

**EC-ACP CAPACITY BUILDING PROGRAMME ON**

**Multilateral Environmental Agreements (MEAs)**

**African Hub**



**CONSULTANT'S REPORT OF THE STUDY ON THE DEVELOPMENT OF  
STRATEGY TO GUIDE THE PROMOTION OF THE RATIFICATION OF THE  
REVISED AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND  
NATURAL RESOURCES (i.e. the MAPUTO CONVENTION)**

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## *Acronyms and Abbreviations*

### **ACRONMYS:**

ACP	African, Caribbean and Pacific
AMCAN	African Ministerial Conference on the Environment
AUC	African Union Commission
CARICOM Secretariat	Caribbean Community Secretariat
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
ECOWAS	Economic Commission for West African States
FAO	Food and Agriculture Organisation
MEAs	Multilateral Environmental Agreements
OAU	Organisation of African Unity
SAICM Secretariat	Strategic Approach to International Chemicals Management Secretariat
SLM	Sustainable Land Management
SPREP	Secretariat of the Pacific Regional Environment Programme
UNCCD	United Nations Convention to Combat Desertification
UN/ECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme

### **ABBREVIATIONS:**

<i>Maputo Convention</i>	Revised African Convention on the Conservation of Nature and Natural Resources
validation workshop	refers to the validation workshop of the study on the development of strategy to guide the promotion of the ratification of the Maputo convention held in Mombasa, Kenya from 7 <sup>th</sup> -9 <sup>th</sup> June, 2011

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*The main objective of this report is to recommend, for submission to AUC and UNEP, strategies to guide and promote the ratification of conventions under the auspices of the AU, particularly the Maputo Convention.*

*This report is based on the situational analysis of policy, legislation and institutional framework of selected member states of the AU in order to establish their impact on the ratification process within their respective jurisdiction. Analysis is also made of relevant MEAs under the auspices of the AU, international MEAs and documents on MEAs in order to identify best practices and provisions that promote ratification and effective implementation of conventions. The report also covers consultations made with institutions and people, methodology used, reviews undertaken and constraints encountered. The information was primarily gathered through desk study, internet and telephone. The methodology used was limiting and adversely affected the amount of information collected. Response from selected countries was poor.*

*Despite this limitation the Consultant was able to obtain relevant information from IUCN and the two countries that responded to the questionnaire used in the interview.*

*The Consultants draft report was validated at a workshop and the input of the workshop is incorporated in this report. This report provides justification for ratification of Maputo Convention, explores possible reasons for delay in ratification and recommends strategies for expediting the ratification process. Once the convention is in force, this report recommends strategies for initial stages of implementation so that the process does not stall. The report strongly recommends that at the implementation stage of Maputo Convention, projects and programs be mainstreamed into the Climate Change convention for effectiveness.*

*As recommended at the validation workshop the following documents are for delivery at the next AMCEN meeting and are an integral part of this report: Ratification Kit for Maputo Convention; Strategy Document; Executive Summary of the consultant report; Brochure on Maputo Convention and Draft Decision. Participants also noted the usefulness and necessity for the following documents to be drafted at a later stage to assist the implementation process: Handbook on how to implement the Maputo Convention; Manual on ratification procedures.*

*It is hoped that AUC and UNEP will adopt the recommendations of this report in the interest of expediting ratification of conventions under the auspices of the AUC.*

## *Acknowledgements*

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*Mention cannot be made by name of all those who have assisted the consultant in this assignment. Kindly accept this acknowledgement as a sign of my gratitude.*

*The Consultant acknowledges that the mistakes or errors in this report are hers and accepts responsibility for them.*

CONSULTANT'S REPORT OF THE STUDY ON THE DEVELOPMENT OF STRATEGY TO GUIDE THE PROMOTION OF THE RATIFICATION OF THE REVISED AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (i.e. the MAPUTO CONVENTION)

CHAPTER 1: General Introduction

*The Revised African Convention on the Conservation of Nature and Natural Resources i.e. the Maputo Convention:*

*1. Introduction:*

The Maputo Convention is one of the Multilateral Environmental Agreements (MEAs) under the auspices of the AU.

*1.1 Origin and Background to Maputo convention:*

*1.1.1 The 1900 London Convention:*

The initiative for a regional convention to conserve nature and natural resources on the African continent was pioneered by the colonial powers through the Convention on the Preservation of Wild Animals, Birds and Fish in Africa. Signed in London on 19 May 1900, the convention was aimed at preventing the uncontrolled massacre of wild animals and ensuring the conservation of diverse wild animal species.

*1.1.2 The 1933 London Convention*

The London Convention of 1900 did not effectively achieve the above aim. An international congress on the protection of nature was held in Paris in 1931. The international congress was to propose the convening of an international conference for the adoption of a new text. On 8<sup>th</sup> November 1933, the Convention relating to the Preservation of Fauna and Flora in their Natural State (the London Convention) was adopted. It entered into force on the 14 January 1936. Its scope was extended to include plant species.

*1.1.3 Review of the 1933 London Convention*

After WW2, a conference was held in 1953 in Burkina Faso in order to review the London Convention<sup>1</sup> in light of acquired experience. One of the major recommendations was on the preparation of another convention that would address the essential elements of a general policy for the protection of nature in Africa taking into consideration the main interests of the African people. This resulted into the Algiers Convention of 1968.

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<sup>1</sup> Ref: Annex I

#### *1.1.4 Algiers Convention 1968<sup>2</sup>:*

The convention was signed by 38 and ratified by 30 African States. It served well as a basis for the efforts by newly independent African nations to take steps for the conservation of their environment and natural resources. The Convention did not establish mechanisms to encourage compliance and enforcement nor did it provide the institutional structures that would have facilitated effective implementation.

Because of all these and the rapid progress in scientific knowledge in the environmental field and subsequent legal evolution it became necessary to revise the Algiers Convention.

#### *1.1.5 Revision of 1968 Convention:*

Two governments, Nigeria and Cameroon, requested the OAU to initiate the revision and updating of the 1968 Convention. Based on the request, the OAU and IUCN submitted a proposed revision of the Convention in 1981. Meetings and consultations took place up to 1986 but the revision process was not completed. Subsequent continent wide instruments, however, acknowledged and took account of the continent evolution in environmental management. The 1999 Abuja Treaty establishing African Economic Community (Abuja Treaty) called for the adoption of a protocol on natural resources and a protocol on the environment respectively<sup>3</sup>. The eighties were also marked by the adoption of land mark environmental conventions. All these made it clear that it was necessary to adjust the Algiers Convention to new developments in scientific, legal and institutional knowledge.

