Review Task Force will be represent the Task Force in the Project Steering Committee. However, in view of Ms. Magabe's concern, he suggested two options: Either the Regional Task Force will have select a Chairperson who will represent the Task Force in the Steering Committee throughout the work of the Task Force or the Task Force will select a separate representative who will not necessarily be Chairperson of the Regional Task Force. He suggested that the Task Force decides on the best option.

Ms Manna, delegate of Mauritius suggested that there should only be one Chairperson of the Regional Legal Task Force who ideally should be a legal expert and this Chairperson should work in close collaboration with the Focal Points.

Mr. Jacqueline, the delegate of the Seychelles agreed with the Mauritius suggestion and noted that the Regional Legal and Technical Review Task Force should be represented in the Steering Committee by the Chairperson and one other member of the Task Force.

Ms Nashreen, the representative of Mauritius requested for clarification as to whether the Focal Points would be members of the Regional Legal and Technical Review Task Force.

Mr. Scheren noted that Focal Points were invited to the 1<sup>st</sup> meeting of the Regional Legal and Technical Review Task Force on the basis of their role towards the Nairobi Convention. They will be expected to play an important role in the approval of the protocol.

Mr. Waruinge noted that although Focal Points know how the LBS Protocol should be framed, it is important that main issues regarding the development of the LBS Protocol are dealt with by technical and legal experts. He noted that the participation of technical experts will provide a framework on which the legal experts will be working. He suggested that the Focal Points be the Chairperson of the National Legal and Technical Review Task Force where legal and technical experts will be members. He noted that this structure will guarantee that the legal expert will be fully briefed by the technical experts on various environmental issues.

Mr. Youssouf, delegate of the Comoros noted that the Focal Points should be members of the Regional Legal Task Force noting that they are the ones who understands environmental issues that will guide the legal experts in their work.

Mr. Mboya, delegate of Kenya suggested that Chairperson of the Regional and Technical Review Task Force should just be chairing meetings of the Task Force, but in as far as the representation in the Steering Committee is concerned, the Task Force should elect its representative who may not necessarily be the Chairperson of the Regional Task Force. He suggested that the Regional Task Force make a decision as to who will represent it in the Project Steering Committee.

Mr. Mboya noted also that legal experts may be limited in certain areas of the convention and the technocrats who are more conversant on matters related to the convention should be involved since they will provide necessary inputs which legal experts will conceptualize in a legal text. He noted that the legal Task Force cannot work without the involvement of the Focal Points.

Mr. Waruinge agreed Mr. Mboya's suggestion, but noted that the membership in the Regional Task Force should be a country position and not an individual position. He emphasized the need to distinguish between individual and country responsibilities in as far as membership in the Task Force is concerned.

Mr. Akunga emphasized the need for the delegates to understand the way the WIO-LaB Project is structured noting that in the organizational structure of the project, the Focal Points are members of the Steering Committee. Considering various Task Forces that have been established under the auspices of the project, there is a possibility of micro-managing the project if the Focal Points will double as members of the Regional Task Force. He emphasized on the need for delegation of responsibilities by the Focal Points who should then expect to receive required response from the Task Force.

Mr. Akunga also noted that National Legal Task Force includes the national Focal Points as the Chair of the Task Force and suggested that the National Legal Task Force should designate a technical expert to represent it in the Regional Legal Task Force in order to ensure there are different levels of work. Mr. Akunga informed the meeting that in the current proposed composition of the Regional Task Force, the Focal Points were designated as ex-officio members and were ideally expected to set the pace for the present inception meeting of the Regional Task Force. In order to ease burden from the Focal Points, there is need for each country to have national representatives to the Regional Task Force.

Ms. Nashreen requested for clarification on the receiving of reports by the National Task Force and wondered whether the Task Force would be expected to come up with the report.

Mr. Scheren noted that the National Legal Task Force will have the responsibility of reviewing reports written by the national experts/consultants, overseen by the National Task Force. He noted that some of the outputs are activities to be implemented by experts at

national level. He noted that these outputs will be reviewed by the National Task Force at national level.

Ms. Magabe wanted clarification on who will be drafting the regional reports and suggested that terms of reference be modified to reflect the fact that the Regional Legal and Technical Review Task Force will receive the reports from WIO-LaB Project Office

Mr. Scheren responding to this question informed the Task Force noted that the WIO-LaB Project Management Unit will come up with a selection process/criteria for the selection of legal experts/consultants who will be charged with the responsibility of drafting reports, which will be discussed by the National Legal and Technical Review Task Force.

Ms. Nashreen requested for clarification on the term of reference that stated that the Regional Legal and Technical Review Task Force will ensure participation of ALL stakeholders and wondered whether the National Legal and Technical Review Task Force will be able to ensure this is achieved.

Mr. Akunga, responding to Ms. Nashreen's comment noted that the involvement of all stakeholders in the National Legal and Technical Review Task Force will only work well if national coordination mechanisms work well. He also noted that in order to achieve broader agreement at national level, there will be a need to bring onboard other stakeholders and noted that this will be important in the preparation of the Land based Sources and Activities (LBS) Protocol.

Mr. Scheren noted that the intention of that term of reference was to make sure that the National Legal and Technical Review Task Force is able to obtain the broad views of all stakeholders at national level. He noted that the term of reference is intended to state that it is the obligation of the National Legal and Technical Review Task Force to bring onboard various stakeholders. Mr. Scheren also noted that the WIO-LaB Project will support the stakeholder consultative process and Task Forces. He however noted that this support will be based on specific country needs.

Mr. Waruinge proposed another term of reference stating that the regional Task Force role emanates from the national legal Task Force. He also suggested that an additional term of reference that will refer to the ratification of the LBS protocol be included noting that after review and amendments of the protocol, countries will be required to ratify the protocol.

Ms. Nashreen noted that ratification of the LBS Protocol at regional level would not be a problem since it will have been done at national level. She noted that if national representatives who ensured its ratification at national level participate in the Regional Legal and Technical Review Task Force meetings, they will facilitate ratification of the protocol at regional level.

Mr. Jacqueline, delegate of Seychelles noted that ratification is a big responsibility for the Regional Legal and Technical Review Task Force and suggested that this responsibility of ensuring that the Protocol is ratified at Regional level should be shared with the Project Steering Committee.

Mr. Waruinge noted that ratification is an entirely national issue. He noted that once the Conference of Parties to the Nairobi Convention adopts the protocol in 2007, all countries will be expected to implement it. He suggested that in each of the participating countries, there should be somebody who will champion the process of ratification of the protocol at national level. He noted that this role of the champion could be undertaken by the national Focal Point.

Mrs. Magabe noted that the national legal experts attending Regional Legal and Technical Review Task Force are expected to have an understanding of national issues such as the state of laws in their countries. However, she noted that if a different person who is not a member of the National Legal and Technical Review Task Force will participate in the Regional Legal and Technical Review Task Force meeting, this may bring some difficulties.

Ms. Nashreen supported the idea of having independent legal expert or consultants being appointed to come up with a national report on gaps in national legislation, noting that the National Task Force responsibility will be to validate the report of the national legal consultant.

Mr. Scheren elaborated on this matter noting that his understanding of the term of reference is that members present in the inception meeting of the Regional Legal Task Force will also be members of the National Legal Task Force. He noted that a transparent system for selecting legal expert/consultants, according to the United Nations regulations would be followed.

Mr. Numidio, delegate of Mozambique observed that although the legal experts/consultants will be independently operating, it would be important to invite them to the National Legal and Technical Review Task Force meetings. He however, suggested that the consultants should not be full members of the National Legal Task Force since it will be expected to validate the work of the consultants at national level.

Ms. Fatouma, the Focal Point for the Comoros proposed that a standard procedure be followed by all countries in the establishment and constitution of National Legal and Technical Review Task Forces and in particular, in determining the participation of stakeholders. However, Task Force members noted that this will not be practical since each country has unique situations and hence each country should choose the appropriate stakeholders who will be invited to be members of National Legal and Technical Review Task Force.

Mr. Yousouf, delegate of the Comoros requested for clarification as to whether there is a limit to the number of members of the Regional Legal and Technical Review Task Force that each country can nominate. The meeting concluded that each country should send only two members, one of which should be a nominated legal expert, and the second a technical expert.

Mr. Gove, delegate of Mozambique noted that if the national Focal Point is a legal expert, it would be difficult for the National Legal and Technical Review Task Force to elect a non-legal expert to be the second representative to the Regional Legal and Technical Review Task Force. He suggested that the national Focal Point should be allowed to suggest the second representative to the Regional Legal and Technical Review Task Force.

Mr. Akunga noted the need to clearly define the background of technical persons who will be members of the National Legal and Technical Review Task Force. He suggested that the National Task Force be mandated with the responsibility of identifying the technical members who will accompany the legal expert to the Regional Legal and Technical Review Task Force.

