



KENYAN NATIONAL ASSEMBLY	
DATE:	09 NOV 2022
TABLED BY:	Hon. Kimani Ichungwa, MP Leader of the Majority Party
CLERK-AT	Mainah Wanjiku

Wednesday - Afternoon

MINISTRY OF FOREIGN AFFAIRS

PARLIAMENTARY MEMORANDUM

ON

THE RATIFICATION OF THE

AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION

OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN

FROM LAND BASED SOURCES AND ACTIVITIES.

PARLIAMENTARY MEMORANDUM ON THE RATIFICATION OF THE AMENDED NAIROBI CONVENTION AND THE PROTOCOL FOR THE PROTECTION OF MARINE AND COASTAL ENVIRONMENT OF THE WESTERN INDIAN OCEAN FROM LAND BASED SOURCES AND ACTIVITIES.

1.0 OBJECTIVE OF THE MEMORANDUM

- 1.1 The purpose of this Parliamentary Memorandum is to appraise the National Assembly and seek approval for Kenya's ratification of the Amended Nairobi Convention for the Protection, Management, and Development of the Marine and Coastal Environment of the Western Indian Ocean and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.
- 1.2 The ratification process was approved by the Cabinet in a meeting held on **12th May 2022**.

2.0 BACKGROUND

- 2.1 The Nairobi Convention on the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern Africa Region was adopted on 21st June 1985 to develop, plan, coordinate and co-operate in the protection and sustainable use of the Coastal and Marine Environment
- 2.2 The Amended Nairobi Convention for the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern African Region was adopted on 31st of March 2010 as an amendment to the Nairobi Convention.
- 2.3 The Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities was also adopted alongside the Amended Nairobi Convention.

2.4 The Amended Convention and its Protocol are Regional Legislations, covering the Eastern and Southern African Region. It currently has ten (10) state parties.

2.5 Kenya is yet to ratify the Amended Convention and its Protocol.

3.0 OBJECTS AND SUBJECT MATTER OF THE AMENDED NAIROBI CONVENTION

3.1 The overarching goal of this Regional Convention is to enhance the management of the Marine and Coastal Environment and natural heritage including its Biological Diversity as provided under article 11(1) of the Amended Convention for the sustainable use and benefits of present and future generations.

3.2 It endeavors to protect from threat the Marine and Coastal Environment, its ecological equilibrium, resources and legitimate uses, posed by pollution and the insufficient integration of environmental dimension into the development process.

3.3 The Convention recognizes the impact of climate change on the Marine and Coastal Environment in *inter alia*, sea-levels rise, increase of sea water temperatures ocean acidification, weather and climate variability that affect the coastal communities. It also recognizes the special hydrographical and ecological characteristics which require special care and responsible management.

3.4 The Convention is an important instrument in ensuring that sufficient policies and practices are integrated into the Marine and Coastal Environment due to their economic and social value.

- 3.5 The Convention takes into account the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, the 1992 Convention on Biological diversity (1992), the 1992 United Nations Framework Convention on Climate Change, the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous wastes and their disposals, the 1991 Bamako Convention on the Ban of the Import into Africa, other relevant International Conventions, outcomes and decisions of the United Nations Conference on Environment and Development.

4.0 OBJECTS AND SUBJECT MATTER OF THE PROTOCOL

- 4.1 The Protocol is conscious of the grave danger posed by various Land-Based Sources and Activities to the Marine and Coastal Environment affecting its rich heritage of Biological Diversity, coastal tourism, parts and harbours, human health and other natural and human made endowments and resources.
- 4.2 The Protocol notes the threats to the Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities, including but not limited to untreated domestic wastes and discharges, industrial discharges, Agricultural run-off and activities causing physical alteration and destruction of habitats.
- 4.2 The Protocol is further determined to Conserve and Protect the Marine and Coastal Environment, the sustainable development and use of the natural resources of the region by undertaking proactive and inclusive planning processes so as to meet the need of present and future generation in an equitable manner.

5.0 OBLIGATIONS IMPOSED BY THE AMENDED CONVENTION

5.1 State Parties are obligated to;

- Take all appropriate measures to prevent, reduce and combat pollution of the convention area and also ensure sound environmental management;
- Co-operate in the formulation and adoption of the Protocols to facilitate effective implementation of the Convention;
- Harmonize policies and laws with regards to the Convention;
- Ensure effective implementation of the Convention and its protocol;
- Apply relevant environmental principle such as the precautionary principle and the polluter pay principle in ensuring that in the application of the measures, they do not cause pollution outside the Convention area.

6.0 PROBLEM ANALYSIS

6.1 The Amended Convention notes in the preamble that the existing international conventions concerning the Marine and Coastal Environment does not cover all aspects and sources of marine pollution and Environmental degradation and do not entirely meet the special requirements of the Western Indian Ocean.

6.2 The Amended text was adopted so as to incorporate the transboundary issues of climate changes, marine and land based pollution, integrated coastal management and the importance of biological diversity.

6.3 This resulted to the addition of two new articles to the Convention:

- Article 9, Pollution resulting from Transboundary Movement of Hazardous Wastes to prevent and abate pollution that

might be caused by transboundary movement and disposal of hazardous waste and if possible eliminate such waste and;

- Article 11, Biological Diversity to preserve rare or fragile ecosystems, endangered or threatened species of Fauna and Flora and their habitats.

6.4 The rationale to this is that the utilization of transboundary resources causes impacts such as pollution, overfishing, and the destruction of habitat.

7.0 JUSTIFICATION

7.1 United Nations has adopted Seventeen (17) Sustainable development Goals (SDGs) as a universal call to action to eradicate poverty, protect the planet and ensure by 2030 all people enjoy peace and prosperity. Ratifying the Amended Convention will enhance the achievement of goal number Fourteen (14) of the Sustainable Development Goals which seeks to conserve and sustainably use the Ocean, Seas and Marine resources for Sustainable development.¹

7.2 Kenya is a Champion in Environmental matters and this is evidenced by the fact that it hosted the Blue Economy Conference that was held on the 26th to the 28th November 2018. The main objective of the conference was to harness potential of our Ocean, Seas, Lakes and Rivers to improve the lives of the people.

7.3 Pollution from land based sources and activities constitute one of the major threats to the sustainability of the Marine and Coastal Environment in the Western Indian Ocean. This necessitates the ratification of the Regional Protocol to address the problem.

¹ <http://www.globalgoals.org/resources/>

- 7.4 The Amended Convention as opposed to the former convention incorporates clear provisions for compliance and enforcement of its provisions. The article requires the contracting parties to take measures to enforce and comply with the convention.
- 7.5 The Convention will govern all aspects and sources of Marine Pollution and Environmental Degradation and also meet the special requirements of the Western Indian Ocean.
- 7.6 It also takes into account emerging issues and trends at both global and regional levels, particularly those that have implications on the management of the Coastal and Marine Environment.
- 7.7 The convention seeks to ensure the protection of Marine and Coastal Environment by incorporating appropriate measures to combat pollution and ensure sound management of the natural resources.

8.0 COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATION

- 8.1 The Convention is consistent with the Constitution and promotes constitutional values and provisions under article 69 (1) (e) and (g) on obligations in respect to the Environment.
- 8.2 Additionally, there will be no policy implication for Kenya since the provisions of the Convention and the Protocol are already embedded in the National Environment Policy, 2013, and Environmental Management and Coordination Act 1999 (Rev. 2015), the Environmental Management and Coordination (Waste Management) Regulation of 2006 and Environmental Management and Coordination (Water Quality) Regulations of 2006.

9.0 IMPLICATION RELATING TO COUNTIES

- 9.1 The obligations imposed under the protocols are under the purview of the National Government.

10.0 FINANCIAL IMPLICATION

- 10.1 Under the amended Nairobi Convention framework, Contracting Parties are obligated to make financial contributions to the Eastern Africa Trust Fund. The implementation of the Trust Fund fulfills one of the main goals established by the Regional Seas Program that is to become financially self-sufficient.

11.0 MINISTERIAL RESPONSIBILITY

- 11.1 The Ministry responsible for the implementation and activity in regard to the amended Nairobi convention falls under the ministry of Environment and Natural resources and the Ministry of Foreign Affairs.
- 11.2 The Ministry of Foreign Affairs and the Office of the Attorney General and Department of Justice will coordinate the reporting process on state obligation pursuant to Treaty Making and Ratification Act of 2012

12.0 RESERVATION

- 12.1 The convention does not provide for reservations

13.0 RECOMMENDATION

- 13.1 In consideration of the aforementioned facts, the National Assembly is invited to:

- i. Note the contents of the Memorandum;

- ii. Consider and approve the Amended Nairobi Convention Protection Management and Development of Marine and Coastal Environment and its Protocol;
- iii. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depositary.

SIGNED.....



DATED..... JULY, 2022

20th

AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY
MINISTRY OF FOREIGN AFFAIRS



MINISTRY OF FOREIGN AFFAIRS

PARLIAMENTARY MEMORANDUM ON THE RATIFICATION ON

THE KIGALI AMENDMENT TO THE MONTREAL PROTOCOL

ON SUBSTANCES THAT DEplete THE OZONE LAYER.

PARLIAMENTARY MEMORANDUM ON KENYA'S RATIFICATION OF THE KIGALI AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

1. INTRODUCTION

- 1.1 The purpose of this Parliamentary Memorandum is to appraise the National Assembly and seek approval for Kenya's ratification of the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 1.2 The ratification was approved by the Cabinet in its meeting held on the 12th May, 2022.

2. BACKGROUND

- 2.1 The Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer was agreed upon at the 28th Meeting of Parties on the 15th of October 2016 in Kigali, Rwanda. While Kenya has ratified the Montreal Protocol, it is yet to ratify the Kigali Amendment. There are currently one hundred and thirty (130) state parties that have ratified the amended Protocol.
- 2.2 The Montreal Protocol on Substances That Deplete the Ozone Layer is a global agreement that was finalized in 1987 with the objective of protecting the ozone layer as it protects the earth from harmful ultraviolet rays that come from the sun. The treaty set out to protect the global environment by phasing out the production and consumption

of ozone-depleting substances (ODSs).¹ The protocol is supplementary to the Vienna Convention for the Protection of the Ozone Layer and controls the use of manufactured chemicals that destroy the ozone layer and essentially restricts the international trade of ODSs.²

- 2.3 The Montreal Protocol is signed by 197 countries and is the first treaty to achieve universal ratification. It is also considered be one of most successful environmental global action plans.³
- 2.4 The purpose of the Meeting of Parties was to engage members states of the Montreal Protocol on a new action plan where they would phase down production and consumption of hydrofluorocarbons (HFCs) worldwide using the approaches that are in the Montreal Protocol which under Article 5, distinguishes levels of implementation and progress required from Article 5 and non-Article 5 countries. Under the Montreal Protocol, Article 5 provides that developing countries are entitled to a ten-year delay in compliance with its control measures and the same is to be transplanted in the implementation of the Kigali Amendment.⁴
- 2.5 The Montreal Protocol addresses and limits the production and consumption of various ozone depleting substances (ODSs) such as chlorofluorocarbons (CFCs)⁵. Due to this, the common practice become alternating them with HFCs which are greenhouse gases commonly used in sectors such as refrigeration, air conditioning, aerosols and fire suppression. However, new research has found that HFCs can have

¹ The Kigali Amendment to the Montreal Protocol: Another Global Commitment to stop Climate Change, UN Environmental Programme, Available at < <https://www.unep.org/news-and-stories/story/kigali-amendment-montreal-protocol>>

² Trade Beat, 'The Montreal Protocol on Substances that Deplete the Ozone Layer', Volume 8, Issue 3, 1, June 2016.

³ International Actions- The Montreal Protocol on Substances that Deplete the Ozone Layer, United States Environmental Protection Agency, Available at< <https://www.epa.gov/ozone-layer-protection/international-actions-montreal-protocol-substances-deplete-ozone-layer> >

⁴ Article 5, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

⁵ Article 2A, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

high global warming potentials (GWPs) and can be more potent than carbon dioxide.⁶

- 2.6 The Kigali Amendment is the most recent amendment of the Montreal Protocol and sets out to significantly limit the future production and consumption of HFCs. Without the amendments made therein, the emissions of HFCs are projected to peak around 2035 leading to surface temperatures peaking as high as 0.3-0.5 degrees Celsius by 2100. It is estimated that the provisions of the Amendment will reduce future global warming that may occur due to the HFC emissions from a baseline of 0.3-0.5 degrees Celsius to less than 0.1 degrees Celsius by the end of the century.⁷

3. OBJECT AND SUBJECT MATTER

- 3.1 The Kigali Amendment contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment also includes target baselines and emission levels that States in agreement with it are to achieve. There is also an objective of replacing HFCs with more planet friendly alternatives, provisions to restrict countries that have ratified the protocol or its amendments from trading in controlled substances with countries that are yet to ratify it. Lastly, there is an agreement for non-Article 5 states to aid Article 5 states with their transition to alternative safe products.
- 3.2 The new amendment classifies the HFCs that are included in the phase down exercise in a new Annex F and the baselines, timelines and percentages that they are to be phased out in is to be done in accordance with Article 2(J) and Article 5(8) of the amended

⁶ Hydrofluorocarbons (HFCs), Climate and Clean Air Coalition, Available at <<https://www.ccacoalition.org/en/slcsps/hydrofluorocarbons-hfcs> >

⁷ Hydrofluorocarbons (HFCs), Climate and Clean Air Coalition, Available at <<https://www.ccacoalition.org/en/slcsps/hydrofluorocarbons-hfcs> >

protocol.⁸ Furthermore, Article 5(8) qua provides for the timeline considerations that are to be granted onto developing countries.⁹ In addition, the amendment creates four different groups of countries each with different baseline volumes and reduction schedules.¹⁰

3.3 The Amendment was to enter into force on 1st of January 2019, provided that it is ratified by at least 20 states that are parties of the Montreal Protocol.¹¹ As of October 2021, 130 states including the European Union have ratified the Kigali Amendment.

3.4 The implementation of the new targets set out in the amendment will be conducted in three phases which take into account the different socio-economic, scientific and technological capabilities of the member states. Under the Montreal Protocol, Kenya is classified as a developing country and is therefore entitled to start the process of phasing down HFCs by 2028.