#### *1.1.6 Revised convention (Maputo Convention) of 2003:*

In 1996, the government and Burkina Faso requested the OAU to resume the revision process. In 1994 the OAU requested the cooperation of IUCN, UNDP and the United Nations Economic Commission for Africa (UN/ECA) in the preparation of a new text that would be adopted to the current state of international environmental law as well as the current scientific and policy concepts and approaches. An interagency process was initiated in 2000. A draft revision was completed the following year. This was followed by consultations with all African Ministries for the environment and with foreign affairs. The results of the consultations were considered at a meeting of governmental experts convened by the OAU in Nairobi in January 2002. It discussed the draft and comments submitted and provided a revised version.

This draft was then submitted by the OAU to the 9<sup>th</sup> Session (July 2002) at the African Ministerial Conference on the Environment (AMCEN).

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<sup>2</sup> An introduction to the African Convention on the Conservation of Nature and Natural Resources. Environmental Policy and Law Paper No. 56 IUCN The World Conservation Union 2004

<sup>3</sup> Articles 57 and 60

## 1.2 Entry into force:

The Maputo Convention needs the ratification of 15 states (Article XXXVIII) to enter into force. More than seven years after the negotiations and conclusion of the convention, 8 member states have ratified/acceded to the convention; 37 member states signed but not ratified /acceded to the Convention and 16 Member States neither signed nor ratified or acceded to the Convention.

## 1.3 Justification for ratification:

Generally, given the advantages under the Convention, there is need for all African States to ratify or become Party to the Maputo convention for the following reasons<sup>4</sup>:

### 1.3.1 The Maputo Convention is a framework convention for Africa<sup>5</sup>:

The Maputo Convention should be seen by all member states and marketed by them as the continent's framework convention on the conservation of nature and natural resources. The Maputo Convention establishes a wide range and solid legal foundation for the environment. Grounded on the three pillars of sustainability, having an out reaching scope and providing for stronger institutional tools, the Maputo convention embodies a comprehensive regional regime for environmental protection and sustainable development.

### 1.3.2 An African convention<sup>6</sup>:

The Maputo convention is anchored in African values. The Maputo convention is a convention that crystallizes African responses to global issues and commitments.

### 1.3.3 Novelty: the convention is people centered, reconciles nature to culture<sup>7</sup>:

The Maputo Convention reflects a renewed perception of resource management that reconciles nature and culture. Being people centered, emphasizing people's rights to land and security of tenure, advocating integrated resource management, it provides a land mark for further advancing the rule and law to sustainably manage resources among African nations and communities.

### 1.3.4 Integrates conservation concerns and development aspirations<sup>8</sup>:

Further still, the Maputo convention has many novel features that can be summarized as its broader coverage than its predecessor. Notably, the Maputo convention seeks to integrate conservation concerns and development aspirations.

<sup>4</sup> Reference Annex II on responses from Ethiopia and Ghana contact persons.

<sup>5</sup> Articles VI to XIV of Maputo Convention and XXXV

<sup>6</sup> Article XVII

<sup>7</sup> Article XVII paragraph 3 and Article IV

<sup>8</sup> Articles II to IV

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### *1.3.5 Integrates conservation into development plans and projects<sup>9</sup>:*

“Natural resources” is defined widely to include renewable, non-renewable, tangible and intangible resources. It seems to integrate conservation and better environmental management strategies into development plans and projects through techniques i.e. Environmental Impact Assessment s (EIA).

### *1.3.6 Forum for reducing the poverty-environment nexus<sup>10</sup>:*

The convention provides an effective forum through which member states could, both domestically and internationally, develop sound environment policies and mechanisms that mutually support the goal of sustainable development and helps reduce the poverty-environment nexus.

## *1.4 Specific novelty of the Maputo Convention:*

### *1.4.1 Nexus between environment and development:*

A novelty of the Maputo Convention is seen in Article II. The fundamental principal articulated in Article II, which is now generally referred to in relevant literature on international environmental law as the principle of sustainable development and respect for the environment as a common heritage for public good. It is worth noting that the philosophy behind this approach, which attempts to establish a nexus between environment and development, was articulated by the OAU member states well before it became generally acceptable in the context of the United Nations activities and debates<sup>11</sup>.

### *1.4.2 Modern Approach to the Conservation of Nature:*

The Maputo Convention, through its predecessor (i.e. the Algiers Convention) had already moved away from a concept of natural resources conservation solely centered on utilitarian purposes. It introduced innovative approaches for the conservation of nature. It was a precursor to modern international wildlife law in the sense that it acknowledged early-on the principle of common but differentiated responsibility for environmental management by African States.

It also called for the conservation and rational use of natural resources for the welfare of the present and future generation.

While the Algiers Convention focused on living resources, calling for the creation of protected areas for specific conservation measures for species that are listed in its Annex, Maputo Convention also provided the grounds for the conservation of other natural resources

<sup>9</sup> Article V paragraph 1; Articles VI to XIV

<sup>10</sup> Article IV; Article XXII; Article XXVI

<sup>11</sup> This can be traced to the UN Conference on Environment and Development held in Stockholm, Sweden in June 1972: A study on the Procedures for Ratification of Treaties in Member States of the African Union, Harmonisation of Ratification Procedures and Measures to Speed up the Ratification of OAU/AU Treaties; MinJustice/Legal/3(II) Rev.1 (Draft).

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e.g. soil and water and for the consideration of environmental concerns in development plans and for research and education.

#### *1.4.3 Structure and Approach:*

The Maputo Convention consolidates 30 years of learning and experience in international environmental law and policy. It holds strong international legitimacy as it is in line with the major international conventions and takes account of the latest scientific, technical and policy developments. The Maputo Convention retains the outline and structure of its predecessor; the Algiers Convention. The purpose of the revision is to remain the principle vehicle through which issues of particular concern to the continent may be considered and concerted action taken.

#### *1.4.4 Link to international MEAs<sup>12</sup>:*

Reading the Maputo Convention, one gets the idea of concepts from the Climate Change Convention, Convention on Biological Diversity and CITES being incorporated in the edition. This provides an opportunity for African states to design management plans and projects that would attract financial support from funds under international MEAs. It is important for member states to recognize the need to fully utilizing this avenue in order to harness financial support for environmental projects designed under MEAs within the AU.

#### *1.4.5 Stronger Institutional Mechanisms:*

A major weakness of the original Algiers Convention was its failure to provide the administrative, legal, institutional and financial foundations for its implementation and the pragmatic means to honor the international law principle of *pacta sunt servanda*.

The Maputo Convention addresses this shortcoming by providing the Convention with modern institutional arrangements. The “COP”, a secretariat and subsidiary body mechanisms are introduced, and a financial mechanism, reporting and information techniques are added as major innovations.

In addition, the provisions relative to national authorities and cooperation have been significantly strengthened.

#### *1.4.6 Institutional Mechanisms of the Convention<sup>13</sup>:*

The Maputo convention provides for the creation of a COP that will be its decision making body. The COP is to be established at the Ministerial level.