Ms. Nashreen, delegate of Mauritius suggested that the election of representatives of the National Legal Task Force to the Regional Task Force should only be confined to the technical members and not the legal experts who are nominated by their Governments. She also noted that once countries have elected members of the National Task Force who includes the Focal Point, there should not be another election since this will create confusion.

Mr. Waruinge noted that at national level, the role of the appointed legal experts in the National Legal and Technical Review Task Force will need to be established. He noted that

the National Legal and Technical Review Task Force has the responsibility of validating the work of the consultant. He suggested that where a consultant is a member of the National Task Force, the consultant should step aside when the National Task Force is validating the work of the national legal consultant.

Mr. Numidio, delegate Mozambique noted that if one of the members of the National Legal and Technical Review Task Force is appointed as national legal consultant, he/she should not be excluded as a member of the National Legal and Technical Review Task Force. He noted that some members of the National Legal and Technical Review Task Force may have skills that qualify them to be consultants and it will be unfair to exclude them from the Task Force. He suggested that the consultant be a member of the National Legal and Technical Review Task Force but should not be involved in the validation process.

Mr. Mboya suggested that members of the National and Regional Legal and Technical Task Force should be excluded from undertaking consultancy work since they will be supposed to review the work of the national legal experts/consultants. He noted that the national legal expert has many responsibilities and may not get extra time to formulate the report at a required magnitude and standard. As a national expert, he may also not be able to devote time to prepare the report since he/she may be already burdened with many responsibilities.

The meeting concluded that unless there is no demonstrable conflict of interest, the National Legal and Technical Review Task Force should be given the responsibility of deciding whether to include or exclude the national legal experts/consultants from the National and Technical Review Task Force.

Mrs. Martinez noted that there is a need to address institutional mechanisms for the review of national legislation. She also suggested the need for the National Legal and Technical Review Task Force to also consider at the onset the various financial instruments that will help in the implementation of legal instruments.

Mrs. Martinez also underscored the need to think of reforms that can be initiated, including also the need to be realistic in output on ratification of the LBS Protocol noting that ratification is the responsibility of the national Parliaments and is therefore beyond what the National Task Force can do. She noted that National Legal and Technical Review Task Force will only be able to lobby the process of ratification and initiation of legislative reforms so that law can be implemented immediately after the ratification.

Following lengthy discussions on the draft Terms of Reference of the Task Force and expected outputs of the Regional and National Legal and Technical Review Task Forces, the meeting adopted them with amendments. The revised Terms of References are presented as Annex 2 of this Report.

Following deliberations on the mechanisms of establishing the National Legal and Technical Review Task Force, the Regional Legal and Technical Review Task Force decided that the responsibility for the establishment of the Task Force should squarely rest with the National Focal Point working in close collaboration with the national legal expert.

Following lengthy discussions on the question of representation of the National Legal and Technical Review Task Force in the Regional Legal and Technical Review Task Force and also representation of the Regional Task Force in the Steering Committee, the meeting decided that the National Legal and Technical Review Task Force be charged with the responsibility of determining who represents it in the Regional Legal and Technical Review meeting. It was noted that there is need to ensure at least there is a representation by members with both technical and legal background.

The meeting resolved that the national Focal Point will be the Chair of the National Task Forces, but on the question of representation in the Regional Legal Task Force, the National Task Force will elect legal experts to represent it in the Regional Task Force.

Also, following lengthy deliberations on the question of participation of stakeholders in the National Legal and Technical Review Task Force, members appreciated the need to ensure full and broad participation of main stakeholders at national level and noted that for this to be achieved; the National Legal and Technical Review Task will need to be fully functional. The meeting noted the participation of all stakeholders will ensure there is broad consensus and agreement at national level.

Following discussions on the constitution of membership of the National Legal and Technical Review Task Force, it was felt that the membership of the Task Force should consist of both the legal and scientific/technical experts since the legal experts will not be in position to work in isolation from the technical experts.

The meeting also recognized the importance of linking the Legal and Technical Review Task Forces to the other Task Forces that have been established under the auspices of the WIO-LaB Project such as the PADH and MWW Task Force since the outputs of these Task Forces will find relevancy in the work of the National Legal and Technical Review Task Force.

Following discussions on the participation of national legal experts/consultants in the National Legal and Technical Review Task Force, the Regional Task Force resolved that the national legal expert/consultant should be invited to participate in the meetings of the National Legal and Technical Review Task Force but should not participate in sessions where members of the Task Force will be validating the work of the consultant.

## **7. CONSIDERATION OF THE WIO-LaB PROJECT LEGAL AND TECHNICAL REVIEW TASK FORCE WORK PLAN**

The Chairperson, Ms. Andrianarivo introduced the above agenda item and invited the WIO-LaB Project Manager, Mr. Scheren to present the work plan of the Regional legal and Technical Review Task Force as prepared by the WIO-LaB Project Management Unit.

Mr. Scheren briefed the meeting on the relevant activities to be implemented during the duration of the WIO-LaB Project (2004-2008) and noted that the time for implementation of activities of the legal Task Force is rather short.

Following the presentation by the WIO-LaB Project Manager, Mr. Scheren, the Chairperson opened the floor for discussions.

Mr. Waruinge suggested that there should a political process in addition to the technical process that will be followed in the review of the LBS protocol. He recommended for a full fledged review of the protocol in one of the review meetings indicated in the Work Plan. He suggested that the national Focal Points should review the protocol in one of the review meetings so that they could have an output as the Government representatives.

Mr. Waruinge also suggested that before the 3<sup>rd</sup> and final draft of the LBS Protocol is produced, the second draft should be presented to the Bureau of the Nairobi Convention which will review it and decide whether to present the draft to the 5<sup>th</sup> Conference of Parties (COP) to the Nairobi Convention or to the Conference of Plenipotentiaries which will approve/adapt the protocol before it is presented to the 5<sup>th</sup> Conference of Parties to the Nairobi Convention in 2007.

The Regional Legal and Technical Review Task Force noted the overall work plan of the WIO-LaB Project and adopted the Work Plan of the Regional Legal and Technical Review Task Force with its amendments. The approved work plan is presented as Annex 6 of this Report.

## **8. DISCUSSION ON THE OUTLINE OF THE LAND-BASED SOURCES/ACTIVITIES (LBS) PROTOCOL AND LINKAGE TO NAIROBI CONVENTION**

The Chairperson, Ms. Andrianarivo introduced the above agenda item and invited Mr. Akunga, the legal Consultant for the Nairobi Convention to present the draft outline of the proposed LBS Protocol. Mr. Akunga informed the members of the relevant documents prepared for the meeting as detailed in the Annex 7 of this Report.

Mr. Akunga took the Regional Legal and Technical Review Task Force through the draft outline prepared and noted that the draft outline of the LBS Protocol was circulated to the national legal experts in December 2004 for their comments and input. He elaborated on various suggested Articles of the LBS protocol. He suggested that Task Force should review the outline and suggest necessary amendments and/or inclusion of issues that may have been left out.

Mr. Akunga also briefed the Task Force on the draft revised Nairobi Convention for the protection, management and development of the marine and coastal environment in the Eastern Africa region.

Following presentation by Mr. Akunga, the Chairperson opened the floor for discussions and requested for clarification as to whether there is a difference between the draft revised Nairobi Convention and the one presented by the consultant to the fourth Conference of Parties (COP-4) to the Nairobi Convention. Mr. Akunga clarified that the one presented in the present meeting was the updated version of the COP version.

Mr. Waruinge noted that the issue of compliance and enforcement should be highlighted in the revised Nairobi convention and LBS protocol. He suggested that a completely new Article on compliance and enforcement be included in the revised Nairobi Convention. He also suggested that a complete outline of the process that the development of the annexes will follow be included.

Mr. Mboya suggested the need to give latitude for the future improvement of annexes to the proposed LBS Protocol of the revised Nairobi Convention noting that there is need to include other possible substantive annexes to the protocols that will come in future. He also recognized the need for further consultation on the inclusiveness of the proposed annexes of the proposed LBS protocol.

Mr. Scheren observed that the LBS protocol is focused on pollution issues and does not deal with other sectors that are considered important by the GPA such as harbor and ports, aquaculture, tourism, mining, etc.

Mr. Waruinge responding to Mr. Scheren's intervention noted the above sectors have been partly captured in the annexes of the other two protocols of the Nairobi Convention. He emphasized that the Nairobi Convention does not deal with management of watersheds and biodiversity in totality and issues related to integrated river basin and coastal zone management will need to be addressed in future. Mr. Waruinge also noted that there are two other protocols of the Nairobi Convention that need to be reviewed or amended. He noted that issues related to physical alteration and destruction of habitats can be addressed in the

protocol on the wild fauna and flora. He suggested that the Legal Task Force should review the entire convention and establish areas where there is need for improvement. Mr. Waruinge also suggested that specific issues in the annexes of the LBS Protocol should be supported with scientific papers.