4. OBLIGATIONS IMPOSED BY THE KIGALI AMENDMENT.

4.1 The obligations imposed by the Kigali Amendment involve phasing down the consumption, production and importation of HFCs worldwide to protect the ozone layer from further depletion. These are found under Article 2J of the Amendment which prescribes that State Parties are to:

- i. Reduce the consumption of Annex F Group I HFCs and ensure that the level of consumption does not exceed the percentages

⁸ Article 1, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

⁹ Article 5(8) qua, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹⁰ UNEP, OzoneAction Fact Sheet, The Kigali Amendment to the Montreal Protocol: HFC Phase-down.

¹¹ Article IV, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

that are respective to the range of years that are specified in subparagraphs (a) to (e).¹²

- ii. State parties that are involved in producing the controlled substances under Annex F do not exceed the percentages that are outlined in paragraph, 2(J)(3)(a) to (e).¹³
- iii. Destroy Annex F Group II HFCs in accordance with the percentages timelines and processes set out under Article 2J and Article 5.¹⁴
- iv. Gradually reduce the use of HFCs by 80-85% by late 2040s.¹⁵
- v. Restrict the trading of controlled substances under Annex F with states that are not parties to the protocol.¹⁶
- vi. Establish and implement a new system that oversees the importation, exportation and licensing of new, used and reclaimed controlled substances under Article 4B 2bis.¹⁷
- vii. Monitor and report the production and consumption of HFCs and HFC-23 emissions within their states under new Articles 7(2) (3) and 3(ter).¹⁸
- viii. Ensure that baselines are be calculated for both HFC and hydrofluorocarbon (HCFC) production and consumption.

4.2 The timeline under which these obligations are to be implemented depends on whether a country is classified as an 'Article 5 Party' (developing country) or a 'non-Article 5' party (developed countries).

¹² Article 2J(1), Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹³ Article 2J(3), Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹⁴ Article 2J(7), Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹⁵ 'What is the Kigali Amendment?', European Fluorocarbons Technical Committee (EFTC), Available at < <https://www.fluorocarbons.org/environment/climate-change/kigali-amendment/> >

¹⁶ Article 4, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

¹⁷ Article 4B 2bis, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹⁸ Article 7, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

- 4.3 Under Article 5(8) qua, Article 5 parties are entitled to delay their compliance with the measures set out under Article 2J and modify them according to the timelines provided therein.¹⁹

5. PROBLEM STATEMENT

- 5.1 The ozone-layer is a naturally occurring layer of gas in the earth's upper atmosphere and acts as a shield that protects us from harmful ultraviolet radiation. Initially, CFCs were found to be the root cause of damage to the ozone layer, and this prompted governments to create an agreement that would reduce their production and consumption. This led to the creation of the Montreal Protocol which aimed at reducing the prevalence of ozone depleting substances (ODSs) in the atmosphere in order to protect the ozone layer.
- 5.2 However, new research has found that the alternative to the previous mentioned ODSs, HFCs also contribute to the depletion of the ozone layer as they have the potential to be more potent than carbon dioxide in contributing to climate change and global warming.²⁰ HFCs currently represent approximately 1 percent of total greenhouse gases, however, their impact on global warming is estimated to be thousands of times greater than that of carbon dioxide per unit of mass. For example, HFC-134a which is one of the most abundant HFC is capable of being 3,790 times more damaging to the climate than carbon dioxide over a 20-year period. The rate of emission is growing at a rate of ten to fifteen percent per year, which may double every five to ten years.²¹
- 5.3 The discovery highlights a grave threat to African countries which are extremely vulnerable to climate change as the yield in the

¹⁹ Article 5(8)qua, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 2000.

²⁰ Velders J. M, 'The large contribution of projected HFC emissions to future climate forcing', July 7, 2009, Available at <
<https://www.pnas.org/doi/10.1073/pnas.0902817106>>

²¹ Hydrofluorocarbons (HFCs), Climate and Clean Air Coalition, Available at
<<https://www.ccacoalition.org/en/slcps/hydrofluorocarbons-hfcs>>

agriculture sector would decline leading to a risk of undernourishment and massive economic losses.²² Due to this, the Kigali agreement was created to target the decreased use of HFCs and replace them with more planet friendly alternatives. The Kigali Amendment is a viable solution to this problem as it establishes a timeline through which parties to the Protocol will be expected to implement obligations under the Amendment.

6. JUSTIFICATION

Ratification of the Kigali Amendment will:

- i. Enable Kenya to access financial support as Article 10 of the Montreal Protocol establishes a Multilateral Fund to support Article 5 parties. Extra financial support will be available for Article 5 parties that accelerate the phasing down of HFCs;
- ii. Help reduce the rate of ozone layer depletion therefore leading the overall reduction of global warming;
- iii. Encourage Kenya to strengthen and develop strategies for phasing down HFCs;
- iv. Kenya will be able to avoid the trade restrictions that are will be imposed onto states that are not party to the Protocol by 1st of January 2033;
- v. As the amendment encourages the use of other environmentally friendly alternatives to HFCs, implementing it will give Kenya a competitive advantage in the world market;
- vi. Demonstrate Kenya's commitment to the international community's collective action against ozone-layer depletion and global warming;
- vii. Kenya is already a member state of the Montreal Protocol on Substances that Deplete the Ozone Layer and,

²² 'The Kigali Amendment to the Montreal Protocol: Another Global Commitment to stop climate change', UN environment programme, Available at < <https://www.unep.org/news-and-stories/story/kigali-amendment-montreal-protocol-another-global-commitment-stop-climate>>

- viii. The Kigali Amendment is aligned with the objectives of Kenya's Climate Change Act, 2016.

7. EXPECTED OUTCOMES

- 7.1 Following the timelines and baselines provided under Article 2J and Article 5(8) qua the expected outcome is that Parties to the Protocol and Amendment shall gradually reduce the HFC use and consumption by 80-85 percent by the late 2040s.²³
- 7.2 Under Article 5(8) qua, the phase down in the consumption and production of HFCs for Article 5 countries is as follows respectively:
- i. 2024 to 2028: 100 per cent
 - ii. 2029 to 2034: 90 per cent
 - iii. 2035 to 2039: 70 per cent
 - iv. 2040 to 2044: 50 per cent
 - v. 2045 and thereafter: 20 percent
- 7.3 Additionally, Kenya is an Article 5 country under the Montreal Protocol and is therefore entitled to assistance from non-Article 5 countries to aid the fulfillment of the obligations as per the amendment.
- 7.4 Kenya will be able to transplant the objectives of the Kigali Amendment to its existing legal framework that establishes a national mechanism that regulates the emissions of greenhouse gases including HFCs enshrined under the Climate Change Act 2016.²⁴ The amendment will assist Kenya achieve its environmental

²³ UNEP, OzoneAction Fact Sheet, The Kigali Amendment to the Montreal Protocol: HFC Phase-down.

²⁴ Climate Change Act, 2016.

and climate change objectives as highlighted in the National Climate Change Action Plan that is created under Article 13 of the Climate Change Act, 2016.

8. COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

- 8.1 The Kigali Amendment is consistent with Article 69(1)(g) of Constitution of Kenya, 2010 which provides that the State has obligations to eliminate processes and activities that are likely to endanger the environment.²⁵ In addition, the Kigali Amendment promotes Kenya's constitutional values and objectives which are enshrined in its preamble particularly, the provision on the respect and sustenance of the environment for future generations. It does not allude to an amendment of the Constitution.
- 8.2 Ratification of the Kigali Amendment will provide a timeline and framework under which Kenya can implement the obligations set out under it with aid from developed/ non-article 5 parties.
- 8.3 Kenya enacted the Climate Change Act 2016, which is an Act of Parliament with the purpose of providing a regulatory framework that enhances the responses, mechanisms and measures in response to climate change to achieve low carbon climate development. Part of their mandate involves the establishment of Climate Change Council whose main duty under Section 5 is to provide a national mechanism that sets targets for the regulation of greenhouse gas emissions including HFCs under Section 2.²⁶ This is aligned with the chief objectives of the Kigali Amendment therefore increasing the capacity of its implementation.
- 8.4 Due to this the Climate Change Act is sufficient for the implementation of the Kigali Amendment as it establishes:

²⁵ Article 69(1)(g), Constitution of Kenya, 2010.

²⁶ Section 5, Climate Change Act, 2016.

- i. The National Climate Change Council which is the principal climate change coordination mechanism.²⁷
- ii. Climate Change Directorate which is established as the lead agency on national climate change plans and actions.²⁸
- iii. National Climate Change Action plan which identifies all actions required to enable climate change response and reviews levels and trends of greenhouse gas emissions.²⁹
- iv. The National Environmental Management Authority which shall on behalf of the council regulate, enforce and monitor compliance levels of greenhouse gas emissions as set out by the National Climate Change Council.³⁰
- v. The powers and duties of the Cabinet Secretary which involves the responsibility of creating a biannual report to Parliament on the status of implementation of international obligations to respond to climate change and the attainment of low carbon climate resilient development.³¹

The above mechanisms and authorities can be exercised regarding the Implementation of the Kigali Amendment.

9. FINANCIAL IMPLICATIONS

- 9.1 Financial requirements for the implementation for the Convention which include administrative costs will be provided for under normal budgetary estimates of the relevant institution.
- 9.2 The implementation of the Kigali Amendment is based on a phase-down schedule supported through the Multilateral Fund for the implementation of the Montreal Protocol.

²⁷ Section 5, Climate Change Act, 2016.

²⁸ Section 9, Climate Change Act, 2016.

²⁹ Section 13, Climate Change Act, 2016.

³⁰ Section 17, Climate Change Act, 2016.

³¹ Section 8, Climate Change Act, 2016.

- 9.3 The financial benefits would include, and not limited to; capacity building and training in handling HFC alternatives, licensing and quota systems, monitoring, reporting, and project preparation activities.
- 9.4 The Government may need to allocate additional funds to the relevant MDAs to ensure Kenya has inspectors and regulators that are equipped to ensure that the respective timelines and baselines under the Amendment are adhered to as well as monitor the consumption and production of HFCs.

10. MINISTERIAL RESPONSIBILITY

- 10.1 Responsibility for the implementation of the Kigali Amendment to the Montreal Protocol will fall under the Ministry of Environment and Forestry.
- 10.2 The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

11. VIEWS OF THE PUBLIC

Public participation has not been conducted on the Agreement.

12. RESERVATIONS

The Kigali Amendment does not expressly provide for reservations.

13. RECOMMENDATION TO THE NATIONAL ASSEMBLY

In consideration of the aforementioned facts, the National Assembly is invited to:

1. Note the contents of the Amendment;
2. Consider and approve Kenya's ratification of the Kigali Amendment to the Montreal Protocol on Substances the Deplete the Ozone Layer.
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of ratification to the relevant depository.

SIGNED.....

DATED.......... JULY, 2022

AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY
MINISTRY OF FOREIGN AFFAIRS



MINISTRY OF FOREIGN AFFAIRS

PARLIAMENTARY MEMORANDUM

ON

THE ACCESSION OF THE

BAMAHO CONVENTION ON THE BAN ON THE IMPORT INTO

AFRICA AND THE CONTROL OF THE TRANSBOUNDARY

MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES

WITHIN AFRICA

THE ACCESSION OF THE BAMAKO CONVENTION ON THE BAN ON THE IMPORT INTO AFRICA AND THE CONTROL OF THE TRANSBOUNDARY MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA

1.0 OBJECTIVE OF THE MEMORANDUM

- 1.1. The objective of this Memorandum is to seek the National Assembly's approval for Kenya's accession to the Bamako Convention on the Ban on the import into Africa and the Control of the Trans Boundary Movement and Management of hazardous wastes within Africa.
- 1.2. The ratification process was approved by Cabinet during its meeting held on 12th May 2022.

2.0 BACKGROUND

- 2.1. The Bamako Convention was first negotiated by twelve (12) nations of the Organisation of African Unity in Bamako, Mali on 30th January 1991 and came into force on 22nd April 1998. Currently, thirty-five (35) African states have signed the Convention. Kenya signed the Convention on the 17th of December 2003 but is yet to accede to it.
- 2.2. The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa herein referred to as the Convention was ignited by a worldwide concern about the transboundary movement and disposal of hazardous wastes. The fight for the protection of the environment in these sectors began in the 1970s and the early 1980s.

- 2.3. The Bamako Convention came in to address the gaps of the Basel Convention. The Basel Convention does not possess legally binding waste destruction obligations; rather it only can offer weak, non-binding waste disposal guidelines which could lead to serious contamination of the biosphere. Further, it fails to prohibit the trade of hazardous waste to less developed countries.

3.0 PROBLEM ANALYSIS

- 3.1. Hazardous wastes pose a great threat to human health and the environment. The health effects of exposure to hazardous waste may progress slowly and end up in chronic conditions. The common health problems include; Skin conditions, respiratory infections, central nervous disorders, blood infections, congenital disorders.
- 3.2. African states have been victims of disposal of hazardous wastes in the past through importation or outright dumping. Examples of such circumstances are the discharge of 500 tons of toxic waste in Abidjan killing 17 people and poisoning thousands of others. ¹In 1988, thousands of hazardous wastes disguised as building materials were also disposed of in Koko, Nigeria causing serious conditions for the residents.
- 3.3. In Kenya, the pastoral population of Mandera county has been treated in health facilities with complaints of poisoning or reaction resulting from hazardous substances, the most common waste includes wood, glass, scrap metal, textiles, kitchen waste, disposable nappies and scrap metal.² Moreover, in 2021, an order by the Kenyan Government was made to

¹ United Nations News "Côte d'Ivoire: 10 years on, survivors of toxic waste dumping 'remain in the dark,' say UN rights experts" 17th August 2016

² Omambia, B. & Ogonya, A. M. (2017). Assessing Household Solid Waste Management Systems in Baraton Centre. Retrieved from http://ueab.ac.ke/BIRJ/download/birj_articles_2015/2015_CONFERENCE_17.pdf

return a 20 feet container to India when hazardous chemicals like titanium were traced in the shipment.

3.4. Kenya's framework on environmental protection is vast starting from the national statutes and other international laws such as the Stockholm Declaration and the Basel Convention. All laws when read together show the intent of Kenya in the protection of the environment.