#### *1.4.7 Platform for dialogue and cooperation:*

Observers like the representatives of the African Regional Economic Communities and African regional or sub-regional communities, the UN, its specialized agencies, non member

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<sup>12</sup> Articles VI to XIV and Article XXXV

<sup>13</sup> Article XXVI;

states that are partners to the Algiers Convention as well as qualified NGOs can attend meetings of the COP.

The COP offers a unique and effective avenue for cooperation and exchange of information and skills at national and regional levels amongst stakeholders. Like the Nairobi convention, the Maputo convention is an important platform for dialogue between Governments and the civil society at the regional and national level.

#### *1.5 Financial mechanisms:*

The previous Algiers Convention did not provide for financial resources to ensure implementation. This was identified as a major shortcoming addressed by Article XXVIII (28) of the Maputo Convention on financial resources.

##### *1.5.1 Contributions from each Party according to its capacity, annual contribution for AU etc:*

Recognizing that financing is of central importance to the achievement of its objectives, the Maputo Convention provides that each Party, according to its capacity, must make every effort to ensure that financial resources were made available for its budget, through direct contributions from the Parties, annual contributions from the AU and contributions from other institutions.

##### *1.5.2 Conservation Fund established by the COP, Trust Funds:*

The COP may also establish a Conservation Fund constituted from voluntary contributions of Parties or any other approved sources for the purpose of providing funding for projects and activities pertaining to the objectives of the Convention. Trust funds as well as earmarked contributions are also potential tools of financing. Funds are to be used for the purpose of financing projects and activities relating to conservation of the environment and natural resources (Article XXVII (3)).

##### *1.5.3 Bilateral and multilateral sources:*

Finally, Parties are to seek further financial resources from all national, bilateral and multilateral funding sources and mechanisms, including those of the private sector and NGOs<sup>14</sup>.

#### *1.6 Advocacy strategies:*

For purposes of advocacy, the advantages can be simplified as follows:

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<sup>14</sup> e.g. CIDA (Canada); cf (France); DANIDA (Denmark); GIZ (Germany); JICA (Japan); NORAD (Norway); SIDA (Sweden); SDC (Switzerland); The Netherlands; USAID (United States); as well as development assistance program of the EU or private companies or foundations.



#### *1.6.1 Economic advantage:*

The economic advantage that Africa would enjoy once conservation concerns are built into developmental program would be sustainable utilisation and financial gains from trade in the products leading to better management of environmental resources, increase in productivity and therefore improved livelihoods of the people of Africa and fight against poverty.

#### *1.6.2 Social advantage:*

The social advantage would be unity and lasting friendship with neighbouring states and globally.

#### *1.6.3 Cultural advantage:*

The cultural and environmental advantages relating to the joint management of natural resources by the African states would be sharing of knowledge especially on medicinal plants and cultural conservations methods thereby encouraging the most cost effective efforts in conservation.

The link between nature and culture will be strengthened based on sustainable development. This facilitates cultural identity.

#### *1.6.4 Ecological:* Natural resource conservation and rehabilitation of degraded areas.

*1.6.5 Gender issues:* Gender issues will be addressed and women incorporated in the implementation of the convention. Through the women and civil societies, awareness of the convention will be expanded at the national and grass-root levels.

Given the above advantages it is in the interest of AU member states to ratify and effectively implement the convention.

## Chapter 2: Possible constraints to ratification and causes of those constraints

### *2. Factors that might impede ratification:*

Unless member states openly provide the reasons for delay in ratification, one can only hazard a guess at possible reasons. Generally, these are some of the factors that might impede the ratification process: lack of participation in negotiations, low awareness, inadequate technical, financial, and governance mechanisms at national, regional and international levels.

#### 2.1. Within AU:

##### *2.1.1 Ineffectiveness of the AU:*

Current political problems affecting AU member states e.g. in Côte d'Ivoire and Libya has led to open criticism of the AU. In fact the AU has been equated to an ostrich with its head buried in the sand. It is openly reported by the press that the AU policy is "see no evil, say no evil, do no evil". This is very sad given the mandate of the AU under the Charter of Organisation of African Unity. AU's failure to act, in relation to the ratification of the Maputo Convention is reflected in and illustrated by the lack of impact and effectiveness of resolutions passed in support of ratification.

##### *2.1.1.2 OAU/AU resolutions calling for ratification*

In 2003 the Assembly of the African Heads of State in decision Assembly/AU/Dec.4 (ii) called on member states to sign and ratify the convention in order to bring it into force as early as possible.

In May 2004, at a meeting of Experts on the Review of the Organisation of African Unity/African Union (OAU/AU) Treaties held in Addis Ababa, Ethiopia, the Chairperson of the AU Commission stated that "it was worrying --- the slow pace of signing and ratification [of these treaties] by Member States".

In July 2004, the Executive Council at its Fifth Ordinary Session appealed to all Member States who had not yet signed, ratified or adhered to all treaties adopted under the aegis of the OAU/AU to do so.

In January 2007, the Report of the Commission on the status of OAU/AU Treaties presented to the Executive Council at its Tenth Ordinary Session pointed out that since the inception of the OAU in 1963, the Policy organs of the OAU/AU had adopted 32 treaties, but that only 24 of them had entered into force at the date of reporting<sup>15</sup>.

##### *2.1.2 No proactive steps to ensure ratification*

Other than the conferences to be organized by the Office of the Legal Counsel in collaboration with other departments on the importance of signature, ratification, accession and domestication of OAU/AU treaties by AU Member States, there is no evidence that any proactive step was taken to address this problem

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<sup>15</sup> Three additional treaties are in force provisionally in conformity with the provisions of the respective treaties.

### *2.1.3 No follow up*

There is no evidence of any follow up by the AU Secretariat on the resolutions passed. Having noted the delay in ratification, the meetings could have explored ways in which this delay could be overcome and not just left it at pointing out the problem.

### *2.1.4 Genuine unity and commitment within AU:*

The failure to respond to the resolutions could also be interpreted as a sign of weakness by Heads of States in their commitment to unity under the AU. Under the OAU Charter, the heads of states undertook to promote the unity and solidarity of the African States. The failure to respond to the call under the resolution is a test to their commitment to be united to the cause of the Union. Africa has to act as one to have impact.

The contact person from Ghana and Ethiopia recommends that for effectiveness, the AU should, at the political level, engage commitment from the highest level of government<sup>16</sup>. The best forum at which such commitment could be obtained is at meetings at which the resolutions are passed.

### *2.1.5 Lack of political clout:*

From the resolutions passed and the fact that the resolutions have not been complied with, one could also argue that the AU lacks the political clout to demand compliance from its members. There is need for the AU to be strengthened and for members to give it the respect it deserves.

### *2.1.6 Assign responsibilities:*

Following negotiation of a convention, apart from indicating the depositary no person is assigned responsibility for follow up.