Mrs. Martinez noted that the draft outline of the LBS Protocol prepared by the consultant is comprehensive and similar to other LBS protocols developed elsewhere. She however suggested that sources of technical information for the LBS protocol could be the updated Strategic Action Programme (SAP) and Transboundary Diagnostic Analysis (TDA) which will be some of the outputs of the WIO-LaB Project. She also noted there is a need to establish priorities in terms of land based activities since the activities and sources could be diverse.

Ms. Martinez also noted that the objectives of the LBS protocol need to be stated and detailed additions need to be provided. She suggested that SAP could be considered as an instrument for the implementation of the protocol at national level. Ms. Martinez also suggested that in order for governments to implement the convention and its protocol, there is need to clearly establish both internal and external sources of funds. She noted that there is a range of opportunities in this report that should be identified in the protocol.

Ms. Nashreen wondered whether the protocol is limited to wastewater management noting that all countries need to identify sources of pollution that are relevant to them. She noted that the problem of textile effluents is important in Mauritius but may not be relevant other countries in the region. She also noted that although the problem of sand mining is no longer an issue in Mauritius, it may be relevant to other countries.

Ms. Martinez suggested that countries should come up with a list of common activities that they need to deal with collectively at regional and national level. She however noted that at national level, there could be other activities and standards that may be higher than those adopted at regional level.

Mr. Scheren noted that activities aimed at establishing the relevant pollution sources and activities in participating countries are already factored in the Assessment and Monitoring work modules of the project. He noted that status reports on pollution will look at sediment and water quality and will provide information on the land-based activities and sources of pollution in all countries participating in the project.

Mr. Waruinge emphasized that the LBS Protocol will be developed specifically for participating countries and urged the Task Force to suggest a process through which by 2007, some output will be achieved and adopted by the fifth Conference of Parties to the Nairobi Convention in 2007. He noted that the process and the products should be truly country driven and the WIO-LaB Project secretariat should only facilitate this process.

Following lengthy deliberations on the draft outline and the various proposed Articles in the draft LBS Protocol, the Regional Legal and Technical Review Task Force adopted the draft outline of the Land based sources and activities protocol to the Nairobi Convention with amendments. The draft outline is presented as Annex 7 of this Report.

## **9. NATIONAL PRACTICALITIES AND PECULIARITIES ON THE DEVELOPMENT OF LBS PROTOCOL AND OTHER OUTPUTS**

The Chairperson, Ms. Andrianarivo introduced the above agenda item and invited Mr. Akunga, the legal Consultant of the Nairobi Convention to provide some briefs on the national practicalities and peculiarities on the development of the LBS Protocol and other

outputs. Mr. Akunga noted that the main aim of the session was to explore how different countries expect to conduct the national consultations in the preparation of the LBS Protocol and also to familiarize themselves with approval procedures in participating countries.

Mr. Akunga furthermore noted that the session will give the representatives of countries participating in the WIO-LaB Project an opportunity to discuss any assumptions, risks and opportunities that may need to be taken into consideration or explored in the process of developing the LBS Protocol.

Following the introduction of the session by the Regional Legal Consultant for the Nairobi Convention, the Chairperson gave representatives of participating countries an opportunity to present their country situations.

#### **Comoros:**

Ms Fatouma, the national Focal Point for the Comoros briefed the meeting on the Comoros situation. She started by noting that his country will proceed with full implementation of the activities defined in the WIO-LaB Project work plan. She noted that for the recruitment of a national legal expert who will draft the national report on gaps in legislation in the Comoros, they will advertise for the post and encourage experts to present their applications before the same is send to the WIO-LaB Project Management Unit for the final selection. Ms. Fatouma also reported that as in other projects, a stakeholder consultation process will be applied in the case of the WIO-LaB Project.

Mr. Nadjib, the delegate of the Comoros informed the meeting about the ratification process in the Comoros, noting that in certain cases ratification may require endorsement by the President of the Comoros. He noted that important protocols dealing with issues such as trade have to be presented to the Parliament. However, where Convention or protocol has no financial implications, the responsible Minister can sign the protocol, but ratification will still have to done the President

Mr. Nadjib reported that Ministry of Environment in the Comoros presents the Convention to the Cabinet before it is presented to the Ministry of Foreign affairs for the preparation of the ratification instruments. Once it is signed by the Minister of Foreign Affairs, it will be presented to the President who will sign if it has no financial implication. He also reported that before a treaty or convention is proposed to the Cabinet, there is usually consultation between relevant Ministries.

#### **Kenya**

Mr. Mboya, delegate of Kenya briefed the meeting on the process on ratification of conventions in Kenya noting that the matter essentially lies with the Cabinet. The Champion is the parent Ministry, which drafts a cabinet paper on the protocol and present it to the Cabinet chaired by the President. The lead Ministry in Kenya in case of the environmental conventions should be the Ministry of Environment and Natural Resources, which will prepare a Cabinet paper to persuade the Cabinet. The office of the Attorney General will also advice on treaties and convention to be adopted. He noted that the Ministry of Foreign Affairs prepares the ratifications instruments and in certain instance, the Ministry of Foreign Affairs can delegate the authority of preparation of the ratification instruments to another Ministry.

Mr. Mboya noted that Kenya operates under a Common law regime and therefore there has to be a legal instrument to give force of law to the ratification. Once the ratification instruments have been finalized, all protocols are provided as schedule of bills to be presented to the Parliament for enactment. He noted that where there are certain reservations, the Articles of the protocol or convention may in subsequent bills be omitted for ratification.

Mr. Mboya also reported that Kenya is in the point of writing a new Constitution and a process leading to the ratification of international instruments is envisaged. According to the proposed new Constitution, public participation in ratification process must be ensured. The general public must have an input on the ratifications process even before the instrument is presented to the Parliament for enactment.

On the question of stakeholders consultation process in Kenya and in particular at what stage it takes place. Mr. Mboya responded and noted that at the moment there is no consultation process, but stakeholder consultation is envisaged in the proposed new Constitution which is yet to be adopted. He noted that the establishment of the National Legal Task Force under the auspices of the WIO-LaB Project will ensure a measure of consultations at national level. He also noted that once the draft new constitution is adopted, it will be mandatory to have a consultative process where various stakeholders and the public will be involved in the ratifications process.

Mr. Akunga requested clarification on which stakeholders should be involved in the national consultation process in Kenya. Mr. Mboya responding to this question noted that already there is an indication of who should be members of the National Legal Task in Kenya. He noted that this will include legal experts, NGOs, national Focal Points, members of other Task Forces in Kenya, etc. He suggested that this issue be dealt with by the Ministry of Environment and Natural Resources which will champion the ratification process.

Mr. Mboya emphasized the need to consult widely on the membership of the National Legal and Technical Review Task Force and noted that the Ministry of Environment and Natural Resources, Ministry of Foreign affairs, National Environment Management Authority (NEMA) must of necessity be involve in the process. He also reported that the Government of Kenya appointed Task Force to review and look in the marine legislation, came up with comprehensive legislation touching on marine pollution and hence Kenya Maritime Authority (KMA) will need to be involved in the enforcement issues.

Mr. Mboya also emphasized that the National Legal Task Force should not be an exclusive club but should encourage wide stakeholder consultation. He noted that consultation process in Kenya would be quite wide and the national Focal Point will be involved to provide necessary directions.

### **Madagascar**

Ms Razanamiharisoa, the delegate of the Madagascar reported on the ratification procedure in the Madagascar. She reported that the convention has to be presented Cabinet for endorsement before it is submitted to the National Assembly for enactment. Before the President signs the convention, it has to be submitted to the supreme body of law for evaluation.

Ms. Razanamiharisoa reported that the Ministry of Foreign Affairs could sign an international Convention before ratification. The ratification instruments are signed by the Ministries of Foreign affairs, Environment and the President. The protocol is submitted to the National Assembly for debate following which deputies and the Senate meets to ratify the protocol in a plenary. The President signs the instruments of ratification and sends them to the depository of the Convention. The period between submissions of the protocol to the Cabinet and ratification can take 6 months.

Ms. Razanamiharisoa noted that there is usually a stakeholder consultation before a treaty is ratified. She however pointed out there is presently no Task Force that coordinates the consultation process. Ms. Andrianarivo gave the example of Categna protocol that was signed

in 2002 through the Ministry of Foreign Office where although there was no Task Force, all stakeholders were consulted before the Categna protocol was ratified.

### **Mauritius**

Ms. Manna, the delegate of Mauritius reported on the ratification procedure in Mauritius. She informed the Task Force that the Minister of Environment signs the protocol. The protocol is circulated to all Ministries and the Universities including the Integrated Coastal Zone Management Committee and the Attorney Generals Office in order to determine if the protocol is in conformity with the laws of Mauritius. The Attorney General can advise the Ministry to amend appropriate law and in certain instances, the protocol may be ratified and amendments be done later. She noted that the protocol has to be in conformity with the national Law for it to be ratified.