3.5. The gaps in the law however that form the basis of this memorandum are;

- *Gaps in methods of monitoring discharges to the environment.* Under the **Water Quality Regulations**, holders of effluent discharge licenses are required to monitor their discharges by the methods and procedures of sampling and analysis prescribed by NEMA. However, such methods and procedures have not yet been developed.
- *Gaps in equipment for the treatment of non-hazardous waste.* Under the **Waste Management Regulations**, waste generators must install at their premises antipollution technology for the treatment of the non-hazardous waste that is produced. However, there are neither prescribed measures on the matter nor recommendations on the use of existing national or international standards on the issue.
- *Kenyan law has no provisions on underground disposal.* Kenyan law fails to regulate work-over fluids, and naturally occurring radioactive materials (NORM)
- Water Quality Regulations do not provide sufficient requirements and methods for disposal of Liquid Effluents derived from the petroleum sector, except for discharge into water bodies and sewage systems which may not necessarily provide for effective methods for

various reasons, e.g. availability of sewage system for disposal of large volumes of effluents.

- Kenya has no regulatory requirements applicable to deck drainage systems for removing oil-containing fluid from an offshore facility.
- 3.6. The present international, regional and national law applying to Kenya has proven to be inadequate as evidenced by the above. The Country is therefore in dire need of a law that would not only be a guideline but also stipulate clear procedures and have implementation mechanisms to ensure hazardous waste management.
- 3.7. Moreover, the law should have a standard way of regulating hazardous waste all over the African continent. The Bamako Convention is the best to address the gap.

4.0 OBJECT AND SUBJECT MATTER OF THE CONVENTION

- 4.1. The main object of the Convention is to prohibit the import into Africa of any hazardous waste and to specifically ban transboundary movement of hazardous wastes. State parties are imposed by the Convention to ban the importation into, and the transit through, their territory, of hazardous wastes and substances for human health and environmental reasons.
- 4.2. The Bamako Convention outlines hazardous waste examples in Annex 1 and stipulates when exactly one can be deemed to be involved in the transboundary movement of hazardous waste. Further, it provides for a resolution mechanism under Article 20 should they find themselves with a case of transboundary movement of hazardous waste.

- 4.3. The Convention has clear guidelines for hazardous waste management, proper implementation procedures, and clear classifications of hazardous waste.

5.0 OBLIGATIONS IMPOSED BY THE CONVENTION

- 5.1. Mindful of the threat that hazardous substances have to the environment, the rules of sustainable use of the environment, and the risk of damage to human health, state parties are bound by the obligations of the convention under Article 4 to:
- a) Prohibit the import of all hazardous and radioactive waste into Kenya.
 - b) Ensure that hazardous materials are disposed of in the safest way possible.
 - c) Minimize transboundary movements of hazardous wastes within Kenya.
 - d) Prohibit all ocean and inland water dumping into Kenya;
 - e) Ensure that disposal of wastes in Kenya is conducted in an environmentally sound manner.
 - f) Carry out its responsibilities concerning the transport and disposal of hazardous wastes in a manner that is consistent with the protection of human health and the environment.
 - g) Introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct. (Article 9(2))

6.0 JUSTIFICATION FOR ACCESSION

- 6.1. Acceding to the Convention Kenya will:

- i. Enable Kenya to build Capacity for institutions for the implementation of Multilateral Agreements on chemicals and wastes;
- ii. Get information on all movements of hazardous wastes within and across the continent through the notification process for parties;(Article 13)
- iii. Be eligible for the second phase of the Africa Stockpiles Programme which will rid African Countries of obsolete pesticides and stockpiles as well as prevent future pile-ups of toxic wastes including e-waste;
- iv. Benefit from strengthened regional and sub-regional legal and institutional capacity for solid waste management;
- v. Reduce the likelihood of transboundary movement of hazardous waste in Kenya;
- vi. Receive support from the proposed merged African court in dealing with activities considered to be transboundary movement of hazardous wastes; (Article 20)
- vii. Have solutions to issues attracting transboundary movement of hazardous wastes; (Article 20)
- viii. Have a guideline for acts and emissions contributing to the transboundary movement of hazardous wastes. (Annex 1);and
- ix. Have a duty to Re-import hazardous wastes back to where they came from as per the provisions of Article 8.

7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

- 7.1. The Convention is consistent with the Constitution of Kenya 2010 and other laws on the protection of the environment and human health. It promotes all the constitutional values and objectives and does not allude to an amendment of the Constitution.

- 7.2. The ratification of the Bamako Convention presents no new policy implications for Kenya as the provisions of the Convention are already embedded in the Environment Management and Coordination Act, 1999 (Rev 2015).
- 7.3. The national laws relating to hazardous waste management in Kenya are;
1. The Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations 2003 which requires ships to off-load oil or oily mixture and wastes to the certified Port Waste Reception Facility at the Port of Mombasa.
 2. The Environmental Management and Coordination Act 1999 (EMCA 1999)- Provides the legal and institutional framework applicable to all local industries, including the petroleum sector. This is the foundation of environmental protection in Kenya.
 3. The Environmental Management and Coordination (Water Quality) Regulations 2006 provides more specific instructions on how to reach compliance with requirements imposed by EMCA 1999 on discharges of effluents into sewage systems, and into the environment.
 4. Environmental (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations 2003 requires ships to off-load oil or oily mixture and wastes to the certified Port Waste Reception Facility at the Port of Mombasa.
 5. Environmental Impact Assessment Guidelines and Administrative Procedures-The guidelines provide details on the information on what is expected in applications for Environmental Impact licenses, and how it will assess such applications.
 6. The Petroleum (Exploration, Development, and Production) Act, 2019)-This is the main law governing upstream petroleum operations in Kenya.

7.4. As it deems necessary, Kenya may have to incorporate in the laws provisions for;

- Imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct. (Article 9(2))
- Imposing strict restrictions on the importation, dumping, and incineration of hazardous and radioactive waste into Kenya's oceans and inland water.
- Establishing the classifications of hazardous and radioactive waste that are prohibited as per Annex 1 of the Convention.
- Establishing a central national authority that will oversee that the prohibitions and restrictions under the Convention are implemented.

8.0 IMPLICATIONS RELATING TO COUNTIES

8.1. The obligations that are imposed under the Convention are under the jurisdiction of the National Government.

9.0 MINISTERIAL RESPONSIBILITY

9.1. The Ministry that will be responsible for the implementation and any activity regarding the Convention is the Ministry of Environment and Natural Resources.

9.2. The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

10.0 RESERVATIONS

10.1. The Convention does not provide for reservations.

11.0 RECOMMENDATION TO THE NATIONAL ASSEMBLY

11.1. In consideration of the aforementioned facts, the National Assembly is invited to:

1. Note the contents of the Memorandum;
2. Consider and approve Kenya's accession to The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous wastes within Africa.
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of accession to the relevant depository.

SIGNED.......... DATED..........JULY, 2022

AMB. RAYCHELLE OMAMO, SC, EGH

CABINET SECRETARY

MINISTRY OF FOREIGN AFFAIRS



Final text of the

Amended Nairobi Convention for the

Protection, Management and Development

of the Marine and Coastal Environment of

the Western Indian Ocean

Adopted in Nairobi, Kenya
on 31 March 2010

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Preamble

We, the Contracting Parties,

Fully aware of the economic and social value of the marine and coastal environment of the Western Indian Ocean region;

Conscious of our responsibility to manage our marine and coastal environment and natural heritage, including its biological diversity, for the sustainable use and benefit of present and future generations;

*Aware of the impacts of climate change on marine and coastal environment resulting in, *inter alia*, sea-level rise, increase of sea water temperature, ocean acidification, weather and climate variability that affect or are likely to affect coastal communities;*

Recognizing the special hydrographical and ecological characteristics of the region, which require special care and responsible management;

Recognizing further the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and the insufficient integration of an environmental dimension into the development process;

Seeking to ensure that resource development shall be in harmony with the maintenance of the environmental quality of the region and the evolving principles of rational environmental management, including, but not limited to, the ecosystem based management, polluter pays and precautionary principles;

Conscious of the need to adopt integrated policies and practices of sustainable coastal zone management to improve the quality of life of our people;

Realizing fully the need for co-operation amongst the Contracting Parties and with competent international and regional organizations in order to ensure a coordinated and comprehensive development of the natural resources of the region;

Taking into account the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, the 1992 Convention on Biological Diversity (1992), the 1992 United Nations Framework Convention on Climate Change, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, other relevant international conventions, outcomes and decisions of the 1992 United Nations Conference on Environment and Development;

Further taking into account the special circumstances and vulnerability of the small island states of the region reflected in, among others, the 2005 Mauritius Strategy for Further Implementation of the Programme of Action for Sustainable Development of Small Island Developing States;

Recognizing the desirability of promoting the wider acceptance and national implementation of existing international environmental agreements;

Noting the role of non-governmental organizations, civil society and other major groups in the promotion of sound environmental management;

Noting, however, that existing international conventions concerning the marine and coastal environment do not cover all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the Western Indian Ocean region;

Desirous to adopt a regional convention elaborated within the framework of the Action Plan for the Protection Management and Development of the Marine and Coastal Environment of the Western Indian Ocean region, and;

Convinced that the purposes of this Convention would be better achieved by amending the Original Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (1985).

Have agreed as follows,

Article 1 GEOGRAPHICAL COVERAGE

This Convention shall apply to the Western Indian Ocean covering the Eastern and Southern Africa region, hereinafter referred to as "the Convention area" as defined in paragraph (b) of Article 2.

Article 2 DEFINITIONS

For the purposes of this Convention:

- (a) "Contracting Party" means any state or regional inter-governmental integration organization located within the Convention area as defined in this Convention and which is a party to this Convention or its protocols;
- (b) The "Convention area" shall comprise the riparian, marine and coastal environment including the watershed of the Contracting Parties to this Convention. The extent of the watershed and of the coastal environment to be included within the Convention area shall be indicated in each protocol to this Convention, taking into account the objectives of the protocol concerned;
- (c) "Pollution" means the introduction by human intervention, directly or indirectly, or through river flows, of substances, organisms or energy into the marine and coastal environment, including estuaries, resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and reduction of amenities;
- (d) "Organization" means the body designated as responsible for carrying out secretariat functions pursuant to article 17 of this Convention; and
- (e) "Original Convention" means the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region adopted in Nairobi in 1985.

Article 3 GENERAL PROVISIONS

1. The Contracting Parties may enter into bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection and management of the marine and coastal environment of the Convention area. Such agreements shall be consistent with this Convention and Protocols made therein and in accordance with international law. Copies of such agreements shall be communicated to the Organization, and, through the Organization, to all Contracting Parties to this Convention.
2. Nothing in this Convention or its protocols shall be deemed to affect obligations assumed by a Contracting Party under agreements previously concluded and, in particular, the 1982 United Nations Convention on the Law of the Sea.

3. This Convention and its protocols shall be construed in accordance with international law relating to their subject matter. Nothing in this Convention and its protocols shall prejudice the present or future claims and legal views of any Contracting Party concerning the nature and extent of its maritime jurisdiction.
4. Nothing in this Convention and its protocols shall affect the immunity of warships and other government ships operated for non-commercial purposes. Nonetheless, each Contracting Party shall ensure that its vessels and aircraft, entitled to sovereign immunity under international law, act in a manner consistent with this Convention.

Article 4 **GENERAL OBLIGATIONS**

1. The Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are party, to prevent, reduce and combat pollution of the Convention area and to ensure sound environment management of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities.
2. The Contracting Parties shall co-operate in the formulation and adoption of protocols to facilitate the effective implementation of this Convention.
3. The Contracting Parties shall take all appropriate measures in conformity with international law for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavor to harmonize their policies and laws in this regard.
4. The Contracting Parties shall co-operate with the competent international, regional and sub-regional organizations to ensure the effective implementation of this Convention and its protocols. They shall assist each other in fulfilling their obligations under this Convention and its protocols.
5. In taking the measures referred to in paragraph 1, the Contracting Parties shall ensure that the application of each of such measures does not cause pollution of the marine environment outside the Convention area, and in this regard shall endeavour to apply relevant environmental principles including but not limited to the precautionary principle, the polluter pays principle, and the promotion of integrated coastal zone management.

Article 5 **POLLUTION FROM SHIPS**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by discharge from ships and, for this purpose, to ensure the effective implementation of the applicable international rules and standards established by, or within the framework of, the competent international organization.

Article 6 **POLLUTION CAUSED BY DUMPING**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by dumping of wastes and other matter at sea from ships, aircraft, or manmade structures at sea, taking into account applicable international rules and standards and recommended practices and procedures.

Article 7

POLLUTION FROM LAND-BASED SOURCES AND ACTIVITIES

The Contracting Parties shall endeavor to take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other land-based sources and activities within their territories.

Article 8

POLLUTION FROM SEABED ACTIVITIES

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil.

Article 9

POLLUTION RESULTING FROM TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES

1. The Contracting Parties shall take all appropriate measures to prevent, abate and, to the fullest possible extent, eliminate pollution of the Convention area which may be caused by the transboundary movement and disposal of hazardous wastes, and to reduce to a minimum and, if possible, eliminate such transboundary movements.
2. The measures taken by the Contracting Parties under paragraph 1 shall be without prejudice to the obligations of the Parties resulting from their participation in the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes within Africa.

Article 10

AIRBORNE POLLUTION

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting from discharges into the atmosphere from activities under their jurisdiction.

Article 11

BIOLOGICAL DIVERSITY

1. The Contracting Parties shall, individually or jointly, take appropriate measures to conserve biological diversity and protect and preserve rare or fragile ecosystems as well as rare, endangered or threatened species of fauna and flora and their habitats in the Convention area.
2. The Contracting Parties shall, in areas under their jurisdiction, establish protected areas, such as parks and reserves, and shall regulate and, where required and subject to the rules of international law, prohibit any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are established to protect.
3. The establishment of such areas shall not affect the rights of other Contracting Parties and third States and in particular other legitimate uses of the sea.

Article 12
CO-OPERATION IN COMBATING POLLUTION
IN CASES OF EMERGENCY

1. The Contracting Parties shall co-operate in taking all necessary measures to respond to pollution emergencies in the Convention area and to reduce or eliminate pollution or the threat of pollution resulting there from. To this end, the Contracting Parties shall, individually and jointly, develop and promote contingency plans for responding to incidents involving pollution or the threat thereof in the Convention area.
2. When a Contracting Party becomes aware of a case in which the Convention area is in imminent danger of being polluted or has been polluted, it shall immediately notify other States likely to be effected by such pollution, as well as competent international organizations. Furthermore, it shall inform, as soon as feasible, such other States and the Organization of any measures it has taken to minimize or reduce pollution or the threat thereof.

Article 13
ENVIRONMENTAL DAMAGE FROM ENGINEERING ACTIVITIES

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat environmental damage in the Convention area in particular the destruction of marine and coastal ecosystems, caused by engineering activities such as land reclamation and dredging.