AUC could consider assigning to a particular member state the duty of ensuring that all member states sign and ratify a Convention. The state to which responsibility is assigned would bear the name of the convention. This time it is Maputo Convention so Mozambique should play the lead role in assisting the AU and MEAs Secretariats ensure ratification and effective implementation. The name of the Convention should not be based on the country in which it was negotiated and signed but rather on the country that will bear the responsibility for assisting the AU and MEAs Secretariats follow up on ratification and effective implementation. This should also help strengthen the spirit of African unity.

### *2.2.1. Member states:*

### *2.2.2. Absence of effective participation in negotiations:*

Despite efforts to engage the African states in discussion of the revised text, it is not clear as to whether meaningful contribution and participation was felt by the African countries involved. It is not clear as to whether those involved ensured that their respective and unique concerns were adequately addressed. In case their participation and contribution, if any, were

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<sup>16</sup> Annex II

not meaningfully incorporated in the revised text then this could be reason for their failure to identify with and support the revised convention through ratification.

#### *2.2.3 Low awareness:*

It was evident, during the personal and telephone consultations, that most government officials are not aware of the existence of the 1968 nor the revised text of 2003.

Given the extensive promotion that the Ugandan Women Lawyers (FIDA) have done on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) that was adopted by Heads of State and Government of the African Union on 11<sup>th</sup> July 2003 in Maputo, Mozambique<sup>17</sup> most officials thought the Consultant was mistaken and not aware of what she was talking about. The focal point for the Biological Convention at the National Environmental Management Authority (NEMA) admitted he has never heard of the Convention.

#### *2.2.4 No penalties or timeline for non-compliance:*

There is no provision for penalising those who do not comply with resolutions passed by the governing bodies. The resolutions do not provide a way forward to this impasse. There is no explanation as to the impact of non-compliance on those who have ratified the convention.

#### *2.2.5 No contact person or focal point following conclusion of negotiations:*

Following negotiation and opening for signature there is no contact person or focal point to which further clarifications could be directed and a solution obtained. This would have created an avenue for some of the contact persons or focal points to move the process towards ratification.

#### *2.2.6 Ownership and commitment:*

The Maputo Convention begun as the London Convention<sup>18</sup>. As Africans gained independence the need for a new treaty to address nature conservation issues was expressed in the Arusha manifesto in 1961. In 1963, the African Charter for the Protection and Conservation of Nature was adopted. In 1964 the United Nations Economic Commission for Africa and UNESCO recommended that the London Convention be revised. They advised that the OAU request the assistance of IUCN in collaboration with the UN Food and Agriculture Organization (FAO) and UNESCO in preparing a draft text. OAU requested IUCN to take the lead and after a number of meetings with the experts and reviews by OAU member states, the convention was adopted at the OAU's Fifth Summit in July 1968 in Algiers.

The origin of the convention was post independence. Apparently, the member states were not actively involved in the discussion of the text till after the draft text had been discussed and prepared by UNESCO, FAO and IUCN. These are highly technical and scientific organizations. It is not clear as to whether the unique needs of each member state was ever solicited for or incorporated. Given this position, it could be difficult for member states to

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<sup>17</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, OAU Doc. CAB/LEG/66.6 available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/>

<sup>18</sup> Annex 1 Item No. 4

feel that they own the revised text despite the reviews and adoption of the revised text by the member states of OAU. Lack of ownership goes hand in hand with lack of commitment.

#### *2.2.7 Lack of appreciation due to inadequate participation in revision:*

The degree of participation by the AU member states in the revision of the 1968 Algiers Convention is not clear. What is clear is that IUCN took the lead. As to whether in this lead role each country felt that it effectively participated in the revision so as to feel that it owns the revised text is not clear. This is an issue that only each member state that has not ratified the convention can respond to.

#### *2.2.8 Lack of appreciation due to ignorance:*

Member states of the AU need to own the Convention at regional and national levels<sup>19</sup>. There seems to be lack of political, social and economic will by member states who have not fully appreciated the novelty of the Maputo Convention to support its coming into force and its effective implementation. The saying that “where there is a will there is a way” rules out the fact that lack of support to the Convention could be due to gaps in national policies, laws, institutional set up or any such other factor. This could be due to ignorance of the effectiveness of the Convention, especially at national levels, to support proposed/desired Government programs.

#### *2.2.9 Ignorance due to similarity in abbreviation of names:*

Ignorance of the existence of the convention seems to be common across the continent. Given the confusion caused by the use of Maputo convention and Maputo Protocol under the same organisation, it is clear that the official use of similar abbreviations /acronyms to refer to conventions does not help the situation and should be avoided in future.

#### *2.2.10 Level of technical input:*

The African states, or at least some states, might need technical support in order to address the Convention in light of their individual requirements and program. The revised text was developed by a highly technical team from UNESCO, IUCN and FAO. Given that the member states might not have been effectively involved in shaping the revised text, it is important that each member state identifies technical or highly scientific provisions that they do not fully understand and those that could impede the need for ratification.

With the support of IUCN, Senegal is moving towards sensitization of its citizen, ratification and implementation of Maputo Convention. Given IUCN’s willingness to assist in the ratification process, the Bureau of AMCEN should establish a working relationship with the IUCN regional offices especially for technical support at the implementation stages.

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<sup>19</sup> Martinez Arapta Mangusho, Minister Counselor/Legal Counsel Department of Multilateral Organisations and Treaties Ministry of Foreign Affairs, Kampala. Uganda see Annex II

#### *2.2.11 Duplication and Impact:*

The Maputo convention deals with water, soil etc. The Climate Change Convention and the Biological Diversity Convention covers similar areas plus more at a wider scale i.e. globally. The CITES deals with trade in threatened species. The international MEAs are the mother of conservation initiatives and enjoys global support. The Conventions have teeth, are being effectively implemented, have sufficient financing, enjoys the best technical support, have demonstrated global impact e.t.c. Compliance with these global conventions would result in addressing issues in the Maputo Convention. It could be argued that some member states feels that it would be an additional burden and of no additional benefit or value to become a Party to a similar convention. Participants at the validation meeting recommended that once the Maputo Convention is in force, it should be mainstreamed to the Climate Change Convention to attract funding.

#### *2.2.12 No clear benefits:*

It could be argued that AU member states do not see any clear benefit from becoming Party to Maputo Convention. They see that money has to be paid to bring it into force and keep it in force. There is no clear indication of actual funds or benefits. Member states should also take the initiative and request international organisation like IUCN to assist them incorporate environmental concerns in their developmental plans and budget.

#### *2.2.13 Colonial bias:*

The London Convention was revised and resulted in the Algiers Convention. It could also be argued that the London Convention was post independence for African countries. The African countries therefore could be linking the subsequent conventions to the colonial masters and would want nothing to do with it since the colonial masters conservation efforts were closely linked to exploitation of resources in Africa for the benefit of the colonial masters.

#### *2.2.14 Communication for Information gap:*

It is important to note that every convention provides for ratification and depositary after negotiation and signature by those present. However, no provision is made for responses or handling of queries or issues that might arise after the negotiation and signature and prior to coming into force. This is a big omission given that even states who have not signed a Convention may want to accede to the Convention. Having in place a mechanism that efficiently and effectively handles queries during this period could contribute to an increase in the number of member states who would ratify or accede to a Convention after negotiation and signing.