Ms. Manna informed the meeting that there is usually a wide consultation between all Ministries before a Cabinet paper on the protocol or convention is prepared. She noted that ratification of the protocol does not mean it is legally binding.

Ms. Manna also noted that after ratification, the Minister sends the file to the Attorney General who prepares a bill incorporating all obligations and in certain instances, it may only be necessary to amend the existing legislation instead of coming up with a new law.

Ms. Manna reported that consultation process involves the public, NGO's who provide their views at Task Force level. The Minister is obliged to take all recommendations of the stakeholders and incorporate them in the new legislation. For technical issues, the Minister can set up a technical committee to advise him on matters related to the ratification of the protocol. Following approval by the Minister, the protocol is sent to the Parliament where it is debated and enacted into law.

Mr. Akunga informed the meeting that the work plan of the Regional Legal Task Force has allocated three months to the national consultation process and requested for clarification as to whether this will be adequate to facilitate effective consultation in participating countries. He also requested for clarification as to whether national level consultation will be done through memos, workshop or conferences or Task Forces.

Ms Manna noted that the consultation process in the Mauritius can take up to 6 months, but the actual duration depends on whether there is a political will. She noted that allocation of the consultation process duration of between 3 to 6 months would be adequate in case of Mauritius.

### **Mozambique**

Mr. Numidio, the delegate of Mozambique briefed the Regional Legal Task Force on the ratification process in Mozambique. He reported that the process of ratification of international instruments is detailed in the new Constitution of Mozambique.

Mr. Numidio noted that the Ministry of Foreign affairs signs the treaty or protocol and there is a process of consultation where civil society, NGO's are involved in consultation process. He however noted that the consultation process in Mozambique is not mandatory. He noted that part of the reason for consultation is to determine the implication of ratifying the treaty or protocol. He observed that while various Ministries are involved in the consultation process, the Ministry of Foreign affairs coordinates the consultation process in Mozambique.

Mr. Numidio reported that the duration of the consultation processes vary depending on specific situation. He reported that the delay could be caused by the fact that the Parliament

in Mozambique sits in only two sessions of 45 days per year and in certain cases, the delay can be due to lack of lobbying to include the protocol in the agenda of the Parliament. He noted that following the approval by the Parliament, the protocol is sent to the Ministry of Foreign Affairs, which prepares ratification instruments. Following the approval by the Ministry of Foreign Affairs, the protocol or treaty is submitted to the depository, which will provide the date of receiving the document upon which an official gazette notice will be prepared so that the new law comes into force.

Mr. Numidio reported that the bilateral agreements are ratified by the Cabinet chaired by the President and the multilateral ones are ratified by the Parliament.

### **Seychelles**

Mr. Jacqueline, the delegate of the Seychelles reported on the procedure for ratification/execution of the protocol or treaty in the Seychelles. He reported that the Ministry of Foreign Affairs receives and studies the treaty to determine the benefits, its compliance with national legislation and the possibilities of its implementation. There is a consultation process where views are sought from different agencies and ministries.

Mr. Jacqueline noted that if a treaty relates to a specific Ministry, the Ministry of Foreign Affairs will submit it to the relevant Ministry which will then submit it to the Cabinet as a memorandum. Mr. Jacqueline noted that the Cabinet reviews the treaty or protocol and informs the concerned Ministry of the decision reached. The Ministry concerned also sends copies of the same including the Cabinet decision to the Minister of Foreign Affairs who prepares a brief on the treaty to the leader of Government Business in the National Assembly. The Ministry of Foreign Affairs also prepares the instruments for signature, accession, acceptance or ratification.

Mr. Jacqueline informed the meeting that following approval by the National Assembly, the President proceeds to execute the Treaty by signing the instrument which is then sent to the Ministry of Foreign Affairs and before it is then forwarded to the Attorney General's Office where the seal of the Republic is fixed on the instrument. It is then submitted to the Ministry of Foreign Affairs which sends the ratification instruments to the depository of the treaty through the relevant Embassy, High Commission or Seychelles Embassies abroad.

Mr. Jacqueline noted that the process is not considered complete until the Ministry of Foreign Affairs receives a letter from the Depository of the Treaty of protocol acknowledging receipt of the instrument.

### **Tanzania**

Ms. Magabe reported on the ratification process in the United Republic of Tanzania noting that it is done by the executive arm of the Government of Tanzania. She elaborated on the five steps in the ratification process, namely (1) development of the protocol, (2) negotiation, (3) conclusion/signing, (4) ratification and (5) domestication.

Ms. Magabe reported that various stakeholders are involved in different stages of the ratification process and there is usually a wide stakeholder consultation for environmental issues. She noted that technical institution is very important in initiating the preliminary procedures and consultation with other agencies. Ms. Magabe also noted that the blessing of the Vice President Office, which is responsible for the environment, is important.

Ms. Magabe noted that the protocol must be tabled to all relevant Ministries and consultation process can be through workshops where the draft will be debated. The lead agency or Ministry in close collaboration with the Ministry of Foreign Affairs will then negotiate the protocol.

Ms. Magabe noted that once the protocol is signed, the lead institution will initiate the process of ratifying the instrument. This entails wide stakeholder consultation through inter-Ministerial technical Committee where all Permanent Secretaries are members. Once the inter-Ministerial Committee approves the protocol, it forwards it to the Cabinet (chaired by the President) for final approval before it is sent to the Parliament for enactment.

Ms. Magabe noted that the responsible institution usually takes the lead in the domestication process. If the protocol or treaty is considered important by the government, it may take three months before the ratification process is completed. However, the process can take longer period if the protocol is considered not to be important.

Ms. Magabe also reported that all stakeholders affected by the treaty or protocol are involved in the consultation process. These include Government Ministries and Departments, NGOs, Universities, private sector, etc. She noted the process could be stalled if there is an objection from one of the stakeholders. In certain cases the Inter-Ministerial Technical Committee may demand a list of all stakeholders who participated in the consultative process.

Mr. Akunga suggested that responsible sectoral agencies, ministries, private sector and development partners need to be fully involved in the consultative process since the project is dealing with a multi-sectoral protocol.

Ms. Martinez requested the representatives of participating countries to also indicate whether there is a requirement to determine institutional implication costs as well as cost of implementing new laws in their respective countries.

Ms. Magabe noted that in the United Republic of Tanzania, the determination of costs of implementing new law is done at two levels; at the inter ministerial committee level where the Ministries looks at the financial and technical implications of the new law and at the Cabinet level where the parent Ministry will have to show that adequate resources are available to implement the new law or protocol or convention. Where resources are not available, there can be a delay in the implementation of the new law. She emphasised that there has to be willingness and consensus to take responsibility for the implementation of the new law.

Mr. Mboya noted that the process of consultation under the current Kenya constitution is not mandatory. The costs of implementation of a new law are defined by the parent Ministry when a cabinet paper is prepared. He noted that in Kenya, treaties do not have a force of law. He noted that determination of the cost of implementing a new law is done at both the Cabinet level and also when implementing the bill.

Mr. Jacqueline noted that in case of Seychelles, the National Environmental Management Plan of Seychelles has provisions for catering for the financial implications of a new law. The concerned Ministry must however forward its needs to the Cabinet for the allocation of funds in order to implement a new law. He noted that issues related to the environment are usually taken seriously in Seychelles and there is usually no problem in allocating funds for the implementation of a new law.

Mr. Mazivila, delegate of Mozambique reported that ratification of international conventions starts with the Ministries. In case of environmental issues, the responsible Ministry is the Ministry of Environment, which prepares the proposal for submission to the inter-Ministerial Committee. Inter Ministerial Committee will discuss various issues related to the treaty after which the document is send to the Cabinet for approval. Following the approval by the Cabinet, the treaty or protocol is send to the Parliament, which analyses its social and financial implications before enactment. Financial implications of the treaty are discussed

before the treaty is submitted to the Parliament. If the protocol has a potential to jeopardize the state, it will not be ratified.

Ms. Manna expounded on the procedure for determining cost of implementing new law in the Mauritius noting that there is a new legislation in Mauritius that takes care of budget for the implementation of new laws. She reported that the concerned Ministry has the responsibility of determining the cost of implementation of the new law. The Environment Management Committee has a standard procedure that takes care of the financial implications of a new law.

Mr. Nadjib noted that there is no specific rule or procedure for the evaluation of cost of ratifying new law in the Comoros. He however noted that the parent Ministry has to brief the Cabinet about the cost of implementing a new law. He however noted that ratification does not mean that the protocol will be implemented, but it simply implies commitment to implement the protocol.

Ms. Razanamiharisoa reported that in Madagascar there is no budget for implementation of international conventions or protocol. She however noted that there can be funding for the implementation of conventions even when these are not ratified by the government. She pointed that the costs of implementing new law in Madagascar increases due to costs related to the translation of the convention.