Article 14
ENVIRONMENTAL IMPACT ASSESSMENT

1. As part of their environmental management policies, the Contracting Parties shall, in co-operation with competent regional and international organizations if necessary, develop technical and other guidelines to assist in the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area.
2. Each Contracting Party shall assess, within its capabilities, the potential environmental impacts of major projects, which it has reasonable grounds to expect may cause substantial pollution of, or significant and harmful changes to the Convention area.
3. With respect to the assessments referred to in paragraph 2, the Contracting Parties shall, if appropriate in consultation with the Organization, develop procedures for the dissemination of information and, if necessary, for consultations among the Contracting Parties concerned.

Article 15
SCIENTIFIC AND TECHNICAL CO-OPERATION

1. The Contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, in scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of this Convention and its protocols.
2. To this end, the Contracting Parties shall develop and co-ordinate their marine and coastal research and monitoring programmes to include, *inter alia*, biophysical and socio-economic aspects in the Convention area.
3. The Contracting Parties shall establish, in co-operation with competent regional and international organizations, a regional network of national research centres and institutes to ensure compatible results.

4. The Contracting Parties shall endeavor to participate in international arrangements for research and monitoring outside the Convention area.
5. The Contracting Parties shall co-operate, within their available capabilities, directly or through competent regional and international organizations, in the provision to other Contracting Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention area.

Article 16 **LIABILITY AND COMPENSATION**

The Contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, with a view to formulating and adopting appropriate rules and procedures, which are in conformity with international law in the field of liability and compensation for damage resulting from pollution of the Convention area.

Article 17 **INSTITUTIONAL AND FINANCIAL ARRANGEMENTS**

1. The Contracting Parties designate Executive Director of the United Nations Environment Programme as the secretariat of the Convention to carry out the following functions:
 - (a) to prepare and convene the meetings of Contracting Parties and Conferences provided for in articles 18, 19 and 20;
 - (b) to transmit to the Contracting Parties the information received in accordance with articles 3, 12, 14 and 24;
 - (c) to perform the functions assigned to it by protocols to this Convention;
 - (d) to consider enquiries by, and information from, the Contracting Parties and to consult with them on questions relating to this Convention and its protocols;
 - (e) to coordinate the implementation of co-operative activities agreed upon by the meetings of Contracting Parties;
 - (f) to ensure the necessary co-ordination with other regional and international bodies that the Contracting Parties consider competent; and
 - (g) to enter into such administrative and financial arrangements as may be required for the effective discharge of the secretariat functions.
2. Each Contracting Party shall designate an appropriate authority to serve as the channel of communication with the Organization for the purposes of this Convention and its protocols.

Article 18 **MEETINGS OF THE CONTRACTING PARTIES**

1. The Contracting Parties shall hold ordinary meetings once every two years. It shall be the function of the ordinary meetings of the Contracting Parties to keep under review the implementation of this Convention and its protocols and, in particular to:
 - (a) consider information submitted by the Contracting Parties under article 24;

- (b) adopt, review and amend annexes to this Convention and to its related protocols, in accordance with the provisions of article 21; make recommendations regarding the adoption of any additional protocols or amendments to this Convention or its protocols in accordance with the provisions of articles 19 and 20;
 - (c) establish working groups as required to consider any matters concerning this Convention and its protocols;
 - (d) assess periodically the state of the environment in the Convention Area;
 - (e) consider co-operative activities to be undertaken within the framework of this Convention and its protocols; including their financial and institutional implications, and to adopt decisions relating thereto; and
 - (f) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its protocols.
2. Extraordinary meetings shall be convened at the request of any Contracting Party or the Organization, provided that such requests are supported by a two-thirds majority of the Contracting Parties. It shall be the function of the extraordinary meeting of the Contracting Parties to consider only those items proposed in the request for the holding of the extraordinary meeting.

Article 19 ADOPTION OF PROTOCOLS

1. The Contracting Parties, at a conference of plenipotentiaries, may adopt additional protocols to this Convention pursuant to paragraph 2 of article 4.
2. If so requested by a two-third majority of the Contracting Parties, the Organization shall convene a conference of plenipotentiaries for the purpose of adopting additional protocols to this Convention.

Article 20 AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS

1. Any Contracting Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-thirds majority of the Contracting Parties.
2. Any Contracting Party to this Convention may propose amendments to any protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-third majority of the Contracting Parties to the protocol concerned.
3. The text of any proposed amendment shall be communicated by the Organization to all Contracting Parties at least ninety days before the opening of the conference of plenipotentiaries.
4. Any amendment to this Convention shall be adopted by a two-thirds majority vote of the Contracting Parties to the Convention, which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention. Amendments to any protocols shall be adopted by a two-thirds majority vote of Contracting Parties to the protocol which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the protocol.

5. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 4 shall enter into force between Contracting Parties having accepted such amendments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least six of the Contracting Parties to this Convention or to the protocol convened, as the case may be. Thereafter the amendments shall enter into force for any other Contracting Party on the thirtieth day after the date on which that Party deposits its instrument.
6. After the entry into force of an amendment to this Convention or to a protocol, any new Contracting Party to this Convention or such protocol shall become a Contracting Party to the Convention or protocol as amended.

Article 21

ANNEXES AND AMENDMENTS OF ANNEXES

1. Annexes to this Convention or to a protocol shall form an integral part of the Convention or, as the case may be, such protocol.
2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the adoption and entry into force of amendments to annexes to this Convention or to annexes to a protocol:
 - (a) any Contracting Party may propose amendments to annexes to this Convention or annexes to any protocol at the meetings convened pursuant to article 18;
 - (b) such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties to the instrument in question;
 - (c) the Depositary shall without delay communicate the amendments so adopted to all Contracting Parties to this Convention;
 - (d) any Contracting Party that is unable to accept an amendment to annexes to this Convention or to annexes to any protocol shall so notify the Depositary in writing within a period determined by the Contracting Parties concerned when adopting the amendment;
 - (e) the Depositary shall without delay notify all Contracting Parties of notifications received pursuant to the preceding subparagraph;
 - (f) on expiry of the period determined in accordance with sub-paragraph (d) above, the amendment to the annex shall become effective for all Contracting Parties to this Convention or to the protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph; and
 - (g) a Contracting Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party.
3. The adoption and entry into force of a new annex to this Convention or to any protocol shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex, provided that, if it entails an amendment to the Convention or a protocol, the new annex shall not enter into force until such time as that amendment enters into force.
4. Any amendment to the Annex on Arbitration shall be proposed and adopted, and shall enter into force, in accordance with the procedures set out in article 20.

Article 22
RULES OF PROCEDURES AND FINANCIAL RULES

1. The Contracting Parties shall adopt rules of procedures for their meetings.
2. The Contracting Parties shall adopt financial rules, prepared in consultation with the Organization, to determine, in particular, their financial participation in the co-operative activities undertaken for the purposes of this Convention and of protocols to which they are parties.

Article 23
SPECIAL EXERCISE OF THE RIGHT TO VOTE

In their fields of competence, the regional intergovernmental integration organizations referred to in article 27 shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention and to one or more protocols. Such organizations shall not exercise their rights to vote if the member States concerned exercise theirs and vice versa.

Article 24
TRANSMISSION OF INFORMATION

The Contracting Parties shall transmit every two years to the Organization, at least six weeks before the Conference of Parties next following, information on the measures adopted by them in the implementation of this Convention and of protocols to which they are parties, in such form as the meetings of Contracting Parties may determine.

Article 25
SETTLEMENT OF DISPUTES

1. In case of a dispute between Contracting Parties as to the interpretation or application of this Convention or its protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute shall, upon common agreement of the Parties concerned, be submitted to arbitration under the conditions set out in the Annex on Arbitration.

Article 26
RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS

No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same, a Contracting Party to this Convention.

Article 27
COMPLIANCE AND ENFORCEMENT

1. Each Contracting Party shall take all measures at its disposal, and in accordance with its capacities, and consistent with its obligations and prevailing international law, to enforce and comply with this Convention.
2. The Contracting Parties shall, through decisions of the Contracting Parties, establish and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Convention, including mechanisms for open exchange of information between the parties.

Article 28
SOVEREIGNTY CLAIMS AND RIGHTS

1. Nothing in this Convention or any of its protocols, nor any act adopted on the basis of this Convention or its protocols shall prejudice the rights, the present and future claims or legal views of any state relating to the law of the sea, in particular, the 1982 United Nations Law of the Sea Convention, concerning the nature and the extent of marine areas, the delimitation of marine areas between states with opposite or adjacent coasts, freedom of navigation on the high seas, the right and the modalities of passage through straits used for international navigation and the right of innocent passage in territorial seas, as well as the nature and extent of jurisdiction of the coastal State, island or archipelagic States, the flag States and the port States.
2. No act or activity undertaken on the basis of this Convention or its protocols shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

Article 29
SIGNATURE

This Convention shall be open for signature at Nairobi, Kenya from the first day of April two thousand and ten to the first day of April two thousand and eleven by any Contracting Party and any non-contracting party that has been invited to the Conference of Plenipotentiaries. It shall also be open for signature between the same dates by any regional intergovernmental integration organization exercising competence in fields covered by the Convention and such protocols and having at least one member State which belongs to the Convention area region, provided that such regional organization has been invited to participate in the Conference of Plenipotentiaries.

Article 30
RATIFICATION, ACCEPTANCE, APPROVAL AND DEPOSITARY

This Convention and its protocols shall be subject to ratification, acceptance or approval by the States and organizations referred to in article 29. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Republic of Kenya, which will assume the functions of Depositary.

Article 31
ACCESSION

1. This Convention and its protocols shall be open for accession by the States and organizations referred to in article 26 as from the day following the date on which the Convention or the protocol concerned is closed for signature.
2. No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same, a Contracting Party to this Convention.
3. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.
4. After the entry into force of this Convention and of any protocol, any State or regional intergovernmental integration organization not referred to in article 29 may accede to the Convention and to any protocol, subject to prior approval

by three-fourths of the Contracting Parties to the Convention or the protocol concerned.

5. Instruments of accession shall be deposited with the Depositary.

Article 32 **ENTRY INTO FORCE**

1. This Convention shall govern relationships among Contracting Parties and shall replace the Original Convention.
2. This Convention shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, this Convention by the States and organizations referred to in article 30.
3. Any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, such protocol by the States and organizations referred to in article 29.
4. Thereafter, this Convention and any protocol shall enter into force with respect to any State or organization referred to in article 29 or in article 31 on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 33 **WITHDRAWAL**

1. At any time after three years from the date of entry into force of this Convention with respect to a Contracting Party, that Contracting Party may withdraw from this Convention by giving written notification to the Depositary.
2. Except as may be otherwise provided in any protocol to this Convention, any Contracting Party may, at any time after three years from the date of entry into force of such protocol with respect to that Contracting Party, withdraw from such protocol by giving written notification to the Depositary.
3. Withdrawal shall take effect one year after the date on which notification of withdrawal is received by the Depositary.
4. Any Contracting Party which withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it was a Contracting Party.
5. Any Contracting Party which, upon its withdrawal from a protocol, is no longer a Contracting Party to any Protocol to this Convention, shall be considered as also having withdrawn from the Convention itself.




Article 34 **RESPONSIBILITIES OF THE DEPOSITARY**



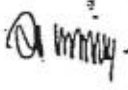
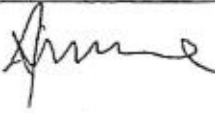

1. The Depositary shall inform the Signatories and the Contracting Parties, as well as the Organization, of:
 - (a) the signature of this Convention and of its protocols and the deposit of instruments of ratification, acceptance, approval or accession;
 - (b) the date on which the Convention or any protocol will come into force for each Contracting Party;

- (c) the notification of withdrawal and the date on which it will take effect;
 - (d) the amendments adopted with respect to the Convention or to any protocol, their acceptance by the Contracting Parties and the date of their entry into force; and
 - (e) all matters relating to new annexes and to the amendment of any annex.
2. The original of this Convention and of any protocol shall be deposited with the Depositary, which shall send certified copies thereof to the Signatories, the Contracting Parties and the Organization.
 3. As soon as the Convention or any protocol enters into force, the Depositary shall transmit a certified copy of the instrument concerned to the Secretary - General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

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

ADOPTED BY THE CONFERENCE OF THE PLENIPOTENTIARIES OF THE CONTRACTING PARTIES TO THE ORIGINAL CONVENTION IN NAIROBI, KENYA ON THIS THIRTY FIRST DAY OF MARCH TWO THOUSAND AND TEN IN SINGLE COPIES IN THE ENGLISH AND FRENCH LANGUAGES, THE TWO TEXTS BEING EQUALLY AUTHENTIC.

Name of Contracting Party	Name of Contracting Party Representative	Signature	Date
COMOROS	SAID MOHAMMED AH SAID		01/04/10
FRANCE	Elisabeth BARBIER		1-4-10
KENYA	Dr AYUB MACHARIA		01-04-10
MADAGASCAR			

Republic of MAURITIUS	Satceaved Seebaluck		07/04/10
MOZAMBIQUE	ANA CHICHAUA		01.04.10
REPUBLIC SEYCHELLES	JOSEPH HOURLICE		1.04.10
SOMALIA	Dr Abdullahi Mohamed 1884		07/04/10
REPUBLIC OF SOUTH AFRICA			
UNITED REPUBLIC OF TANZANIA	Bahula BURIAN		01.04.10

ANNEX ON ARBITRATION

Article 1

Unless the agreement referred to in article 25 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with article 2 to 10 below.

Article 2

The claimant party shall notify the Organization that the parties agree to submit the dispute to arbitration pursuant to paragraph 2 of article 25 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. The Organization shall forward the information thus received to all Contracting Parties to the Convention or to the protocol concerned.

Article 3

The arbitration shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months' period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party, which has not appointed an arbitrator to do so within two months. After such period he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of the Convention and the protocol or protocols concerned.
2. Any arbitral tribunal constituted under the provisions of this annex shall draw up its own rules of procedure.

Article 6

1. The decision of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
2. The arbitral tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.
3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party to the dispute shall not constitute an impediment to the proceedings.

Article 7

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final settlement thereof to the parties.

Article 9

Any Contracting Party that has an interest of legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the arbitral tribunal.

Article 10

1. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period, which should not exceed five months.
2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.
3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the tribunal which made award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.