#### *2.2.15 Technical Team or effective civil society involvement:*

There is no technical team or effective civil society on stand-by that could handle technical issues that might arise and find a solution to those issues. If no team is available, there should at least be in place a mechanism through which technical queries could be addressed and responses received in a timely manner.

The Bureau of AMCEN, through AU regional offices, could request IUCN to assist by using relevant environmental NGOs to extensively promote the Maputo Convention. National and international organisations are an effective tool not only in creating awareness and appreciation of a convention but also in lobbying government for ratification of convention<sup>20</sup>. IUCN could link up with suitable civil societies and environmental organisations at national level to create awareness and lobby support for the ratification of the convention.

#### *2.2.16 Attitude and behavioural change:*

Ensure change in attitude and greater commitment to honour MEAs by member states by setting up an effective and efficient **information unit for conventions** to support the public information and media outreach activities of the various Convention secretariats<sup>21</sup>. The Unit should publish simplified guides to explain the science and politics underlying each Convention, manages press relations and organizes workshops. It should assist with education, training and public awareness programs<sup>22</sup>. In this way the unit will promote awareness and involve all stakeholders.

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<sup>20</sup> Civil societies are continuing to be an effective mechanism in getting countries to ratify/ to the Rome Statute of the International Court.

<sup>21</sup> The African hub is working on a dedicated web-page to provide information to partners and interested countries. To provide a sound science-base to their work, the African Hub is building linkages with the work of the African Monitoring of Environment for Sustainable Development (AMESD) project. See UNEP ACP MEAs Newsletter Volume 2, Issue 1 March 2010.

<sup>22</sup> The unit could assist with the implementation of Article 6 of the Climate Change Convention on Education, Training and Public Awareness.

### *Chapter 3: Terms of Reference and Methodology for the consultancy:*

#### *3. The consultancy:*

The Consultant is required to develop strategy to guide the promotion of the ratification of the Maputo Convention. The said strategy will be developed in such a way as to be adaptable for other regional conventions.

#### *3.1 Objectives of the consultancy:*

##### *3.1.1. Main objectives:*

The main objective of the consultancy initially was to develop a draft practice manual including a regional monitoring framework to promote ratification and effective implementation of the Maputo and other conventions. Given the low level of input from selected countries, it was agreed at the validation workshop that strategies to promote ratification be considered instead of the Manual<sup>23</sup>. At the validation workshop it was also agreed that apart from the strategies, a Ratification Kit and Flyer be developed for presentation at the next AMCEN meeting instead of a Manual<sup>24</sup>. The workshop further agreed that recommendations be made for the Bureau of AMCEN to be given the extra responsibilities to perform the functions of a regional monitoring framework.

##### *3.1.2. Other objectives:*

In achieving the objectives of the consultancy, the consultant was also required to:

- identify gaps and constraints in the legal, institutional and policy frameworks among selected sample countries that would impede ratification and implementation of the convention.
- undertake a review of the regional environmental conventions under the auspices of the AUC and assess the preparedness of African countries to ratify and implement the Maputo convention.
- undertake a desk review of appropriate and relevant regional and international documents on MEAs.

#### *3.2 Deliverables<sup>25</sup>:*

This consultancy report covers consultations made with institutions and people, methodology used, reviews undertaken, constraints encountered and recommendations for submission to AUC and UNEP.

The first draft consultancy report was submitted and validated at a workshop in Mombasa. The recommendations of the workshop are incorporated in this Report<sup>26</sup>.

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<sup>23</sup> Chapter 6

<sup>24</sup> *ibid*

<sup>25</sup> *Supra*

<sup>26</sup> Chapter 6



### *3.3 Methodology:*

#### *3.3.1 Identification of selected sample countries for study:*

The Project Coordinator EC-ACP Capacity Building Project on MEAs AUC contacted several countries requesting for their consent to participate in the study under the consultancy. The countries that responded were the ones selected as sample countries. They were: Ethiopia; Cameroon; Mauritius; Ghana; Senegal and Zambia. Only Ethiopia and Ghana participated in the study.

#### *3.3.2 Situational analysis:*

The consultant conducted a situational analysis of the legal, institutional and policy frameworks among selected sample countries in order to identify gaps and constraints that would impede ratification and implementation of the convention<sup>27</sup>. Given the poor response from the selected countries, the consultant turned to the AUC for assistance. Through the Project Coordinator EC-ACP Capacity Building Project on MEAs, the AUC Legal Department avail to the consultant the AU study on ratification and steps to be taken towards implementation of MEAs<sup>28</sup>. Though a lot of relevant information has been documented under the study by the AU Legal Department, there is still need for response from the remaining member states. The study by AU Legal Department should be updated. The loose leaf binding method used for Laws of Kenya should be used to document the information collected in order to ensure constant update. The said study was also for a different purpose. Though it was a rich source of information on ratification laws and procedure in the different countries, it could not support an effective situational analysis of gaps in policies and institutional frameworks in those countries.

This report is based on logical conclusions on the state of gaps or constraints that might affect ratification.

#### *3.3.3 Study tool:*

The consultant designed and used questionnaire<sup>29</sup> as a tool for conducting the situational analysis in this report. The questionnaire was approved by the Project Coordinator EC-ACP Capacity Building Project on MEAs and UNEP. Of the selected countries, only 2 countries i.e. Ghana and Ethiopia, responded to the questionnaire sent by the consultant.

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<sup>27</sup> Annex II

<sup>28</sup> See also African Union Project On Ratification And Harmonization Procedures Of OAU/AU Treaties: A Study On The Procedures For Ratification Of Treaties In Member States Of The African Union, Harmonization Of Ratification Procedures And Measures To Speed Up The Ratification Of OAU/AU Treaties by AU Legal Department

<sup>29</sup> Questionnaire incorporated in Annex II

### *3.3.4 Desk study:*

Situational analysis of regional environmental conventions under the auspices of the OAU/AU in order to assess the preparedness of African countries to ratify and implement the Maputo convention was conducted through desk study. The regional environmental conventions under the auspices of the AUC considered were provided and selected with the assistance of the project Coordinator EC-ACP and UNEP<sup>30</sup>.

The appropriate and relevant regional and international documents on MEAs analysed are in Annex II.

The analysis was based on identifying best practices that could be adopted from these MEAs in the implementation of the Maputo Convention to ensure effective implementation.

### *3.3.5 Consultations with institutions and people:*

#### *3.3.5.1 Uganda:*

Given the delay in feed backs, the Consultant visited the IUCN Uganda office and had useful discussions with the officer there<sup>31</sup>. The Consultant was referred by the Uganda office to contact IUCN regional office in Senegal. Contact was established through electronic mail. The Consultant also visited the official in charge of conventions in Ministry responsible for foreign affairs and the focal point for Convention on Biodiversity at the National Environmental Management Authority (NEMA)<sup>32</sup>.