Following the presentations by the representatives of participating countries, the Regional Task Force noted and recognised the various national peculiarities related to the implementation of new laws in countries participating in the development of new LBS Protocol to the Nairobi Convention and noted the need to recognize and take into account these specific country situations in the process of ratification of the LBS Protocol.

## **10. DISCUSSION OF THE COMPONENTS/DETAILS OF REPORT ON LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORKS IN EACH COUNTRY**

The Chairperson, Mrs Andrianarivo introduced the above agenda item and invited Mr Akunga, the legal Consultant to make a presentation on the components/details of reports on legal, regulatory and institutional frameworks in participating countries.

Mr Akunga introduced the documents of the agenda item and noted that the two draft outlines of the national and regional reports are intended to assist the national experts and consultants in the drafting the following reports; (1) National Reports of the legal, regulatory and institutional frameworks and, (2) Regional Report of the legal, regulatory and institutional frameworks.

Mr. Akunga took the Regional Legal Task Force through the draft outlines of the above reports and noted that consultants who will be recruited by the WIO-LaB Project Management Unit will have specific terms of reference that will oblige them to write the reports according to above formats. The Task Force deliberated issues in this agenda item together with those in the following agenda item.

## **11. DISCUSSION ON THE COMPONENTS/DETAILS OF REPORT ON THE STATUS OF RATIFICATION/IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS**

Mrs Andrianarivo introduced the above agenda item and invited Mr Akunga to make a presentation on the components/details of report on the status of ratification/implementation of international instruments in participating countries.

Mr Akunga introduced the documents of the agenda item and noted that the four draft outlines of the national and regional reports are intended to assist the national experts and consultants in the drafting the following reports; (1) National reports on the status of ratification and implemented of international convection and, (2) Regional report on the status of ratification and implementation of relevant international conventions.

Mr. Akunga took the Regional Legal Task Force through the draft outlines of the above reports and noted that consultants will have specific terms of reference that will require them to write the reports according to approved format.

Ms. Magabe noted that it is important to have an inventory of LBS activities since lawyers will only undertake the task of preparing relevant legislative framework on the basis of available inventory of land based sources and activities. She noted that lawyer's responsibility will be to investigate rules and legislation governing issues mentioned in the inventory in order to come up with appropriate institutional and legal framework.

Following the presentation by the Consultant, the Chairperson opened the floor for deliberations.

Mrs. Magabe also noted that the consultants should also consider government policies before reviewing rules and legislation. She also suggested that institutions that will be considered in the review should not be just be at the national or provincial levels. She suggested that institutions right from the regional level up to the village level should be considered in the review.

Mr. Scheren noted the LBS activities are considered to be same in all participating countries and noted that these activities will be defined in the terms of reference of the consultants who will be drafting the national reports. On the suggestion that the review of policies, rules and legislation should be from the regional up to the village level, he noted that the task will probably be unfeasible to accomplish. He noted that in case of the LBS protocol, there is no need of taking into consideration the village level and urged the Regional Task Force to make a decision on the appropriate level to which the review will focus on.

Ms. Martinez noted that the outline as presented by the consultant is good. She, however, suggested that there should also be a review of jurisprudence. She also suggested that the national reports should include a short description of the process of ratification in each country.

Mrs. Martinez also noted that it may be important to include a list of legal text in annexes including a table showing various legislation in each country. She recommended that the regional report should be a comparative one where various national reports will be analysed. She suggested that the regional report need not be too long and in this regard it would be important to put limits to the number of pages that should written for each section of the regional report.

Following deliberations on the draft outlines of national and regional reports on policy, legal and regulatory frameworks and the status of ratification and implementation of international environmental conventions, the Regional Legal Task Force endorsed the drafts with amendments and recommended that copies of the updated version of the outlines of the reports should be distributed to the members of the Task Force by the WIO-LaB Project Management Unit.

## **12. ADOPTION OF THE DECISIONS AND RECOMMENDATIONS OF THE REGIONAL LEGAL AND TECHNICAL REVIEW TASK FORCE**

The Chairperson, Ms. Andrianarivo introduced the above agenda item and invited the Rapporteur, Ms. Nashreen to present the decisions and recommendation of the Regional Legal and Technical Review Task Force inception meeting.

Ms. Nashreen took the Regional Legal and Technical Review Task Force through the draft decisions and recommendations of the Task Force. The Task Force deliberated on the draft decisions and recommendations of the Regional Legal and Technical Review Task Force and adopted them with amendments. The final updated versions of the decisions and recommendations are presented in the Report as Annex 8 of this Report.

## **13. ADMINISTRATIVE MATTERS**

The Chairperson, Ms. Andrianarivo introduced the above agenda item and reminded the participants of the proposal put forward in the first day of the inception meeting that the Chairperson and Rapporteur of the Regional Legal and Technical Review Task Force should be elected during the second day of the meeting.

The Chairperson, Ms. Andrianarivo invited members of the Task Force to propose names of candidate countries for the above positions.

For the position of Chairperson, Seychelles proposed Kenya and this proposal was seconded by the Comoros and supported by all countries. Representative of Kenya, Mr. Mboya accepted the election of Kenya for the post of Chairperson of the Regional Legal and Technical Review Task Force.

For the post of co-Chairperson, Mauritius nominated Tanzania and this nomination was seconded by all countries. Representative of Tanzania, Ms. Alicia Magabe accepted the election of Tanzania to the post of co-Chair of the Regional Legal and Technical Review Task Force.

For the post of Rapporteur, Mauritius was proposed by Kenya and this proposal was seconded by Comoros and Madagascar. Ms. Nashreen accepted the election of Mauritius to the post of Rapporteur of the Regional Legal and Technical Review Task Force.

Following the election of the officers of the Regional Task Force, the Chairperson of the inception meeting, Ms. Andrianarivo invited the WIO-LaB Project Manager, Mr. Peter Scheren to make some few announcements on administrative matters related to the Task Force.

Mr Scheren informed the meeting that the list of decisions and recommendations of the Regional Task Force will be circulated to the members of the Task Force. He also informed the meeting that draft Report of the Meeting will be circulated to all participants within a period of two weeks and hoped that the participants will provide comments that will be used to prepare the final version of the Report of the Meeting.

Mr. Scheren also informed the participants that next meeting of the Regional Legal and Technical Review Task Force will be held before the end of the year 2005. The place and date of the next week was however not fixed.

Ms. Magabe wanted clarification on how members of the Task Force will be communicating and consulting with each other at regional and national level during the process of reviewing the national legislation.

Mr. Scheren noted that the process of review of policy, regulatory and legislative frameworks at regional level will be coordinated by a regional consultant and countries will be expected to link up with the consultant. However, for communication with other experts at national level, countries will be expected to come up with appropriate mechanisms that are suitable to them.

#### **14. ANY OTHER BUSINESS**

The Chairperson introduced the above agenda item and requested members of the Task Force to raise any other matter that they would like to discuss under the above agenda item. There was however no any other business that was raised by the members.

#### **15. CLOSURE OF THE MEETING**

Ms. Andrianarivo thanked the participants for their cooperation throughout the period of her Chairpersonship of the meeting and looked forward to meeting the participants in the next meeting of the Regional Legal and Technical Review Task Force. She also invited all participants to a cocktail party at the Colbert Hotel, Antananarivo.

Mr. Scheren, the WIO-LaB Project Manager expressed his votes of appreciation to Ms. Andrianarivo and ANGAP for assisting with the organization of the meeting in Madagascar. He thanked the host for excellent organization of the meeting and for efficient logistical arrangements. On behalf of the WIO-LaB Project Management, he thanked the Government of Madagascar for agreeing to host the inception meeting of the Regional Legal and Technical Review Task Force in Madagascar.

There been no any other business, the Chairperson declared the meeting officially closed at 4.35 pm on Wednesday 25<sup>th</sup> May 2005.