Decision XXVIII/1: Further Amendment of the Montreal Protocol

To adopt, in accordance with the procedure laid down in paragraph 4 of Article 9 of the Vienna Convention for the Protection of the Ozone Layer, the Amendment to the Montreal Protocol set out in annex I to the report of the Twenty-Eighth Meeting of the Parties;

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer

Article I: Amendment

Article 1, paragraph 4

In paragraph 4 of Article 1 of the Protocol, for the words:

“Annex C or Annex E”

there shall be substituted:

“Annex C, Annex E or Annex F”

Article 2, paragraph 5

In paragraph 5 of Article 2 of the Protocol, for the words:

“and Article 2H”

there shall be substituted:

“Articles 2H and 2J”

Article 2, paragraphs 8 (a), 9 (a) and 11

In paragraphs 8 (a) and 11 of Article 2 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

The following words shall be added at the end of subparagraph (a) of paragraph 8 of Article 2 of the Protocol:

“Any such agreement may be extended to include obligations respecting consumption or production under Article 2J provided that the total combined calculated level of consumption or production of the Parties concerned does not exceed the levels required by Article 2J.”

In subparagraph (a) (i) of paragraph 9 of Article 2 of the Protocol, after the second use of the words:

“should be;”

there shall be deleted:

“and”

Subparagraph (a) (ii) of paragraph 9 of Article 2 of the Protocol shall be renumbered as subparagraph (a) (iii).

The following shall be added as subparagraph (a) (ii) after subparagraph (a) (i) of paragraph 9 of Article 2 of the Protocol:

“Adjustments to the global warming potentials specified in Group I of Annex A, Annex C and Annex F should be made and, if so, what the adjustments should be; and”

Article 2J

The following Article shall be inserted after Article 2I of the Protocol:

“Article 2J: Hydrofluorocarbons

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 2019, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Annex F, expressed in CO₂ equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of consumption of Annex F controlled substances for the years 2011, 2012 and 2013, plus fifteen per cent of its calculated level of

consumption of Annex C, Group I, controlled substances as set out in paragraph 1 of Article 2F, expressed in CO₂ equivalents:

- (a) 2019 to 2023: 90 per cent
- (b) 2024 to 2028: 60 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

2. Notwithstanding paragraph 1 of this Article, the Parties may decide that a Party shall ensure that, for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Annex F, expressed in CO₂ equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of consumption of Annex F controlled substances for the years 2011, 2012 and 2013, plus twenty-five per cent of its calculated level of consumption of Annex C, Group I, controlled substances as set out in paragraph 1 of Article 2F, expressed in CO₂ equivalents:

- (a) 2020 to 2024: 95 per cent
- (b) 2025 to 2028: 65 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

3. Each Party producing the controlled substances in Annex F shall ensure that for the twelve-month period commencing on 1 January 2019, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Annex F, expressed in CO₂ equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of production of Annex F controlled substances for the years 2011, 2012 and 2013, plus fifteen per cent of its calculated level of production of Annex C, Group I, controlled substances as set out in paragraph 2 of Article 2F, expressed in CO₂ equivalents:

- (a) 2019 to 2023: 90 per cent
- (b) 2024 to 2028: 60 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

4. Notwithstanding paragraph 3 of this Article, the Parties may decide that a Party producing the controlled substances in Annex F shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Annex F, expressed in CO₂ equivalents, does not exceed the percentage, set out for the respective range of years specified in subparagraphs (a) to (e) below, of the annual average of its calculated levels of production of Annex F controlled substances for the years 2011, 2012 and 2013, plus twenty-five per cent of its calculated level of production of Annex C, Group I, controlled substances as set out in paragraph 2 of Article 2F, expressed in CO₂ equivalents:

- (a) 2020 to 2024: 95 per cent
- (b) 2025 to 2028: 65 per cent
- (c) 2029 to 2033: 30 per cent
- (d) 2034 to 2035: 20 per cent
- (e) 2036 and thereafter: 15 per cent

5. Paragraphs 1 to 4 of this Article will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by the Parties to be exempted uses.
6. Each Party manufacturing Annex C, Group I, or Annex F substances shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its emissions of Annex F, Group II, substances generated in each production facility that manufactures Annex C, Group I, or Annex F substances are destroyed to the extent practicable using technology approved by the Parties in the same twelve-month period.
7. Each Party shall ensure that any destruction of Annex F, Group II, substances generated by facilities that produce Annex C, Group I, or Annex F substances shall occur only by technologies approved by the Parties.

Article 3

The preamble to Article 3 of the Protocol should be replaced with the following:

"1. For the purposes of Articles 2, 2A to 2J and 5, each Party shall, for each group of substances in Annex A, Annex B, Annex C, Annex E or Annex F, determine its calculated levels of:"

For the final semi-colon of subparagraph (a) (i) of Article 3 of the Protocol there shall be substituted:

“, except as otherwise specified in paragraph 2;”

The following text shall be added to the end of Article 3 of the Protocol:

“, and

(d) Emissions of Annex F, Group II, substances generated in each facility that generates Annex C, Group I, or Annex F substances by including, among other things, amounts emitted from equipment leaks, process vents and destruction devices, but excluding amounts captured for use, destruction or storage.

2. When calculating levels, expressed in CO₂ equivalents, of production, consumption, imports, exports and emissions of Annex F and Annex C, Group I, substances for the purposes of Article 2J, paragraph 5 of Article 2 and paragraph 1 (d) of Article 3, each Party shall use the global warming potentials of those substances specified in Group I of Annex A, Annex C and Annex F.”

Article 4, paragraph 1 sept

The following paragraph shall be inserted after paragraph 1 *sex* of Article 4 of the Protocol:

“1 *sept*. Upon entry into force of this paragraph, each Party shall ban the import of the controlled substances in Annex F from any State not Party to this Protocol.”

Article 4, paragraph 2 sept

The following paragraph shall be inserted after paragraph 2 *sex* of Article 4 of the Protocol:

“2 *sept*. Upon entry into force of this paragraph, each Party shall ban the export of the controlled substances in Annex F to any State not Party to this Protocol.”

Article 4, paragraphs 5, 6 and 7

In paragraphs 5, 6 and 7 of Article 4 of the Protocol, for the words:

“Annexes A, B, C and E”

there shall be substituted:

“Annexes A, B, C, E and F”

Article 4, paragraphs 8

In paragraph 8 of Article 4 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

Article 4B

The following paragraph shall be inserted after paragraph 2 of Article 4B of the Protocol:

"2 *bis*. Each Party shall, by 1 January 2019 or within three months of the date of entry into force of this paragraph for it, whichever is later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annex F. Any Party operating under paragraph 1 of Article 5 that decides it is not in a position to establish and implement such a system by 1 January 2019 may delay taking those actions until 1 January 2021."

Article 5

In paragraph 4 of Article 5 of the Protocol, for the word:

"2I"

there shall be substituted:

"2J"

In paragraphs 5 and 6 of Article 5 of the Protocol, for the words:

"Article 2I"

there shall be substituted:

"Articles 2I and 2J"

In paragraph 5 of Article 5 of the Protocol, before the words:

"any control measures"

there shall be inserted:

"with"

The following paragraph shall be inserted after paragraph 8 *ter* of Article 5 of the Protocol:

"8 *qua*

(a) Each Party operating under paragraph 1 of this Article, subject to any adjustments made to the control measures in Article 2J in accordance with paragraph 9 of Article 2, shall be entitled to delay its compliance with the control measures set out in subparagraphs (a) to (e) of paragraph 1 of Article 2J and subparagraphs (a) to (e) of paragraph 3 of Article 2J and modify those measures as follows:

- (i) 2024 to 2028: 100 per cent
- (ii) 2029 to 2034: 90 per cent
- (iii) 2035 to 2039: 70 per cent
- (iv) 2040 to 2044: 50 per cent
- (v) 2045 and thereafter: 20 per cent

(b) Notwithstanding subparagraph (a) above, the Parties may decide that a Party operating under paragraph 1 of this Article, subject to any adjustments made to the control measures in Article 2J in accordance with paragraph 9 of Article 2, shall be entitled to delay its compliance with the control measures set out in subparagraphs (a) to (e) of paragraph 1 of Article 2J and subparagraphs (a) to (e) of paragraph 3 of Article 2J and modify those measures as follows:

- (i) 2028 to 2031: 100 per cent
- (ii) 2032 to 2036: 90 per cent
- (iii) 2037 to 2041: 80 per cent
- (iv) 2042 to 2046: 70 per cent
- (v) 2047 and thereafter: 15 per cent

(c) Each Party operating under paragraph 1 of this Article, for the purposes of calculating its consumption baseline under Article 2J, shall be entitled to use the average of its calculated levels of consumption of Annex F controlled substances for the years 2020, 2021 and 2022,

plus sixty-five per cent of its baseline consumption of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(d) Notwithstanding subparagraph (c) above, the Parties may decide that a Party operating under paragraph 1 of this Article, for the purposes of calculating its consumption baseline under Article 2J, shall be entitled to use the average of its calculated levels of consumption of Annex F controlled substances for the years 2024, 2025 and 2026, plus sixty-five per cent of its baseline consumption of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(e) Each Party operating under paragraph 1 of this Article and producing the controlled substances in Annex F, for the purposes of calculating its production baseline under Article 2J, shall be entitled to use the average of its calculated levels of production of Annex F controlled substances for the years 2020, 2021 and 2022, plus sixty-five per cent of its baseline production of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(f) Notwithstanding subparagraph (e) above, the Parties may decide that a Party operating under paragraph 1 of this Article and producing the controlled substances in Annex F, for the purposes of calculating its production baseline under Article 2J, shall be entitled to use the average of its calculated levels of production of Annex F controlled substances for the years 2024, 2025 and 2026, plus sixty-five per cent of its baseline production of Annex C, Group I, controlled substances as set out in paragraph 8 *ter* of this Article.

(g) Subparagraphs (a) to (f) of this paragraph will apply to calculated levels of production and consumption save to the extent that a high-ambient-temperature exemption applies based on criteria decided by the Parties."

Article 6

In Article 6 of the Protocol, for the words:

"Articles 2A to 2I"

there shall be substituted:

"Articles 2A to 2J"

Article 7, paragraphs 2, 3 and 3 ter

The following line shall be inserted after the line that reads "– in Annex E, for the year 1991," in paragraph 2 of Article 7 of the Protocol:

"– in Annex F, for the years 2011 to 2013, except that Parties operating under paragraph 1 of Article 5 shall provide such data for the years 2020 to 2022, but those Parties operating under paragraph 1 of Article 5 to which subparagraphs (d) and (f) of paragraph 8 *qua* of Article 5 applies shall provide such data for the years 2024 to 2026;"

In paragraphs 2 and 3 of Article 7 of the Protocol, for the words:

"C and E"

there shall be substituted:

"C, E and F"

The following paragraph shall be added to Article 7 of the Protocol after paragraph 3 *bis*:

"3 *ter*. Each Party shall provide to the Secretariat statistical data on its annual emissions of Annex F, Group II, controlled substances per facility in accordance with paragraph 1 (d) of Article 3 of the Protocol."

Article 7, paragraph 4

In paragraph 4 of Article 7, after the words:

"statistical data on" and "provides data on"

there shall be added:

"production,"

Article 10, paragraph 1

In paragraph 1 of Article 10 of the Protocol, for the words:

“and Article 2I”

There shall be substituted:

“, Article 2I and Article 2J”

The following shall be inserted at the end of paragraph 1 of Article 10 of the Protocol:

“Where a Party operating under paragraph 1 of Article 5 chooses to avail itself of funding from any other financial mechanism that could result in meeting any part of its agreed incremental costs, that part shall not be met by the financial mechanism under Article 10 of this Protocol.”

Article 17

In Article 17 of the Protocol, for the words:

“Articles 2A to 2I”

there shall be substituted:

“Articles 2A to 2J”

Annex A

The following table shall replace the table for Group I in Annex A to the Protocol:

Group	Substance	Ozone-Depleting Potential*	100-Year Global Warming Potential
<i>Group I</i>			
CFCl ₃	(CFC-11)	1.0	4,750
CF ₂ Cl ₂	(CFC-12)	1.0	10,900
C ₂ F ₃ Cl ₃	(CFC-113)	0.8	6,130
C ₂ F ₄ Cl ₂	(CFC-114)	1.0	10,000
C ₂ F ₅ Cl	(CFC-115)	0.6	7,370

Annex C and Annex F

The following table shall replace the table for Group I in Annex C to the Protocol:

Group	Substance	Number of isomers	Ozone-Depleting Potential*	100-Year Global Warming Potential***
<i>Group I</i>				
CHFCl ₂	(HCFC-21)**	1	0.04	151
CHF ₂ Cl	(HCFC-22)**	1	0.055	1810
CH ₂ FCI	(HCFC-31)	1	0.02	
C ₂ HFCl ₄	(HCFC-121)	2	0.01–0.04	
C ₂ HF ₂ Cl ₃	(HCFC-122)	3	0.02–0.08	
C ₂ HF ₃ Cl ₂	(HCFC-123)	3	0.02–0.06	77
CHCl ₂ CF ₃	(HCFC-123)**	–	0.02	
C ₂ HF ₄ Cl	(HCFC-124)	2	0.02–0.04	609
CHFClCF ₃	(HCFC-124)**	–	0.022	
C ₂ H ₂ FCI ₃	(HCFC-131)	3	0.007–0.05	
C ₂ H ₂ F ₂ Cl ₂	(HCFC-132)	4	0.008–0.05	
C ₂ H ₂ F ₃ Cl	(HCFC-133)	3	0.02–0.06	
C ₂ H ₃ FCI ₂	(HCFC-141)	3	0.005–0.07	
CH ₃ CFCl ₂	(HCFC-141b)**	–	0.11	725
C ₂ H ₃ F ₂ Cl	(HCFC-142)	3	0.008–0.07	
CH ₃ CF ₂ Cl	(HCFC-142b)**	–	0.065	2310
C ₂ H ₄ FCI	(HCFC-151)	2	0.003–0.005	

C ₃ HFCl ₆	(HCFC-221)	5	0.015–0.07	
C ₃ HF ₂ Cl ₅	(HCFC-222)	9	0.01–0.09	
C ₃ HF ₃ Cl ₄	(HCFC-223)	12	0.01–0.08	
C ₃ HF ₄ Cl ₃	(HCFC-224)	12	0.01–0.09	
C ₃ HF ₅ Cl ₂	(HCFC-225)	9	0.02–0.07	
CF ₃ CF ₂ CHCl ₂	(HCFC-225ca)**	–	0.025	122
CF ₂ ClCF ₂ CHClF	(HCFC-225cb)**	–	0.033	595
C ₃ HF ₆ Cl	(HCFC-226)	5	0.02–0.10	
C ₃ H ₂ FCl ₅	(HCFC-231)	9	0.05–0.09	
C ₃ H ₂ F ₂ Cl ₄	(HCFC-232)	16	0.008–0.10	
C ₃ H ₂ F ₃ Cl ₃	(HCFC-233)	18	0.007–0.23	
C ₃ H ₂ F ₄ Cl ₂	(HCFC-234)	16	0.01–0.28	
C ₃ H ₂ F ₅ Cl	(HCFC-235)	9	0.03–0.52	
C ₃ H ₃ FCl ₄	(HCFC-241)	12	0.004–0.09	
C ₃ H ₃ F ₂ Cl ₃	(HCFC-242)	18	0.005–0.13	
C ₃ H ₃ F ₃ Cl ₂	(HCFC-243)	18	0.007–0.12	
C ₃ H ₃ F ₄ Cl	(HCFC-244)	12	0.009–0.14	
C ₃ H ₄ FCl ₃	(HCFC-251)	12	0.001–0.01	
C ₃ H ₄ F ₂ Cl ₂	(HCFC-252)	16	0.005–0.04	
C ₃ H ₄ F ₃ Cl	(HCFC-253)	12	0.003–0.03	
C ₃ H ₅ FCl ₂	(HCFC-261)	9	0.002–0.02	
C ₃ H ₅ F ₂ Cl	(HCFC-262)	9	0.002–0.02	
C ₃ H ₆ FCl	(HCFC-271)	5	0.001–0.03	

- * Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.
- ** Identifies the most commercially viable substances with ODP values listed against them to be used for the purposes of the Protocol.
- *** For substances for which no GWP is indicated, the default value 0 applies until a GWP value is included by means of the procedure foreseen in paragraph 9 (a) (ii) of Article 2.