#### *3.3.5.2 Consultations with regional focal points:*

As seen above, the list of focal points<sup>33</sup> and their contact was provided to the Consultant by the Coordinator. Both telephone and e-mail contacts were, where possible, made. Within the available time, only 2 were able to send in their report. Some said they will respond but has not done so to-date. Cameroon and Mauritius never responded to the Consultant. The Consultant would have been happy to hear from Cameroon since, according to record, Cameroon and Nigeria in 1981 requested the OAU for a revision of the Algiers Convention. Failure by the contact persons to respond to the questionnaires sent to them had a big negative impact. It was not possible to analyse the situation due to scarcity of data and information obtained through desk studies or electronically. The information required could best be obtained through a one on one interview. The Consultant points out that for an effective Manual to be developed to assist future ratification process, it is important that the interest of each AU member state be taken into account and documented.

### *3.4 Difficulties/constraints encountered:*

From the onset the Consultant had difficulties with the methodology to be adopted. From experience the Consultant was sceptical about accessing information through desk study,

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<sup>30</sup> Annex I

<sup>31</sup> Annex II

<sup>32</sup> See Annex II for their input

<sup>33</sup> From Ethiopia, Cameroon, Mauritius, Ghana, Senegal, and Zambia. See Annex II. Others were added from a Study Report by the AU Secretariat.

telephone and emails for the situational analysis. The delays, network problems and other technical problems that developed countries face in the use of these facilities are well known to many. The desk studies were limited by the fact that most libraries do not lend their books out. Some do not even allow photocopying. Most of the materials are not in the library. Access and availability of relevant literatures in Uganda was a major constraint. Information through the internet, where available, was not constantly up dated. As indicated by the persons contacted, failure at ratification is more of an institutional failure/individualism problem rather than policy, legislation or institutional framework. Institutional struggles for power and incapacities are rarely documented. The information required is best obtained through discussions with individuals rather than formal questionnaire methods. It is not easy for a government official to commit himself/herself in writing and point out the shortcomings of government departments. The responses from Ethiopia and Ghana had to get approval of the relevant actors. This restricts its content. Despite this both responses had information to indicate that the problems are human and not within the policy, legislation or institutional framework.

Where possible, UNEP representative and the Project Coordinator EC-ACP Capacity Building Project on MEAs assisted with relevant information on noting the insufficiency of information due to low response and lack of updated information from the internet. Despite these efforts, the Consultant maintains that for effective and updated information on the spot interviews are required.

### *3.5 Recommendations to AUC and UNEP on TOR:*

In relation to the consultancy, the consultant advises that there is need for a follow up to this consultancy. There is need for visit to selected member states in order to identify the problem on the ground and brain storm on possible solutions within the set up of the particular state under consideration. There is need for technical expertise in identifying and developing project for each member state for effective implementation. The identified projects from each member state would then be scrutinized with a view to clustering similar projects together so as to strategise on the source of funding for those projects.

Given that the AU legal department is seeking for information relevant to this consultancy, it is recommended that what is incorporated in this Report be built on as and when relevant information emerges. The intention is for information for each member state to be incorporated in a Manual and not just those of selected countries.

There is need for another consultancy with a more effective TOR or, through the Legal Office, design means to solicit for relevant information from Member States to provide improvement to or increase in information so far gathered.

The EC-ACP program is a big step in the ratification process. It has drawn attention to the Maputo Convention and created a desire for its ratification. This desire must be strengthened to spearhead the ratification and entry into force of the Convention.

#### *Chapter 4: Gaps and constraints in the legal, institutional and policy frameworks*

In the situational analysis, the Consultant is required to identify gaps and constraints in the legal, institutional and policy frameworks among selected sample countries that would impede ratification and implementation of the convention.

##### *4.1 Selected countries:*

Of the selected countries identified by the Project Coordinator only the identified contact persons for Ethiopia and Ghana responded to the Consultant's questionnaire. The Consultant resorted to the information in the Study by AU Legal Department to support the analysis. The study from the AU Legal Department is silent on the policies and details on institutional set up and linkages. Nor does it contain the sample documents required. This is understandable given that the AU Legal Department study was for a different purpose. Given this shortcoming and the fact that this information was not accessible through internet nor desk study, the Consultant based her analysis on the ratification status of available international and regional conventions by member states to evaluate constraints and gaps that member states might be facing that could impede ratification. Given that IUCN has been very effective in the region and especially in the review of the earlier versions of the Maputo convention and also the fact that IUCN is currently assisting Senegal in the ratification process, the Consultant relied on their assessment of the impact of policies, legislation and institutional framework on the ratification process.

##### *4.1.1. Ghana's Ratification process<sup>34</sup>:*

Under the 1992 Constitution of Ghana, the power to negotiate and sign treaties lies with the President. However, the power to ratify treaties belongs to Parliament. According to the contact person for Ghana, after the negotiation and signing of an environmental convention, the procedure for ratification of a convention/treaty under the auspicious of the AU undergoes the following procedures: the signed instrument is sent first to Cabinet and then to Parliament for ratification. After ratification the convention is sent to the President for signature. Finally the signed instrument is deposited at the embassy of the host country for onward transmission to the depositary as indicated in the convention<sup>35</sup>.

##### *4.1.1.1 Ghana ratification of Maputo Convention:*

The Maputo Convention was signed by Ghana on 31/10/2003; ratified on 13/06/2007 and deposited on 20/07/2007. According to an official in the Ministry of Environment, Science and Technology, Ghana signed, ratified and deposited the Maputo Convention because the natural resources of Ghana are being depleted at a high rate and Ghana sees the Maputo Convention as a means to reverse the trend. The Maputo Convention so far has failed Ghana as an avenue through which Ghana can "reverse the trend"<sup>36</sup> in her environmental degradation.

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<sup>34</sup> supra

<sup>35</sup> supra

<sup>36</sup> Response to questionnaire by Deputy Director, Human Resource Management/Legal Affairs, Ministry of Environment, Science and Technology, Ghana see Annex II

Given the powerful institutions through which the process is subjected (i.e. the President, Cabinet and Parliament) it is not surprising that the contact person cautions that though, ideally, this process should take at least six (6) months, due to “---bureaucratic and other procedures, instruments are sometimes delayed before going to Parliament. When it gets to parliament it is also sometimes delayed for reasons that are not known. There are also delays when such instruments are sent to the President because the President is always busy”<sup>37</sup>.

#### *4.1.1.2 Ghana ratification of conventions under AU:*

The fact that Ghana has ratified the Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (the Abidjan Convention) and its Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency is an indication that the policy, legislation and institutional framework could not be an obstacle to ratification of a convention<sup>38</sup>.