**ANNEX 1:**

**AGENDA**

**DAY 1:**

1. Opening of the meeting
2. Welcome Address/Introductory Remarks
  - Nairobi Convention Secretariat (UNEP)
  - Global Programme of Action (UNEP/GPA)
  - WIO-LaB Project Office (UNEP/GEF)
  - Official Opening(Host Country)
3. Organization of the meeting
  - Election and designation of officers of the Task Force (Chair and Rapporteur)
4. Adoption of the Agenda
5. Context of the Legal Task Force
  - Outline and objectives of the UNEP-GEF WIO-LaB Project
  - Presentation on Basis of Review of Nairobi Convention, its Protocols and development of LBS Protocol, and other legal outputs.
6. Consideration of the Draft Terms of Reference for the WIO-LaB Regional Legal and National Legal Task Forces
7. Consideration of WIO-LaB Legal Task Force Work Plan
8. Discussion on Outline of LBS Protocol and linkage to Nairobi Convention
  - Substantive discussion on various Proposed Articles in Outline LBS Protocol;
  - Necessary linkages to the revision of Nairobi Convention, and consideration of proposed changes

**DAY 2:**

9. National practicalities and peculiarities on the development of LBS Protocol and Other Outputs
  - How to conduct national consultations, approval procedures, etc
  - Risks, assumptions, opportunities
  - Who to involve, how to involve stakeholders and others
10. Discussion on the components/details of Report on legal, regulatory and institutional frameworks in each country
  - Consideration of Expected Report – Regional and National
  - Form, content, methodology and discussion on ToRs for this activity.
11. Discussion on the components/details of Report on Status of Ratification/ Implementation of International Instruments
  - Consideration of Expected Report – Regional and National
  - Form, content, methodology and discussion on ToRs for this activity

12. Adoption of Decisions and Recommendations
13. Administrative matters
14. Any Other business
15. Closure of the meeting.



**ANNEX 2:**

**LIST OF PARTICIPANTS**

	<b>Country</b>	<b>Participant</b>
1.	COMOROS	<p><b>Ms. Fatouma ALI ABDALLAH</b> Chef de Department Direction National l'Environnement Point Focal de la Convention de Nairobi BP 860, Moroni, The COMOROS Tel: (+269) 756029 Fax: (+269) 736388 Email: alfa@snpt.km Fatouma_ay@yahoo.fr</p> <p><b>Mr. Mohammed NADJIB</b> Directeur National Adjoint de l'Environnement BP 860, Moroni, The COMOROS Tel: (+269) 756029 Email : mohamed_nadjib@hotmail.com</p> <p><b>Mr. Nidhoim ATTOUMANE</b> Conseiller Junidifiu du Vice Président BP 2007 Moroni, The COMOROS Tel: (+269)-730236 Email : attoumani@snpt.km</p>
2.	KENYA	<p><b>Mr. Tom Mark MBOYA</b> Principal State Counsel Attorney General's Office Legislative Drafting Department P.O Box 40112 Nairobi, KENYA Tel: (+254) 020-227461-37006 Mobile: (+254) 722-875443 Fax: (+254) 020-211082 Email: tmboya_2000@yahoo.com</p>

	<b>Country</b>	<b>Participant</b>
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**ANNEX 3:**

**LIST OF DOCUMENTS DISTRIBUTED IN THE MEETING**

**Working Documents**

UNEP/GEF/WIOLAB/LTF.1/1	Provisional Agenda
UNEP/GEF/WIOLAB/LTF.1/2	List of Participants
UNEP/GEF/WIOLAB/LTF.1/3	List of Documents
UNEP/GEF/WIOLAB/LTF.1/4	Draft Terms of References for the WIO-LaB Regional Legal and Technical Review Task Force
UNEP/GEF/WIOLAB/LTF.1/5	Draft Terms of References for the WIO-LaB National Legal and Technical Review Task Force.
UNEP/GEF/WIOLAB/LTF.1/6	UNEP-GEF WIO-LaB Project Work Plan for 2005.
UNEP/GEF/WIOLAB/LTF.1/7	UNEP-GEF WIO-LaB Project Legal Work Plan for 2005.
UNEP/GEF/WIOLAB/LTF.1/8	Zero Draft revised Nairobi Convention.
UNEP/GEF/WIOLAB/LTF.1/9	Zero Draft Outline of Land-based Sources (LBS) Protocol.
UNEP/GEF/WIOLAB/LTF.1/10	Decisions and Recommendation of the Legal and Technical Review Task Force Inception Meeting

**Information Documents**

UNEP/GEF/WIOLAB/LTF.1/INF.1	Summary of the recommendations of the UNEP/GPA and WIOMSA 2004: Review of national legislations and institutions relevant to Tourism, Ports, Land Reclamation, and Damming of Rivers in selected countries along the Western Indian Ocean.
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**ANNEX 4:**

**WIO-LAB Regional Legal Task Force**

**TERMS OF REFERENCE FOR REGIONAL LEGAL AND TECHNICAL REVIEW  
TASK FORCE FOR DEVELOPMENT OF LBS PROTOCOL AND OTHER LEGAL  
OUTPUTS.**

**A. General Background**

The Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and the Protocol concerning Protected Areas and Wild Fauna and Flora (SPAW Protocol) in the Eastern African Region and the Protocol concerning Co-operation in combating Marine Pollution in Cases of Emergency (Emergency Protocol) in the Eastern African Region were enacted in Nairobi on 21 June 1985 and constitute the current regional legal framework for the protection and conservation of the marine and coastal environment of the Eastern African region.

The Nairobi Convention Area covers the mainland countries of Somalia, Kenya, Tanzania, Mozambique and South Africa and the island states of Seychelles, Reunion (France), Madagascar, the Comoros and Mauritius. The Convention came into force in 1996 and each of the countries has ratified it.

Since 1999 subsequent Conference of Parties (COPs) have called for the review of the Convention and its protocols to bring them up to date as modern and dynamic legal instruments better suited for the protection and conservation of the marine and coastal environment of the Region. They have in addition called for the development of a new Protocol on Land based Sources and Activities (LBS Protocol). The Convention and its protocols should also respond to developments in relevant law, including other Regional Seas Programmes. In particular, COP 3 (Maputo, 2001) and COP 4 (Antananarivo, 2004) called upon the Executive Director of UNEP to expedite the process of revision of the Nairobi Convention and its protocols as well as the development of the LBS Protocol (C.P. 3/6; CP.4/7).

The proposed LBS Protocol is a tacit acknowledgement of an existing legal gap to confront the increasing challenge and severity of land-based sources and activities causing pollution and degradation of the marine environment in the Western Indian Ocean Region.

The revision of the Convention and its protocols and the development of a new land-based protocol are expected to be carried out within the broader framework of the implementation of the Nairobi Convention Work Programme 2004-2007 and the UNEP/GEF WIO-LaB Project to be implemented in the Region during the same period.

The development of a new LBS Protocol to the Nairobi Convention is covered under Objective II Component (E) of the WIO-LaB Project Document and the same is further elaborated in the WIO-LaB Project Plan of Implementation.

Other important and supporting activities and outputs are covered under Objective II Component (a) and Component (b). Component (a) is on the Review of gaps in national legislation, regulatory and institutional frameworks relevant to land based sources and activities while Component (b) is on the review of the status of ratification and

implementation of appropriate international conventions by countries in the Region, and assistance to countries to develop plans for ratification and/or implementation.

The present Task Force will, for the moment, address activities and tasks under Objective II Components (a), (b) and (e).

**B. Background and Context of WIO-LaB Project.**

The WIO-LaB project focuses on addressing major land-based activities in the region and represents a strong partnership between the EAF countries (Kenya, Tanzania, Mozambique, South Africa, Madagascar, Seychelles, Comoros and Mauritius), the Norwegian government, UNEP, and the GEF. The project is designed to serve as GPA demonstration project and aims to achieve three major objectives:

- Reduce stress to the ecosystem by improving water and sediment quality;
- Strengthen regional legal basis for preventing land-based sources of pollution through GPA; and
- Develop regional capacity and strengthen institutions for sustainable, less polluting development.

The implementation of the WIO-LaB activities in the Western Indian Ocean (WIO) Region will contribute to the realization of the UNEP-GPA commitments, which is in line with the approved Strategic Action Programme (SAP) for the Region by the First Meeting of the Contracting Parties to the Nairobi Convention in March 1997.

**C. Rationale and Purpose of Regional Legal and Technical Review Task Force**

A Regional Legal and Technical Review Task Force will be established in order to facilitate the achievement of the regional tasks under Objective II Components (a), (b) and (e) of the WIO-LaB Project document. The overall responsibility of Regional Legal Task Force will include:

- To ensure effective implementation of activities defined in Objective II Components (a), (b) and (e) of the WIO-LaB Project document;
- Co-ordination of the work of the National Legal Task Forces to be established in each of the participating countries; and
- To provide a mechanism for exchange of information and experiences in the carrying out of tasks under Objective II Components (a), (b) and (e) of the WIO-LaB Project document.

**D. Membership of Regional Legal and Technical Review Task Force**

The Regional Legal and Technical Review Task Force of the WIO-LaB Project shall consist of one legal and one technical expert nominated by the government of each participating country, together with one member of the WIO LaB Project Office and selected regional experts or consultants.

The membership of the Task Force shall be formally established at the first meeting of the Task Force, which shall elect a Chairperson, alternate Chairperson and a Rapporteur from amongst its members for the duration of the WIO-LaB project;

The positions of Chairperson, Alternate Chairperson and Rapporteur will be country positions rather than individual positions;

The Chairperson of the Regional Legal and Technical Review Task Force will represent the Regional Legal Task Force on the WIO-LaB Project Steering Committee.