The following annex shall be added to the Protocol after Annex E:

“Annex F: Controlled substances

Group	Substance	100-Year Global Warming Potential
<i>Group I</i>		
CHF ₂ CHF ₂	HFC-134	1,100
CH ₂ FCF ₃	HFC-134a	1,430
CH ₂ FCHF ₂	HFC-143	353
CHF ₂ CH ₂ CF ₃	HFC-245fa	1,030
CF ₃ CH ₂ CF ₂ CH ₃	HFC-365mfc	794
CF ₃ CHFCF ₃	HFC-227ea	3,220
CH ₂ FCF ₂ CF ₃	HFC-236cb	1,340
CHF ₂ CHFCF ₃	HFC-236ea	1,370
CF ₃ CH ₂ CF ₃	HFC-236fa	9,810
CH ₂ FCF ₂ CHF ₂	HFC-245ca	693
CF ₃ CHFCF ₂ CF ₃	HFC-43-10mee	1,640
CH ₂ F ₂	HFC-32	675
CHF ₂ CF ₃	HFC-125	3,500
CH ₃ CF ₃	HFC-143a	4,470
CH ₃ F	HFC-41	92

CH ₂ FCH ₂ F	HFC-152	53
CH ₃ CHF ₂	HFC-152a	124
<i>Group II</i>		
CHF ₃	HFC-23	14,800

Article II: Relationship to the 1999 Amendment

No State or regional economic integration organization may deposit an instrument of ratification, acceptance or approval of or accession to this Amendment unless it has previously, or simultaneously, deposited such an instrument to the Amendment adopted at the Eleventh Meeting of the Parties in Beijing, 3 December 1999.

Article III: Relationship to the United Nations Framework Convention on Climate Change and its Kyoto Protocol

This Amendment is not intended to have the effect of excepting hydrofluorocarbons from the scope of the commitments contained in Articles 4 and 12 of the United Nations Framework Convention on Climate Change or in Articles 2, 5, 7 and 10 of its Kyoto Protocol.

Article IV: Entry into force

1. Except as noted in paragraph 2, below, this Amendment shall enter into force on 1 January 2019, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.
2. The changes to Article 4 of the Protocol, Control of trade with non-Parties, set out in Article I of this Amendment shall enter into force on 1 January 2033, provided that at least seventy instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.
3. For purposes of paragraphs 1 and 2, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
4. After the entry into force of this Amendment, as provided under paragraphs 1 and 2, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.

Article V: Provisional application

Any Party may, at any time before this Amendment enters into force for it, declare that it will apply provisionally any of the control measures set out in Article 2J, and the corresponding reporting obligations in Article 7, pending such entry into force.

BAMAKO CONVENTION ON THE BAN OF THE IMPORT TO
AFRICA AND THE CONTROL OF TRANSBOUNDARY
MOVEMENT AND MANAGEMENT OF
HAZARDOUS WASTES WITHIN AFRICA

PREAMBLE

The Parties to this Convention,

1. *Mindful of the growing threat to human health and the environment posed by the increased generation and the complexity of hazardous wastes,*
2. *Further mindful that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,*
3. *Aware of the risk of damage to human health and the environment caused by transboundary movements of hazardous wastes,*
4. *Reiterating that States should ensure that the generator should carry out his responsibilities with regard to the transport and disposal of hazardous wastes in a manner that is consistent with the protection of human health and environment, whatever the place of disposal,*
5. *Recalling relevant Chapter of the Charter of the Organization of African Unity (OAU) on Environmental Protection, the African Charter for Human and People's Rights, Chapter IX of the Lagos Plan of Action and other Recommendations adopted by the Organization of African Unity on the environment,*
6. *Further recognizing the sovereignty of States to ban the importation into, and the transit through, their territory, of hazardous wastes and substances for human health and environmental reasons,*
7. *Recognizing also the increasing mobilization in Africa for the prohibition of transboundary movements of hazardous wastes and their disposal in African countries,*

8. *Convinced that hazardous wastes should, as far as is compatible with environmentally sound and efficient management, be disposed in the State where they were generated,*
9. *Convinced that the effective control and minimization of transboundary movements of hazardous wastes will act as an incentive, in Africa and elsewhere, for the reduction of the volume of the generation of such wastes,*
10. *Noting that a number of international and regional agreements deal with the problem of the protection and preservation of the environment with regard to the transit of dangerous goods,*
11. *Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by Decision 14/30 of 17 June, 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), the Charter of Human Rights, relevant recommendations, declarations, instruments and regulations adopted within the United Nations System, the relevant Articles of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, allows for the establishment of regional agreements which may be equal to or stronger than its own provisions, Article 39 of the Lome IV Convention relating to the international movement of hazardous wastes and radioactive wastes, African inter-governmental organizations and the work and studies done within other international and regional organizations,*
12. *Mindful of the spirit, principles, aims and functions of the African Convention on the Conservation of Nature and Natural Resources adopted by the African Heads of State and Government in Algiers (1968) and the World Charter for Nature adopted by the General Assembly of the United Nations at its Thirty-seventh Session (1982) as the rule of ethics in respect of the protection of human environment and the conservation of natural resources,*

13. *Concerned by the problems of the transboundary traffic in hazardous wastes,*
14. *Recognizing the need to promote the development of clean production methods, including clean technologies, for the sound management of hazardous wastes produced in Africa, in particular, to avoid, minimize and eliminate the generation of such wastes,*
15. *Recognizing also that when necessary hazardous wastes should be transported in accordance with relevant international conventions and recommendations,*
16. *Determined to protect, by strict control, the human health of the African population and the environment against the adverse effects which may result from the generation of hazardous wastes,*
17. *Affirming a commitment also to responsibly address the problem of hazardous wastes originating within the Continent of Africa,*

HAVE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For the purpose of this Convention:

1. *"Wastes" are substances or materials which are disposed of, or are intended to be disposed of, or are required to be disposed of by the provisions of national law;*

2. *"Hazardous wastes" shall mean wastes as specified in Article 2 of this Convention;*
3. *"Management" means the prevention and reduction of hazardous wastes and the collection, transport, storage, treatment either for re-use or disposal of hazardous wastes including after-care of disposal sites;*
4. *"Transboundary Movement" means any movement of hazardous wastes from an area under the national jurisdiction of any state to or through an area under the national jurisdiction of another State, or to or through an area not under the national jurisdiction of another State, provided at least two States are involved in the movement;*
5. *"Clean production methods" means production or industrial systems which avoid or eliminate the generation of hazardous wastes and hazardous products in conformity with Article 4, Section 3 (f) and (g) of this Convention;*
6. *"Disposal" means any operation specified in Annex III to this Convention;*
7. *"Approved site or facility" means a site or facility for the disposal of hazardous wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;*
8. *"Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes and any information related to it, and for responding to such a notification, as provided in Article 6;*
9. *"Focal point" means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;*

10. *"Environmentally sound management of hazardous wastes" means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and environment against the adverse effects which may result from such wastes;*
11. *"Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;*
12. *"State of export" means a State from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated;*
13. *"State of import" means a State to which a transboundary movement is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;*
14. *"State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes is planned or takes place;*
15. *"States concerned" means Parties which are States of export or import, or transit States whether or not Parties;*
16. *"Person" means any natural or legal person;*
17. *"Exporter" means any person under the jurisdiction of the State export who arranges for hazardous wastes to be exported;*
18. *"Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes to be imported;*
19. *"Carrier" means any person who carries out the transport of hazardous wastes;*

20. *"Generator" means any person whose activity produces hazardous wastes, or, if that person is not known, the person who is in possession and/or control of those wastes;*

21. *"Disposer" means any person to whom hazardous wastes are shipped and who carries out the disposal of such wastes;*

22. *"Illegal traffic" means any transboundary movement of hazardous wastes as specified in Article 9;*

23. *"Dumping at sea" means the deliberate disposal of hazardous wastes at sea from vessels, aircraft, platforms or other man-made structures at sea, and includes ocean incineration and disposal into the seabed and sub-seabed.*

ARTICLE 2

SCOPE OF THE CONVENTION

1. *The following substances shall be "hazardous wastes" for the purposes of this convention:*

- (a) Wastes that belong to any category contained in Annex I of this Convention;*
- (b) Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;*
- (c) Wastes which possess any of the characteristics contained in Annex II of this Convention;*
- (d) Hazardous substances which have been banned, canceled or refused registration by government regulatory action, or*

voluntarily withdrawn from registration, in the country of manufacture, for human health and environmental reasons.

2. *Wastes which, as a result of being radioactive, are subject to any international control systems, including international instruments, applying specifically to radioactive materials, are included in the scope of this Convention.*

3. *Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, shall not fall within the scope of this Convention.*

ARTICLE 3

NATIONAL DEFINITIONS OF HAZARDOUS WASTES

1. *Each State shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annex 1 of this Convention, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.*

2. *Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to Paragraph 1 of this Convention.*

3. *The Secretariat shall forthwith inform all Parties of the information it has received pursuant to Paragraphs 1 and 2 of this Article.*

4. *Parties shall be responsible for making the information transmitted to them by the Secretariat under Paragraph 3 of this Article, available to their exporters and other appropriate bodies.*

ARTICLE 4**GENERAL OBLIGATIONS****1. *Hazardous Waste Import Ban.***

All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties. Such import shall be deemed illegal and a criminal act. All Parties shall:

- (a) Forward as soon as possible, all information relating to such illegal hazardous waste import activity to the Secretariat who shall distribute the information to all Contracting Parties;*
- (b) Co-operate to ensure that no imports of hazardous wastes from a non-Party enter a Party to this Convention. To this end, the Parties shall, at the Conference of the Contracting Parties consider other enforcement mechanisms.*

2. *Ban on Dumping of Hazardous Wastes at Sea, Internal Waters and Waterways.*

- (a) Parties in conformity with related international conventions and instruments shall, in the exercise of their jurisdiction within their internal waters, territorial seas, exclusive economic zones and continental shelf, adopt legal, administrative and other appropriate measures to control all carriers from non-Parties, and prohibit the dumping at sea of hazardous wastes, including their incineration at sea and their disposal in the seabed and sub-seabed; any dumping of hazardous wastes at sea, including incineration at sea as well as seabed and sub-seabed disposal, by Contracting Parties, whether in internal waters, territorial seas, exclusive economic zones or high seas shall be deemed to be illegal;*

- (b) *Parties shall forward, as soon as possible, all information relating to dumping of hazardous wastes to the Secretariat which shall distribute the information to all Contracting Parties.*

3.

Waste Generation in Africa,

Each Party shall:

- (a) *Ensure that hazardous waste generators submit to the Secretariat reports regarding the wastes that they generate in order to enable the Secretariat of the Convention to produce a complete hazardous waste audit;*
- (b) *Impose unlimited liability as well as joint and several liability on hazardous waste generators;*
- (c) *Ensure that the generation of hazardous wastes within the area under its jurisdiction is reduced to a minimum taking into account social, technological and economic aspects;*
- (d) *Ensure the availability of adequate treatment and/or disposal facilities, for the environmentally sound management of hazardous wastes which shall be located, to the extent possible, within its jurisdiction;*
- (e) *Ensure that persons involved in the management of hazardous wastes within its jurisdiction take such steps as are necessary to prevent pollution arising from such wastes and, if such pollution occurs, to minimize the consequence thereof for human health and environment;*

The Adoption of Precautionary Measures:

- (f) *Each Party shall strive to adopt and implement the preventive, precautionary approach to pollution problems which entails inter-alia, preventing the release into the environment of substances which may cause harm to humans or the environment without waiting for scientific proof regarding such harm. The Parties shall co-operate with each other in taking the appropriate measures to implement the precautionary principle to pollution prevention through the application of clean production methods, rather than the pursuit of a permissible emissions approach based on assimilative capacity assumptions;*
- (g) *In this respect Parties shall promote clean production methods applicable to entire product life cycles including:*
- *raw material selection, extraction and processing;*
 - *product conceptualization, design, manufacture and assemblage;*
 - *materials transport during all phases;*
 - *industrial and household usage;*
 - *reintroduction of the product into industrial systems or nature when it no longer serves a useful function;*

Clean production shall not include "end-of-pipe" pollution controls such as filters and scrubbers, or chemical, physical or biological treatment. Measures which reduce the volume of waste by incineration or concentration, mask the hazard by dilution, or transfer pollutants from one environmental medium to another, are also excluded,

- (h) *The issue of the transfer to Africa of polluting technologies shall be kept under systematic review by the Secretariat of the Conference and periodic reports made to the Conference of the Parties;*

Obligations in the Transport and Transboundary Movement of Hazardous Wastes from Contracting Parties;