#### *4.1.1.3 International MEAs ratified by Ghana:*

In relation to international MEAs, Ghana has signed and ratified CITES as well as the Convention on Biological Diversity and Cartagena Protocol on Biosafety. Both Ghana and Ethiopia signed the Convention on Biological Diversity in 1992 and both ratified it in 1994. Ethiopia signed the Cartagena Protocol on Biosafety in 2000 and ratified it in 2003 where as Ghana acceded to it in 2003.

In order to fast track the ratification process, the contact person recommends that “ [T]he Ministry and all persons involved should be proactive and push hard to ensure that the documents do not unnecessarily delay, especially when it gets to Parliament”.

#### *4.1.2. Ethiopia’s Ratification Process:*

The procedure for ratification of international treaties concluded by Ethiopia or to be acceded to by Ethiopia is governed by Article 9(4) and Article 51(8) of the Constitution of 1995, and the Treaty-Making Procedures Proclamation no. 25/1988, issued on 6 July 1988. Proclamation No.4/1995 which defines the powers and duties of the executive organs of the Federal Democratic Republic of Ethiopia, confers on the Ministry of Foreign Affairs the following powers and responsibilities:

- (i) based on studies undertaken on the country’s relations, the Ministry of Foreign Affairs formulates and submits to the government policy guidelines on foreign affairs and upon approval, follows up their implementation.
- (ii) in consultation with the concerned organs negotiates and signs treaties and agreements that Ethiopia enters into with other states and international organisations which are approved by the government, *except insofar as such power is specifically given by law to another organ, and affects all formalities of ratification of treaties and agreements.*

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<sup>37</sup> Ref Annex II

<sup>38</sup> Annex I

Article 55 (12) provides that the House of the Peoples' Representatives shall ratify the international treaties concluded by the Executive. It is further provided that international agreements that are ratified are only applicable when published in the *Negarit Gazette*.

#### *4.1.2.1 Observation:*

Ethiopia presents a rare example of parliamentary, rather than executive ratification: it is the House of Peoples' Representatives that actually ratifies or decides to accede to a treaty on a specified date, and the Ministry of Foreign Affairs is then charged with the task of completing the remaining procedures, such as preparing the Instrument of Ratification to be signed by the Prime Minister and sent to the depositary of the treaty.

It is not clear as to who has to move parliament to act. Given the powers conferred on the Ministry of Foreign Affairs, it is best that the obligation of moving Parliament to ratify should lie with the Ministry of Foreign Affairs. In situation where ratification is by parliament, there is great opportunity for the relevant CBOs and NGOs to lobby, through their respective representatives in Parliament, for ratification of a given convention. Properly used, involvement of civil society is an effective tool in facilitating ratification of conventions.

#### *4.1.2.2 Institutional constraints:*

The contact person for Ethiopia identifies constraints in the institutional sector. He feels there is need for clarity in some areas in order to resolve the problem. According to him, the Institute of Biodiversity Conservation (IBC) is the focal institution for CBD. Therefore, there should be dialogue between the Environmental Protection Authority (EPA), IBC and the Ministry of Agriculture (MOA) to agree on the one responsible for the ratification of the Maputo Convention. Granted that environmental management in any given country would be scattered amongst different line Ministries thereby creating all sorts of power struggles and bureaucracy, it is clear that although Ghana managed to overcome her difficulties, Ethiopia needs assistance, through an independent third party, in order to overcome this obstacle.

#### *4.1.2.3 Third Party intervention:*

The contact person for Ethiopia admits that intervention by an independent third party could help speed up the ratification process. He recommends some sort of brainstorming session with key stakeholders from the IBC, EPA and MOA to be convened by AUC. According to the contact person, the institutional problems impede the work of the focal point and delay the ratification and implementation process. The Ministry has not communicated this obstacle to the AU secretariat.

At the Validation workshop it was agreed that contact persons be identified by each member state prior to establishment or designation of a national authority<sup>39</sup>. That the Bureau be assigned responsibilities for communication with contact persons to ensure follow up after negotiation and prior to a convention coming into force.

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<sup>39</sup> Article XXI

#### *4.2. Ratification process under other jurisdiction<sup>40</sup>:*

Despite the above constraint, it appears that the institutional issue is not an impediment to all ratification processes. Ethiopia has ratified and is a party to the Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa in addition to other international conventions and treaties<sup>41</sup>. On the basis of this observation, it appears that the problem is not with the policy, legislation or institutional arrangements in the country. There is need to consider obstacles to ratification on a case by case basis.

##### *4.2.1 Cameroon Ratification process:*

The ratification of a convention is governed by the 1972 Constitution as amended in 1996<sup>42</sup>.

In summary, the treaty ratification process of Cameroon goes through five major stages:

(i) negotiation and signature of the treaty by the President or his duly appointed representative; (ii) the text of the signed treaty is transmitted to the Prime Minister by the Minister of External Relations, with a memorandum setting out the motivation for ratification of the treaty and a text of the draft implementing legislation; (iii) the Prime Minister, as head of government, transmits both the treaty and draft law to Parliament for deliberation; once approved by Parliament, the draft law is transmitted back to the Minister of External Relations; (iv) the Ministry of External Relations then prepares the Instrument of Ratification for submission to the President for his signature; (v) finally, the signed Instrument of Ratification is returned to the Ministry of External Relations which arranges for the Ministry of Justice to affix the official seal of the state, before it is transmitted to the designated depositary of the treaty.

The ratification process summarized above is quite similar to that followed in countries where executive power is divided between a Prime Minister as head of government and a President as head of state.

##### *4.2.1.2 Cameroon ratification of conventions under AU:*

In relation to convention under the auspices of the AUC, Cameroon has ratified the Abidjan Convention and its Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency. Cameroon is neither a signatory nor has she ratified the Maputo Convention. It is worth mention that it was Cameroon and Nigeria that approached the then OAU and requested the OAU to initiate the revision and updating of the 1968 Algiers Convention.

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<sup>40</sup> The Consultant is grateful to the AU Legal Department for sharing information on the Project on Ratification and harmonization procedures of OAU/AU Treaties and relies on the information on the Draft Study Report for this section of her report on ratification. See Summary in Annex II.

<sup>41</sup> CITES and Convention on Biological Diversity and Cartagena Protocol on Biosafety

<sup>42</sup> Ref Annex II on relevant laws in Cameroon

#### *4.2.1.3 International MEAs ratified by Cameroon:*

At international level, Cameroon signed the Convention on Biological Diversity in 1992 and ratified it in 1994. Cameroon ratified the Cartagena Protocol on Biosafety in 2003. Cameroon became a Party to CITES in 1981.

Given these examples, one could argue that whatever obstacles Cameroon might have in its policy, legislation or institutional framework that might pose as an obstacle to the ratification of a Convention, the obstacle is minor and can be overcome in relation to the Maputo Convention.