**E. Specific Terms of Reference.**

The following are the proposed terms of reference for the Regional Legal and Technical Review Task Force: -

1. Receive from the WIO LaB Project Management Unit and carefully study the following documents: -
  - (i) Drafts of Revised Nairobi Convention 1985;
  - (ii) Drafts and outlines of a New Protocol to the Nairobi Convention on Land-Based Sources and Activities (2004) (Main text to be developed within the framework of implementation of the WIO-LaB Project 2004-2007);
  - (iii) Regional and National Reports on Review of Gaps in National Legislation, Regulatory and Institutional Frameworks with Recommendations as Necessary; and
  - (iv) Regional and National Reports on the Review of Status of Ratification and/or Implementation of Appropriate International Conventions by Countries and Plans for Assistance in Ratification and/or Implementation, with Recommendations as Necessary.
2. Exhaustively deliberate on the above documents in plenary, committee or otherwise, with a view to achieving broad agreement and consensus with respect to items 1 (i), (ii), (iii), and (iv) above, and to this end, endeavor to achieve full participation by relevant regional stakeholders;
3. Coordinate, facilitate, guide and oversee the National Legal Task Forces in the execution of their tasks;
4. Propose to the WIO-LaB Project Office or the WIO-LaB Project Steering Committee or Conference of Plenipotentiaries or Conference of Parties as appropriate final drafts of the instruments in No. 1 above for adoption and other action as necessary; and
5. Perform any other tasks relevant to the above terms of reference as may be assigned from time to time by the WIO-LaB Project Steering Committee.

**F. Expected Outputs**

1. Revised Nairobi Convention and existing protocols;
2. Protocol on Land Based Activities and Sources (LBS Protocol) to the Nairobi Convention; and its ratification
3. Reports on Development of LBS Protocol; Review of Gaps in National Legislation, Regulatory and Institutional Frameworks; and Review of Status of Ratification and/or Implementation of Appropriate International Conventions and Plans for Assistance, including appropriate recommendations to the WIO-LaB Project Office, WIO-LaB Project Steering Committee or the next Conference of Plenipotentiaries or Conference of Parties as appropriate.



**ANNEX 5:**

**TERMS OF REFERENCE FOR NATIONAL LEGAL AND TECHNICAL REVIEW  
TASK FORCE(S) FOR DEVELOPMENT OF LBS PROTOCOL AND OTHER  
LEGAL OUTPUTS.**

**A. General Background**

The Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and the Protocol concerning Protected Areas and Wild Fauna and Flora (SPAW Protocol) in the Eastern African Region and the Protocol concerning Co-operation in combating Marine Pollution in Cases of Emergency (Emergency Protocol) in the Eastern African Region were enacted in Nairobi on 21 June 1985 and constitute the current regional legal framework for the protection and conservation of the marine and coastal environment of the Eastern African region.

The Nairobi Convention Area covers the mainland countries of Somalia, Kenya, Tanzania, Mozambique and South Africa and the island states of Seychelles, Reunion (France), Madagascar, the Comoros and Mauritius. The Convention came into force in 1996 and each of the countries has ratified it.

Since 1999 subsequent Conference of Parties (COPs) have called for the review of the Convention and its protocols to bring them up to date as modern and dynamic legal instruments better suited for the protection and conservation of the marine and coastal environment of the Region. They have in addition called for the development of a new Protocol on Land based Sources and Activities (LBS Protocol). The Convention and its protocols should also respond to developments in relevant law, including other Regional Seas Programmes. In particular, COP 3 (Maputo, 2001) and COP 4 (Antananarivo, 2004) called upon the Executive Director of UNEP to expedite the process of revision of the Nairobi Convention and its protocols as well as the development of the LBS Protocol (C.P. 3/6; CP.4/7).

The proposed LBS Protocol is a tacit acknowledgement of an existing legal gap to confront the increasing challenge and severity of land-based sources and activities causing pollution and degradation of the marine environment in the Western Indian Ocean Region.

The revision of the Convention and its protocols and the development of a new land-based protocol are expected to be carried out within the broader framework of the implementation of the Nairobi Convention Work Programme 2004-2007 and the UNEP/GEF WIO-LaB Project to be implemented in the Region during the same period.

The development of a new LBS Protocol to the Nairobi Convention is covered under Objective II Component (E) of the WIO-LaB Project Document and the same is further elaborated in the WIO-LaB Project Plan of Implementation.

Other important and supporting activities and outputs are covered under Objective II Component (a) and Component (b). Component (a) is on the Review of gaps in national legislation, regulatory and institutional frameworks relevant to land based sources and activities while Component (b) is on the review of the status of ratification and implementation of appropriate international conventions by countries in the Region, and assistance to countries to develop plans for ratification and/or implementation.

The present Task Force will, for the moment, address activities and tasks under Objective II Components (a), (b) and (e).

**B. Background and Context of WIO-LaB Project.**

The WIO-LaB project focuses on addressing major land-based activities in the region and represents a strong partnership between the EAF countries (Kenya, Tanzania, Mozambique, South Africa, Madagascar, Seychelles, Comoros and Mauritius), the Norwegian government, UNEP, and the GEF. The project is designed to serve as GPA demonstration project and aims to achieve three major objectives:

- Reduce stress to the ecosystem by improving water and sediment quality;
- Strengthen regional legal basis for preventing land-based sources of pollution through GPA; and
- Develop regional capacity and strengthen institutions for sustainable, less polluting development.

The implementation of the WIO-LaB activities in the Western Indian Ocean (WIO) Region will contribute to the realization of the UNEP-GPA commitments, which is in line with the approved Strategic Action Programme (SAP) for the Region by the First Meeting of the Contracting Parties to the Nairobi Convention in March 1997.

**C. Rationale and Purpose of National Legal and Technical Review Task Force**

A National Legal and Technical Review Task Force will be established in order to be a forum and to facilitate the achievement of the national tasks under Objective II Components (a), (b) and (e) of the WIO-LaB Project document. The overall responsibility of National Legal and Technical Review Task Force will include:

- To ensure effective implementation of national activities defined in Objective II Components (a), (b) and (e) of the WIO-LaB Project document;
- To provide a mechanism for exchange of information, experiences and feedback in the carrying out of national tasks under Objective II Components (a), (b) and (e) of the WIO-LaB Project document.

**D. Membership of National Legal and Technical Review Task Force**

The National Legal and Technical Review Task Force will be set up by the National Focal point of the Nairobi Convention supported by the nominated legal expert of the Regional Legal Task Force

The National Legal and Technical Review Task Force of the WIO-LaB Project shall consist of experts from various government and non-government organizations and institutions competent in various aspects of the tasks, and experts nominated in the other WIO LaB task Forces.

The Chairperson of the National Legal and Technical Review Task Force will be the National Focal Point for the Nairobi Convention.

The membership of the Task Force shall be formally established at the first meeting of the National Legal and Technical Task Force, which shall elect a Rapporteur from amongst its members.

The National Legal and Technical Review Task Force shall designate a technical person from the Task Force to represent the task force in the regional Legal Task Force alongside the nominated legal expert.

The National Expert recruited by the WIO LaB project for the drafting of the National Report shall be invited to attend the meetings of the Task Force

**E. Specific Terms of Reference.**

The following are the proposed terms of reference for the National Legal and Technical Review Task Force(s), expected to be established in each participating country : -

1. Receive and carefully study the following documents: -
  - (i) Drafts of revised Nairobi Convention 1985;
  - (ii) Drafts of Outline and main text of LBS Protocol to The Nairobi Convention;
  - (iii) Regional and National Reports on Review of Gaps in National Legislation, Regulatory and Institutional Frameworks with Recommendations as Necessary; and
  - (iv) Regional and National Reports on the Review of Status of Ratification and/or Implementation of Appropriate International Conventions by Countries and Plans for Assistance in Ratification and/or Implementation, with Recommendations as Necessary.
2. Exhaustively deliberate on the above instruments with a view to adopting any proposed or desired changes to items 1(i), (ii), (iii), and (iv) above, and seek to achieve general consensus on the items above;
3. The Task Force shall validate the reports produced by the National Consultant/Expert
4. In consultation with the Regional Taskforce, to disseminate the above instruments as widely as possible and to facilitate all national stakeholders' participation;
5. To propose any changes, amendments or views on the above instruments to the Regional Taskforce as appropriate for inclusion in the final drafts;
6. To initiate and facilitate the development of appropriate draft national legislation on land-based sources and activities in tandem with the proposed LBS Protocol to the Nairobi Convention;
7. facilitate the process of ratification of the LBS protocol to the Nairobi Convention and enactment of appropriate enabling legislation
8. Perform any other tasks as per the terms of reference above as may be assigned from time to time by the WIO-LaB Project Steering Committee or the Regional Legal Task Force.