- (i) *Each Party shall prevent the export of hazardous wastes to States which have prohibited by their legislation or international agreements all such imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;*
- (j) *A Party shall not permit hazardous wastes to be exported to a State which does not have the facilities for disposing of them in an environmentally sound manner;*
- (k) *Each Party shall ensure that hazardous wastes to be exported are managed in an environmentally sound manner in the State of import and of transit. Technical guidelines for the environmentally sound management of wastes subject to this convention shall be decided by the Parties at their first meeting;*
- (l) *The Parties agree not to allow the export of hazardous wastes for disposal within the area South of 60 degrees South Latitude, whether or not such wastes are subject to transboundary movement;*
- (m) *Furthermore, each Party shall:*

- (i) *prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes unless such persons are authorized or allowed to perform such operations;*
 - (ii) *ensure that hazardous wastes that are to be the subject of a transboundary movement are packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling and transport, and that due account is taken of relevant internationally recognized practices;*
 - (iii) *ensure that hazardous wastes be accompanied by a movement document, containing information specified in Annex IV B, from the point at which a transboundary movement commences to the point of disposal;*
- (n) *Parties shall take the appropriate measures to ensure that the transboundary movements of hazardous wastes only are allowed if:*
 - (i) *the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or*
 - (ii) *the transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention;*

- (o) *Under this Convention, the obligation of States in which hazardous wastes are generated, requiring that those wastes are managed in an environmentally sound manner, may not under any circumstances be transferred to the States of import or transit;*
- (p) *Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes which are exported to other States;*
- (q) *Parties exercising their right to prohibit the import of hazardous wastes for disposal shall inform the other Parties of their decision pursuant to Article 13;*
- (r) *Parties shall prohibit or shall not permit the export of hazardous wastes to States which have prohibited the import of such wastes when notified by the Secretariat or any competent authority pursuant to sub-paragraph (q) above;*
- (s) *Parties shall prohibit or shall not permit the export of hazardous wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes;*
- (t) *Parties shall ensure that the transboundary movement of hazardous wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movements;*
- (u) *Parties shall require that information about a proposed transboundary movement of hazardous wastes be provided to the States concerned, according to Annex IV A, and clearly state the potential effects of the proposed movement on human health and the environment.*

4. **Furthermore:**

- (a) *Parties shall undertake to enforce the obligation of this Convention against offenders and infringements according to relevant national laws and/or order to better protect human health and the environment;*
- (b) *Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order to better protect human health and the environment;*
- (c) *This Convention recognizes the sovereignty of States over their territorial sea, waterways and air space established in accordance with international law, and jurisdiction which States have in their exclusive economic zone and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigation rights and freedoms as provided for in international law and as reflected in relevant international instruments.*

ARTICLE 5

DESIGNATION OF COMPETENT AUTHORITIES
FOCAL POINT AND DUMPWATCH

To facilitate the implementation of this Convention, the Parties shall:

1. *Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.*

2. *Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.*
3. *Inform the Secretariat, within one month of the date of decision, of any changes regarding the designations made by them under paragraph 2 above.*
4. *Appoint a national body to act as a Dumpwatch. In such capacity as a dumpwatch, the designated national body only will be required to co-ordinate with the concerned governmental and non-governmental bodies.*

ARTICLE 6

TRANSBOUNDARY MOVEMENT AND NOTIFICATION PROCEDURES

1. *The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the State concerned of any proposed transboundary movement of hazardous wastes. Such notification shall contain the declaration and information specified in Annex IV A of this Convention, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.*
2. *The State of import shall respond to the notifier in writing consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned that are Parties to this Convention.*
3. *The State of export shall not allow the transboundary movement until it has received:*

- (a) *written consent of the State of import, and*
- (b) *from the State of import written confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.*

4. *Each State of transit which is a Party to this Convention shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing within 60 days consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.*

5. *In the case of a transboundary movement of hazardous wastes where the wastes are legally defined as or considered to be hazardous wastes only:*

- (a) *by the State of export, the requirements of paragraph 8 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;*
- (b) *by the State of import or by the States of import and transit which are Parties to this Convention, the requirements of paragraph 1,3,4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or*
- (c) *by any State of transit which is Party to this Convention, the provisions of paragraph 4 shall apply to such State.*

6. *The State shall use a shipment specific notification even where hazardous wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of entry of the State of import, and in the case of transit via the same customs office of entry and exit of the State or*

States of transit; specific notification of each and every shipment shall be required and contain the information in Annex IV A of this Convention.

7. *Each Party to this Convention shall limit their points or ports of entry and notify the Secretariat to this effect for distribution to all Contracting Parties. Such points and ports shall be the only ones permitted for the transboundary movement of hazardous wastes.*

8. *The Parties to this Convention shall require that each person who takes charge of a transboundary movement of hazardous wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.*

9. *The notification and response by this Article shall be transmitted to the competent authority of the States concerned.*

10. *Any transboundary movement of hazardous wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party to this Convention.*

ARTICLE 7

TRANSBOUNDARY MOVEMENT FROM A PARTY THROUGH STATES WHICH ARE NOT PARTIES

Paragraph 2 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movements of hazardous wastes from a Party through a State or States which are not Parties.

ARTICLE 8DUTY OF RE-IMPORT

When a transboundary movement of hazardous wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within a maximum of 90 days from the time that the importing State informed the State of export and the Secretariat. To this end, the State of export and any State of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

ARTICLE 9ILLEGAL TRAFFIC

I. For the purpose of this Convention, any transboundary movement of hazardous wastes under the following situations shall be deemed to be illegal traffic:

- (a) if carried out without notification, pursuant to the provisions of this Convention, to all States concerned; or*
- (b) if carried out without the consent, pursuant to the provisions of this Convention, of a State concerned; or*
- (c) if consent is obtained from States concerned through falsification, misrepresentation or fraud; or*
- (d) if it does not conform in a material way with the documents; or*

(e) *if it results in deliberate disposal of hazardous wastes in contravention of this Convention and of general principles of international law.*

2. *Each State shall introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct.*

3. *In case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are taken back by the exporter or generator or if necessary by itself into the State of export, within 30 days from the time the State of export has been informed about the illegal traffic. To this end the States concerned shall not oppose, hinder or prevent the return of those wastes to the State of export and appropriate legal action shall be taken against the contravenor(s).*

4. *In the case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are returned to the exporter by the importer and that legal proceedings according to the provisions of this Convention are taken against the contravenor(s).*

ARTICLE 10

INTRA-AFRICAN COOPERATION

1. *The Parties to this Convention shall cooperate with one another and with relevant African organizations, to improve and achieve the environmentally sound management of hazardous wastes.*

2. *To this end, the Parties shall:*

- (a) *make available information, whether on a bilateral or multilateral basis, with a view to promoting clean production methods and the environmentally sound management of hazardous wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes;*
- (b) *cooperate in monitoring the effects of the management of hazardous wastes on human health and the environment;*
- (c) *co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound clean production technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;*
- (d) *co-operate actively to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes. They shall also cooperate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;*
- (e) *co-operate in developing appropriate technical guidelines and/or codes of practice;*
- (f) *co-operate in the exchange and dissemination of information on the movement of hazardous wastes in conformity with Article 13 of this Convention.*

ARTICLE 11INTERNATIONAL CO-OPERATION
BILATERAL, MULTILATERAL AND REGIONAL AGREEMENTS

1. *Parties to this Convention may enter into bilateral, multilateral, or regional agreements or arrangements regarding the transboundary movement and management of hazardous wastes generated in Africa with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are no less environmentally sound than those provided for by this Convention.*
2. *Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 of this Article and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements of hazardous wastes generated in Africa which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes as required by this Convention.*
3. *Each Contracting Party shall prohibit vessels flying its flag or aircraft registered in its territory from carrying out activities in contravention to this Convention.*
4. *Parties shall use appropriate measures to promote South-South cooperation in the implementation of this Convention.*
5. *Taking into account the needs of developing countries, co-operation between international organizations is encouraged in order to promote, among other things, public awareness, the development of the rational management of hazardous wastes and the adoption of new and less polluting technologies.*

ARTICLE 12LIABILITIES AND COMPENSATION

The Conference of Parties shall set up an Ad Hoc Expert Organ to prepare a Draft Protocol setting out appropriate rules and procedures in the field of liabilities and compensation for damage resulting from the transboundary movement of hazardous wastes.

ARTICLE 13TRANSMISSION OF INFORMATION

1. *The Parties shall ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes or their disposal which is likely to present risks to human health and the environment in other States, those States are immediately informed.*
2. *The States shall inform each other, through the Secretariat, of:*
 - (a) *Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5 of the present Convention;*
 - (b) *Changes in their national definition of hazardous wastes, pursuant to Article 3 of the present Convention;*
 - (c) *Decisions made by them to limit or ban the import of hazardous wastes;*
 - (d) *Any other information required pursuant to paragraph 4 of this Article.*
3. *The Parties, consistent with national laws and regulations, shall set up information collection and dissemination mechanisms on hazardous wastes. They*

shall transmit such information through the Secretariat, to the Conference of the Parties established under Article 15 of the present Convention, before the end of each calendar year, in a report on the previous calendar year, containing the following information:

- (a) Competent authorities, Dumpwatch, and focal points that have been designated by them pursuant to Article 5 of the present Convention.*
- (b) Information regarding transboundary movements of hazardous wastes in which they have been involved including:*
 - (i) the quantity of hazardous wastes exported, their category, characteristics, destination, any transit country and disposal methods as stated in the notification;*
 - (ii) the amount of hazardous wastes imported, their category, characteristics, origin and disposal methods;*
 - (iii) disposal which did not proceed as intended;*
 - (iv) Efforts to achieve a reduction of the amount of hazardous wastes subject to transboundary movements.*
- (c) Information on the measures adopted by them in the implementation of this Convention;*
- (d) Information on available qualified statistics - which have been compiled by them on the effects on human health and the environment of the generation, transportation, and disposal of hazardous wastes - as part of the information required in conformity with Article 4 Section 3 (a) of this Convention;*

- (e) *Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention.*
- (f) *Information on accidents occurring during the transboundary movements and disposal of hazardous wastes and on the measures undertaken to deal with them;*
- (g) *Information on disposal options operated within the area under their national jurisdiction;*
- (h) *Information on measures undertaken for the development of clean production methods, including clean production technologies, for the reduction and/or elimination of the production of hazardous wastes; and*
- (i) *Such other matters as the Conference of the Parties shall deem relevant.*

4. *The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes, and the response to it, are sent to the Secretariat.*

ARTICLE 14

FINANCIAL ASPECTS

1. *The regular budget of the Conference of the Parties, as required in Articles 15 and 16 of this Convention, shall be prepared by the Secretariat and approved by the Conference.*

2. *Parties shall, at the first meeting of the Conference of the Parties, agree on a scale of contributions to the recurrent budget of the Secretariat.*

3. *The Parties shall also consider the establishment of a revolving fund to assist on, an interim basis, in case of emergency situations to minimize damage from disasters or accidents arising from transboundary movements of hazardous wastes or during the disposal of such wastes.*

4. *The Parties agree that, according to the specific needs of different regions and sub-regions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and the minimization of their generation should be established as well as appropriate funding mechanisms of a voluntary nature.*

ARTICLE 15

CONFERENCE OF THE PARTIES

1. *A Conference of the Parties made up of Ministers having the environment as their mandate is hereby established. The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the OAU not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.*

2. *The Conference of the Parties to this Convention shall adopt Rules of Procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.*

3. *The Parties to this Convention at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine and inland waters environments in the context of this Convention.*

4. *The Conference of the Parties shall keep under continued review and evaluation the effective implementation of this Convention, and in addition, shall:*

- (a) promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes;*
- (b) consider and adopt amendments to this Convention and its annexes, taking into consideration, inter-alia, available scientific, technical, economic and environmental information;*
- (c) consider and undertake any additional action that may be required for the achievement of the purpose of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11 of the present Convention;*
- (d) consider and adopt protocols as required;*
- (e) establish such subsidiary bodies as are deemed necessary for the implementation of this Convention; and*
- (f) make decisions for the peaceful settlement of disputes arising from the transboundary movement of hazardous wastes, if need be, according to international law.*

5. *Organizations may be represented as observers at meetings of the Conference of the Parties to this Convention. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes which has informed the Secretariat, may be represented as an observer at a meeting of the Conference of the Parties to this Convention. The admission and participation of observers shall be subject to the rules of procedures adopted by the Conference of the Parties.*

ARTICLE 16SECRETARIAT1. *The functions of the Secretariat shall be:*

- (a) *to arrange for, and service, meetings provided for in Articles 15 and 17 of the present Convention;*
- (b) *to prepare and transmit reports based upon information received in accordance with Articles 3,4,6,11, and 13 of the present Convention as well as upon information derived from meetings of subsidiary bodies established under Article 15 of the present Convention as well as upon, as appropriate, information provided by relevant inter-governmental and non-governmental entities;*
- (c) *to prepare reports on its activities carried out in the implementation of its functions under this Convention and present them to the Conference of the Parties;*
- (d) *to ensure the necessary co-ordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;*
- (e) *to communicate with focal points, competent authorities and Dumpwatch established by the Parties in accordance with Article 5 of this Convention as well as appropriate inter-governmental and non-governmental organizations which may provide assistance in the implementation of this Convention.*
- (f) *to compile information concerning approved national sites and facilities of Parties to this Convention available for the disposal on*

treatment of their hazardous wastes and to circulate this information;

(g) to receive and convey information from and to Parties to this Convention on:

- sources of technical assistance and training;*
- available technical and scientific know-how;*
- sources of advice and expertise; and*
- availability of resources.*

This information will assist them in:

- the management of the notification system of this Convention;*
- environmentally sound clean production methods relating to hazardous wastes, such as clean production technologies;*
- the assessment of disposal capabilities and sites;*
- the monitoring of hazardous wastes; and*
- emergency responses.*

(h) to provide the Parties to this Convention with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them with examining a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes with the relevant notification, and/or whether the proposed disposal facilities for hazardous

environmentally sound manner. Any such examinations would not be at the expense of the Secretariat;

- (i) to assist Parties to this Convention in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;*
- (j) to co-operate with Parties to this Convention and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and*
- (k) to perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties to this Convention.*

2. *The Secretariat's functions shall be carried out on an interim basis by the Organization of African Unity (OAU) jointly with the United Nations Economic Commission for Africa (ECA) until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15 of the present Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.*

ARTICLE 17

AMENDMENT OF THE CONVENTION AND OF PROTOCOLS

1. *Any Party may propose amendments to this Convention and any Party to a Protocol may propose amendments to that Protocol. Such amendments shall take due account, inter alia of relevant scientific, technical, environmental and social considerations.*

2. *Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any Protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any Protocol, except as may otherwise be provided in such Protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for their information.*

3. *The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting at the meeting. It shall then be submitted by the Depository to all Parties for ratification, approval, formal confirmation or acceptance.*

Amendment of Protocols to this Convention.