**F. Expected Outputs**

1. Report including appropriate recommendations and opinions on any or all of the instruments under No. 1 and 4 above.
2. Draft National Legislation (Bill) on Land – based Sources and Activities or recommended amendments of existing legislations as appropriate.
3. Ratification of the LBS protocol of the Nairobi Convention.

**ANNEX 6:  
ACTIVITIES PLAN 2005-2008 OF THE LEGAL AND TECHNICAL REVIEW TASK FORCE**

Activities	2005												2006												2007												2008												
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	
1 Identification of national and international/regional experts																																																	
2 Development of detailed TOR for experts																																																	
3 Development of a detailed workplan for legal TF																																																	
4 <i>Inception Meeting</i>																																																	
5 Establishment of Regional and National Legal Task forces																																																	
6 Recruitment of national and international/regional experts																																																	
7 Preparation of reporting formats																																																	
8 Preparation of first draft national reports on legal frameworks																																																	
9 Assessment of status of ratification of international conventions																																																	
10 Review of draft national reports by international/regional expert																																																	
11 Development of second draft national reports																																																	
12 Preparation of first-draft LBS protocol																																																	
13 <i>Regional workshop to review and align national frameworks</i>																																																	
14 Finalisation of national reports																																																	
15 Preparation of regional synthesis report																																																	
16 Provide assistance to countries in ratification process																																																	
17 Expert review of first draft LBS protocol																																																	
18 <i>Regional workshop to review first draft LBS protocol</i>																																																	
19 Preparation of second draft LBS protocol																																																	
20 National level consultations on second draft LBS protocol																																																	
21 Preparation of third draft LBS protocol																																																	
22 <i>Regional workshop to review third draft LBS protocol</i>																																																	
23 Finalisation of third draft protocol																																																	
24 Circulation of third draft protocol for national approval																																																	
25 <i>Final approval session</i>																																																	



**ANNEX 7:**

**DRAFT OUTLINE OF A LAND BASED SOURCES AND ACTIVITIES (LBS)  
PROTOCOL TO THE NAIROBI CONVENTION.**

The Nairobi Convention does not yet have an LBS Protocol. In elaborating a draft for this region, the following issues and provisions should be included, among others:-

1) Preamble.

The importance of a comprehensive, innovative and yet concise preamble cannot be over emphasized. This part will capture the spirit of the protocol and place it in the context of past, present and future legal instruments, programmes, actions, policies and trends. The preamble should include the global and regional efforts dealing with land based sources and activities. It should point out the desirability of a regional protocol for better and more detailed description of the problem. It should also express the magnitude and consequences of land based sources and activities on the marine and coastal areas of the region.

2) Definitions of Terms.

There should be a clear and concise definition of terms and phrases used in the protocol, clearly consistent with and linked to the Nairobi Convention, its other protocols, and other environmental instruments.

3) General (State Party) Obligations.

The obligations of the parties to the protocol should be adequately elaborated so that states know the full extent and nature of their obligations and legal commitments under the protocol.

4) Geographical Application/Jurisdiction.

The protocol should identify the Protocol Area. This should comply with maritime boundary regimes recognized under the international law of the sea, and be consistent with the Nairobi Convention and its other protocols.

5) Sources of Pollution and Control Measures.

The protocol should indicate the land based sources and activities to which its provisions apply. It should elaborate the measures to control, prevent, reduce or otherwise deal with each or more of the pollution sources and activities. These measures could include source control, pre-treatments or treatments and so on.

6) Transboundary Pollution.

The protocol should tackle the growing problem of transboundary movement of marine and coastal pollutants from land based sources and activities.

7) Common Guidelines, Standards and Criteria.

These provisions are to tackle the issue of standardization of the quality of sea water for various purposes, regulations for waste discharge and related issues.

8) Monitoring and Assessment.

There should be provisions that ensure regular, periodic or continuous monitoring and assessment of the measures set out and to investigate the efficacy of those measures. There should be mandatory environmental assessments for certain categories of land based activities in or near marine and coastal areas.

9) Scientific and Technological Co-operation and Technical Assistance.

There should be provision for scientific and technological co-operation and exchanges, as well as technical assistance. Exchange of information and systems should also provide for.

10) Public Participation, Education and Awareness Programmes

Based on the model created by the Wider Caribbean LBS Protocol, some provision should be made for programmes that would improve public participation and thus enhance enforcement and compliance of the provisions and requirements of the protocol.

11) Reporting

The protocol should provide for states parties' obligation to periodically report on the discharge of their obligations under the protocol. The reports should constitute a reservoir of information for the states parties and other interested parties.

12) Funding

There needs to be a clear provision on the sources, methods and purposes for which funds should be applied. There should be emphasis on national and regional self-reliance made for popular involvement of the people in education and awareness programmes, and the participation of the private sectors.

13) Institutional Arrangements

Compliance and enforcement partly relies on effective institutional arrangements. The protocol should therefore make provision for issues such as national focal points or implementing agencies, meetings of states parties, secretariat functions, technical committees, etc.

14) Settlement of Disputes

The protocol should anticipate and provide for the resolution of disputes and conflicts between the parties and/or with the institutions created under the protocol. There should be binding and non-binding procedures, consistent with the like provision in the Nairobi Convention and its other protocols.

15) Annexes

Annexes are very important additions to protocols and should be included herein. They provide further detailed and technical inputs to specific articles of the protocol. The protocol should provide for their adoption, entry into force, amendments, etc.

16) Final Provisions

Final provisions such as adoption, ratification, accession, amendments to the protocol, its annexes, action plans, programmes, etc., should be included.

**SOME SUGGESTED ANNEXES**

In addition to the protocol, there should be as many annexes as necessary. Examples of titles could include:-

- 1) Annex on domestic (or municipal) wastewater;
- 2) Annex on source categories, activities and associated pollutants of concern;
- 3) Annex on effluent and emission source controls and management factors;
- 4) Annex on conditions of application to pollutants transported through the atmosphere;
- 5) Annex on criteria for the definition of best available techniques and best environmental practice;
- 6) Annex on guidelines, regulations and permits for the release of wastes; and
- 7) Annex on agricultural non- point sources of pollution.



**ANNEX 8:**

**DECISIONS AND RECOMMENDATION OF THE LEGAL AND TECHNICAL  
REVIEW TASK FORCE INCEPTION MEETING**

The members of the Regional Legal and Technical Review Task Force elected Madagascar as the Chair and the Mauritius as the Rapporteur of the inception meeting of the Legal and Technical Review Task Force and made the following decisions and recommendations;

1. agreed that the Regional Legal and Technical Review Task Force will elect its Chairperson, alternate Chairperson and Rapporteur for the Duration of the WIO-LaB Project. Agreed that Kenya will be the Chair of the Regional Legal and Technical Review Task Force, Tanzania as Alternate Chair and Mauritius as Rapporteur.
2. agreed that the positions of Chairperson, Alternate Chairperson and Rapporteur will be country positions rather than individual positions;
3. recommended that each National Focal Point, supported by the nominated legal expert, should facilitate the establishment of a National Legal and Technical Review Task Force by 15<sup>th</sup> July 2005;
4. approved, with amendments, the Terms of Reference of the Regional and National Legal and Technical Review Task Forces;
5. recommended that the WIO-LaB Project Management Unit and the National Focal Points should ensure diligent recruitment of National Legal Consultants and the validation of the work of the Consultants by the National Legal and Technical Review Task Forces;
6. recommended that the National Legal Consultant be invited to attend the National Legal and Technical Review Task Force meetings during the period of his/her assignment;
7. approved the proposed work plan of the Regional Legal and Technical Review Task Force with amendments;
8. recommended that the second draft of the Land-based Sources/Activities (LBS) protocol to the Nairobi Convention be discussed in a meeting with the National Focal Points as representatives of their Governments by June 2006;
9. recommended that the third draft of the LBS protocol be submitted for consideration at the Bureau of the Nairobi Convention by November 2006.
10. recommended that before the submission to the Conference of Parties (COP) to the Nairobi Convention in the third quarter of 2007, the draft LBS protocol should be presented for approval to the Conference of Plenipotentiaries by February 2007.
11. recommended that an Article on Enforcement and Compliance should be included in the revised Nairobi Convention (1985).
12. recommended that provision should be made for technical papers to support the definition and preparation of Articles and technical Annexes to the LBS Protocol.

13. recommended that in defining potential sources of funding for the implementation of the obligations of the Nairobi Convention and its protocols, consideration should be made for both domestic and international sources of funding;
14. agreed on the following proposed outlines for the National and Regional expert legal Reports with amendments;
  - I. National Reports on the policy, legal, regulatory and institutional frameworks;
  - II. Regional Report on the policy, legal, regulatory and institutional frameworks;
  - III. National Reports on the status of ratification and implementation of international Conventions;
  - IV. Regional Report on the status of ratification and implementation of international environmental Conventions;

The decisions and recommendations were drafted in Antananarivo, Madagascar on 25<sup>th</sup> May 2005.