4. *The procedure specified in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that Protocol present and voting at the meeting shall suffice for their adoption.*

GENERAL PROVISIONS

5. *Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depository. Amendments adopted in accordance with paragraph 3 or 4 above shall enter into force between Parties having accepted them, on the ninetieth day after the receipt by the Depository of the instrument of ratification, approval, formal confirmation or acceptance by at least two-thirds of the Parties who accepted the amendments to the Protocol concerned, except as may otherwise be provided in such Protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.*

6. *For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.*

ARTICLE 18

ADOPTION AND AMENDMENT OF ANNEXES

1. *The annexes to this Convention or to any Protocol shall form an integral part of this Convention or of such Protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its Protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.*

2. *Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:*

- (a) *Annexes to this Convention and its Protocols shall be proposed and adopted according to the procedures laid down in Article 17, paragraphs 1,2,3, and 4 of the present Convention;*
- (b) *Any Party that is unable to accept an additional annex to this Convention or an annex to any Protocol to which it is Party shall so notify the Depository, in writing, within six months from the date of the communication of the adoption by the Depository. The Depository shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;*
- (c) *Upon the expiration of six months from the date of the circulation of the communication by the Depository, the annex shall become*

effective for all Parties to this Convention or to any Protocol concerned, which have not submitted a notification in accordance with the provision of sub-paragraph (b) above.

3. *The proposal, adoption and entry into force of amendments to annexes to this Convention or to any Protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a Protocol. Annexes and amendments thereto shall take due account, inter alia of relevant scientific and technical considerations.*

4. *If an additional annex or an amendment to an annex involves an amendment to this Convention or to any Protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the Protocol enters into force.*

ARTICLE 19

VERIFICATION

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention must inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. The Secretariat shall carry out a verification of the substance of the allegation and submit a report thereof to all the Parties to this convention.

ARTICLE 20

SETTLEMENT OF DISPUTES

1. *In case of dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any Protocol thereto, the Parties shall seek a settlement of the dispute through negotiations or any other peaceful means of their own choice.*
2. *If the Parties concerned cannot settle their dispute as provided in paragraph 1 of this Article, the dispute shall be submitted either to an Ad Hoc organ set up by the Conference for this purpose or to the International Court of Justice.*
3. *The conduct of arbitration of disputes between Parties by the Ad Hoc organ provided for in paragraph 2 of this Article shall be as provided in Annex V of this Convention.*

ARTICLE 21

SIGNATURE

This Convention shall be open for signature by Member States of the OAU in Bamako and Addis Ababa for a period of six months from 30 January, 1991 to 31 July, 1991.

ARTICLE 22

RATIFICATION, ACCEPTANCE, FORMAL CONFIRMATION OR APPROVAL

1. *This Convention shall be subject to ratification, acceptance, formal confirmation or approval by Member States of the OAU. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depository.*

2. *Parties shall be bound by all obligations of this Convention.*

ARTICLE 23

ACCESSION

This Convention shall be open for accession by Member States of the OAU from the date after the day on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depository.

ARTICLE 24

RIGHT TO VOTE

Each Contracting Party to this Convention shall have one vote.

ARTICLE 25

ENTRY INTO FORCE

1. *This Convention shall enter into force on the ninetieth day after the date of deposit of the tenth instrument of ratification from Parties signatory to this Convention.*
2. *For each State which ratifies this Convention or accedes thereto after the date of the deposit of the tenth instrument of ratification, it shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of accession or ratification.*





ARTICLE 26

RESERVATIONS AND DECLARATIONS

1. *No reservations or exception may be made to this Convention.*
2. *Paragraph 1 of this Article does not preclude a State when signing, ratifying, or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.*

ARTICLE 27

WITHDRAWAL

1. *At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.*
 2. *Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.*
 3. *Withdrawal shall not exempt the withdrawing Party from fulfilling any obligations it might have incurred under this Convention.*
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ARTICLE 28

DEPOSITORY

The Secretary-General of the Organization of African Unity shall be the Depository for this Convention and of any Protocol thereto.

ARTICLE 29

REGISTRATION

This Convention, as soon as it enters into force, shall be registered with the Secretary-General of the United Nations Organization in conformity with Article 102 of the Charter of the United Nations.

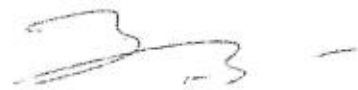
ARTICLE 30

AUTHENTIC TEXTS

The Arabic, English, French and Portuguese texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

ADOPTED IN BAMAKO, MALI, ON 30 JANUARY, 1991



ANNEX I

CATEGORIES OF WASTES WHICH ARE HAZARDOUS WASTES

Waste Streams

- Y0 All wastes containing or contaminated by radionuclides, the concentration or properties of which result from human activity.*
- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics.*
- Y2 Wastes from the production and preparation of pharmaceutical products.*
- Y3 Waste pharmaceuticals, drugs and medicines.*
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals.*
- Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals.*
- Y6 Wastes from the production, formulation and use of organic solvents.*
- Y7 Wastes from heat treatment and tempering operations containing cyanides.*
- Y8 Waste mineral oils unfit for their originally intended use.*
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions.*
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCTs) and/or polychlorinated terphenyls (PCYs) and/or polybrominated biphenyls (PBBs).*
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment.*

- Y12** *Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish.*
- Y13** *Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives.*
- Y14** *Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on human and/or environment are not known.*
- Y15** *Wastes of an explosive nature not subject to other legislation.*
- Y16** *Wastes from production, formulation and use of photographic chemicals and processing materials.*
- Y17** *Wastes resulting from surface treatment of metals and plastics.*
- Y18** *Residues arising from industrial waste disposal operations.*
- Y46** *Wastes collected from households, including sewage and sewage sludges.*
- Y46** *Residues arising from the incineration of household wastes.*

WASTES HAVING AS CONSTITUENTS:

- Y19** *Metal Carbonyls.*
- Y20** *Beryllium; beryllium compounds.*
- Y21** *Hexavalent chromium compounds.*
- Y22** *Copper compounds.*

- Y23 *Zinc Compounds*
- Y24 *Arsenic; arsenic compounds.*
- Y25 *Selenium; selenium compounds.*
- Y26 *Cadmium; cadmium compounds*
- Y27 *Antimony; antimony compounds.*
- Y28 *Tellurium; tellurium compounds.*
- Y29 *Mercury; mercury compounds.*
- Y30 *Thallium; thallium compounds.*
- Y31 *Lead; lead compounds.*
- Y32 *Inorganic fluorine compounds excluding calcium fluoride.*
- Y33 *Inorganic cyanides.*
- Y34 *Acidic solutions or acids in solid form.*
- Y35 *Basic solutions or bases in solid form.*
- Y36 *Asbestos (dust and fibers).*
- Y37 *Organic phosphorus compounds.*
- Y38 *Organic cyanides.*
- Y39 *Phenols; phenol compounds including chlorophenols.*

Y40 *Ethers*

Y41 *Halogenated organic solvents.*

Y42 *Organic solvents excluding halogenated solvents.*

Y43 *Any congener of polychlorinated dibenzo-furan.*

Y44 *Any congener of polychlorinated dibenzo-p-dioxin.*

Y45 *Organohalogen compounds other than substances referred to in this Annex (e.g. Y39, Y41, Y42, Y43, Y44).*

ANNEX II

LIST OF HAZARDOUS CHARACTERISTICS

UN **Code Characteristics**

Class*

1. **H1 Explosive**

An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction or producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

3 **H3 Flammable liquids**

The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 degrees C, closed up test, or not more than 65.6 degrees C, open-cup test (Since the results of open-cup tests and of closed-up tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition).

4.1. **H4.1 Flammable solids**

Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

**Corresponds to the hazardous classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev. 5, United Nations, New York, 1988).*

4.2. H4.2 Substances or wastes liable to spontaneous combustion

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.

4.3. H4.3 Substances or wastes which, in contact with water emit flammable gases.

Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

5.1. H5.1 Oxidizing.

Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to the combustion of other materials.

5.2. H5.2 Organic peroxides

Organic substances or wastes which contain the bivalent -O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.

6.1. H6.1 Poisonous (Acute)

Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.

6.2. **H6.2 Infectious Substances**

Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.

8. **H8 Corrosives**

Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.

9. **10 Liberation of toxic gases in contact with air or water.**

Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.

9. **H11 Toxic (Delayed or Chronic)**

Substances or wastes which, if they are inhaled or ingested, or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.

9. **H12 Ecotoxic**

Substances or wastes which if released, present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effect upon biotic systems.

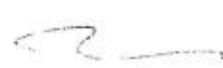
9. **H13**

Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

ANNEX III

DISPOSAL OPERATIONS

- D1** *Deposit into or onto land, (e.g., landfill, etc.).*
- D2** *Land treatment (e.g., biodegradation of liquid or sludgy discards in soils, etc.).*
- D3** *Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.).*
- D4** *Surface impoundment (e.g. placement of liquid into lined discrete cells which are capped and isolated from one another and the environment, etc.).*
- D6** *Release into a water body except seas/oceans.*
- D7** *Release into seas/oceans including sea-bed insertion.*
- D8** *Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Annex III.*
- D9** *Physico-chemical treatment not specified elsewhere in the Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Annex III (e.g. evaporation, drying, calcination, neutralization, precipitation, etc.).*
- D10** *Incineration on land.*
- D11** *Incineration at sea.*
- D12** *Permanent storage (e.g. emplacement of containers in a mine, etc.).*

- D13** *Blending or mixing prior to submission to any of the operations in Annex III.*
- D14** *Repackaging prior to submission to any of the operations in Annex III.*
- D15** *Storage pending any of the operations in Annex III.*
- D16** *Use of fuel (other than in direct incineration) or other means to generate energy.*
- D17** *Solvent reclamation/regeneration.*
- D18** *Recycling/reclamation of organic substances which are not used as solvents.*
- D19** *Recycling/reclamation of metals and metal compounds.*
- D20** *Recycling/reclamation of other inorganic materials.*
- D21** *Regeneration of acids and bases.*
- D22** *Recovery of components used for pollution abatement.*
- D23** *Recovery of components from catalysts.*
- D24** *Used oil re-refining or other reuses of previously used oil.*
- D25** *Land treatment resulting in benefit to agriculture or ecological improvement.*
- 

- D26** *Uses of residual materials obtained from any of the operations numbered D1 - 25.*
- D27** *Exchange of wastes for submission to any of the operations numbered D1 - 26.*
- D28** *Accumulation of material intended for any operation in Annex III.*

ANNEX IV A

INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export.
2. Exporter of the waste 1/
3. Generator(s) of the waste and site of generation 1/
4. Importer and Disposer of the waste and actual site of disposal 1/
5. Intended carrier(s) of the waste or their agents, if known 1/
6. Country of export of the waste.
Competent authority 2/
7. Countries of transit
Competent authority 2/
8. Projected date of shipment and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit).
9. Means of transport envisaged (road, rail, sea, air, inland waters).
10. Information relating to insurance.
11. Designation and physical description of the waste including Y number and UN number and its composition 4/ and information on any special handling requirements including emergency provisions in case of accidents.

12. *Type of packaging envisaged (e.g. bulk, drummer, tanker).*
13. *Estimated quantity of weight/volume.*
14. *Process by which the waste is generated 5/*
15. *Waste classification from Annex II: Hazardous characteristics, H number, and UN Class.*
16. *Method of disposal as per Annex III.*
17. *Declaration by the generator and exporter that the information is correct.*
18. *Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import.*
19. *Information concerning the contact between the exporter and disposer.*

NOTES

- 1/ *Full name and address, telephone, telex or telefax number and the name, address, telephone, telex, or telefax number of the person to be contacted.*
- 2/ *Full name and address, telephone, telex or telefax number.*

- 3/ *Information to be provided on relevant insurance requirements and how they are met by exporter, carrier, and disposer.*
- 4/ *The nature and concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.*
- 5/ *Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.*

ANNEX IV B

INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. *Exporter of the waste 1/*
2. *Generator(s) of the waste and site of generation 1/*
3. *Importer and disposer of the waste and actual site of disposal 1/*
4. *Carrier(s) of the waste 1/ or his agent(s).*
5. *The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste.*
6. *Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated.*
7. *General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable).*
8. *Information on special handling requirements including emergency provisions in case of accidents.*
9. *Type and number of packages.*
10. *Quantity in weight/volume.*
11. *Declaration by the generator or exporter that the information is correct.*
12. *Declaration by disposer or exporter indicating no objection from the competent authorities of all States concerned.*

13. *Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the appropriate date of disposal.*

NOTES

The information required on the movement document shall, where possible, be integrated into one document with that required under transport rules. Where this is not possible, the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instruction as to who is to provide information and fill out any form.

- 1/ *Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.*

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ANNEX V

ARBITRATION

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant Party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 1 or paragraph 2 of Article 20 of the Convention and include, in particular, the Articles of the Convention, and the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

Article 3

The Arbitral Tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement, the third arbitrator, who shall be the Chairman of the Tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in one of the Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

- 1. If the Chairman of the Arbitral Tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the OAU shall, at the request of either Party, designate him within a further two months' period.*

2. *If one of the Parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other Party may inform the Secretary-General of the OAU who shall designate the Chairman of the Arbitral Tribunal within a further two months period. Upon designation, the Chairman of the Arbitral Tribunal shall request the Party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the OAU who shall make this appointment within a further two months' period.*

Article 5

1. *The Arbitral Tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.*

2. *Any Arbitral Tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.*

Article 6

1. *The decision of the Arbitral Tribunal both on procedure and on substance, shall be taken by majority vote of its members.*

2. *The Tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the Parties, recommend essential interim measures of protection.*

3. *The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.*

4. *The absence or default of a Party in the dispute shall not constitute an impediment to the proceedings.*

Article 7

The Tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the expenses of the Tribunal, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares. The Tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the Parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the Tribunal.

Article 10

1. *The Tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.*
2. *The award of the Arbitral Tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the Parties to the dispute.*
3. *Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by either Party to the Arbitral Tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.*

ADOPTED IN BAMAKO, MALI, ON 30 JANUARY, 1991