#### *4.2.2 Mauritius Ratification process:*

The Consultant, up to this stage, was unable to obtain any input from Mauritius on the ratification process and related issues. The AU legal department has not received any input from Mauritius to the questionnaire sent under the study.

Concerning conventions under the auspices of the AUC, Mauritius has ratified the Bamako Convention.

##### *4.2.2.1. International MEAs ratified by Mauritius:*

At the international level, Mauritius in 1992 ratified the Convention on Biological Diversity and in 2002 acceded to the Cartagena Protocol on Biosafety. In 1975 Mauritius became a Party to CITES.

The above could be taken as an indication that there is no serious issue with the policy, legislation or institutional framework that could impede ratification.

##### *4.2.2.2 Senegal Ratification process:*

Senegal's ratification procedure follows five stages:

(i) the preparation of a draft law by the Ministry of Foreign Affairs authorizing the President to ratify the treaty; (ii) adoption of this draft law by the Council of Ministers; (iii) submission of the draft law to the National Assembly for adoption; (iv) if the authorization law is adopted by the National Assembly, the President signs the Instrument of Ratification; (v) finally, the Instrument of Ratification is deposited with the designated depositary for the treaty.

The ratification process in Senegal is top heavy. It is not one that is recommended for adoption by any other country. Contact persons have identified obstacles to ratification, especially delays in the process, as caused by the involvement of officials at the highest rank in the government system<sup>43</sup>. Despite this obstacle, the legal expert at IUCN Senegal sees funding as the biggest obstacle to ratification<sup>44</sup> and not the procedure for ratification.

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<sup>43</sup> Reference Annex II on comments by contact persons from Ethiopia and Ghana.

<sup>44</sup> Yacouba Savadogo, Environmental Law Expert IUCN Senegal Office



#### 4.2.2.3 Conventions ratified by Senegal:

Following the above procedure, Senegal has ratified the Abidjan Convention and the Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency.

#### 4.2.2.4 International MEAs ratified by Senegal:

At international level, Senegal in 1992 signed the Convention on Biological Diversity and ratified it in 1994. In 2003 Senegal ratified the Cartagena Protocol on Biosafety. In 1977 Senegal became a Party to CITES.

The Consultant has established contact with IUCN office in Senegal. Through the contact, the Consultant has been informed that<sup>45</sup>:

*‘Returning to your question on the legal, institutional and political constraints which impact the ratification of this convention, we certainly need, to be precise, to investigate these issues through studies, but now we think that there are no major legal constraints to the ratification of this Convention’.*

*‘In my point of view, the only problem that arises is what states would gain in return in terms of financial interest after signing this agreement? Could they get on efficient financial mechanism behind this Convention?’*

*‘In my point of view, the institutional framework is not major obstacle to the ratification of this Convention’.*

The AU Secretariat needs to case study the development in Senegal for the benefit of member states and as an addition to this consultancy report.

#### 4.2.3 Zambia Ratification process:

In Zambia, the ratification process is more inclusive and involves all the top stakeholders<sup>46</sup>.

##### 4.2.3.1 Zambia ratification of conventions under AU:

Zambia has signed but not ratified the Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement of Hazardous Wastes within Africa. It is not clear as to why the ratification has not been effected given the importance of this convention to Africa.

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<sup>45</sup> Email from the Environmental Law Expert IUCN Senegal Office

<sup>46</sup> Ref. Annex II

#### *4.2.3.2 International MEAs ratified by Zambia:*

Zambia in 1980 acceded to CITES. Zambia signed the Convention on Biological Diversity in 1992 and ratified it in 1993. In 2004 Zambia acceded to the Cartagena Protocol on Biosafety and became a Party to the Protocol in the same year.

#### *4.2.4 Uganda situation:*

The official in Ministry responsible for foreign affairs stated that the failure to ratify the Maputo Convention to date was not intentional. That the line Ministry needs to initiate the process and Ministry responsible for foreign affairs will assist. By the time of the Validation workshop the said official had learnt he was the contact person to initiate the process. Delay is due to human factors. Unlike in the case of Zambia, there are no clear guidelines as to who should do what and by when. Both Ethiopia and Uganda are ready to ratify the Maputo Convention provided clarity can be established, by a third party, as to who should begin the process. The Bureau should step in and assist.

Given the above evidence of effective ratification of treaties and conventions by all African states at national and international levels and the comment by IUCN, the failure to ratify conventions by AU member states is not due to policy, legislation or institutional framework issues but human inefficiency.

## *Chapter 5: Status of Treaties under the auspices of OAU/AU*

As part of the Terms of Reference, the Consultant was also required to undertake a review of the regional environmental conventions under the auspices of the AUC and assess the preparedness of African countries to ratify and implement the Maputo Convention.

### *5.1 Background to regional seas program:*

In 1974, the United Nations Environment Program (UNEP) initiated the regional seas program with a view to improving the control of marine pollution and the management of marine and coastal resources. The Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and the Protocols (i.e. the Nairobi Convention) and the Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West African Region (i.e. the Abidjan Convention) are part of the program.

These regional conventions have been ratified and are effectively being implemented. For the purpose of this consultancy, the analysis was to identify the best practices that could be borrowed from them to ensure the ratification and effective implementation of Maputo Convention.

#### *5.1.1 Abidjan Convention:*

The Abidjan Convention and its Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency was adopted by 11 countries at a conference in Abidjan in March 1981. The Convention and Protocol entered into force on 5th August, 1984 after the deposit of the 6<sup>th</sup> instrument of ratification, and now has 10 contracting parties<sup>47</sup>. There have been several Conference of Parties meetings, the most recent in Johannesburg in, 2008.

#### *5.1.2 Nairobi Convention:*

The Nairobi Convention and its Protocols<sup>48</sup> was adopted by 7 countries at a conference in Nairobi in June, 1985. The Convention entered into force on 30<sup>th</sup> May, 1996 after the deposit of the 6<sup>th</sup> instrument of ratification. It has 9 contracting parties: Comoros, Kenya, Madagascar, Mauritius, Mozambique, Reunion (France), Seychelles, Somalia and Tanzania.

##### *5.1.2.1 Effective implementation of Nairobi Convention:*

The Nairobi Convention Secretariat held the Conference of Plenipotentiaries and the Sixth Conference of Parties (COP6) to the Nairobi Convention at the United Nations Environment Programme (UNEP) Headquarters at Gigiri in Nairobi Kenya, from 29 March to 1 April 2010<sup>49</sup>. At the conference, two new legal instruments were considered and adopted for effective implementation.

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<sup>47</sup> Cameroon, Congo, Cote d'Ivoire, Gabon, Gambia, Ghana, Guinea (Conakry), Nigeria, Senegal and Togo

<sup>48</sup> Concerning i) Co-operation in Combating Pollution in Cases of emergency in the East African Region and ii) Protected Areas and Wild Fauna and Flora in the Eastern African Region

<sup>49</sup> UNEP website: Nairobi Convention

#### *5.1.2.2 Status of ratification of Nairobi Convention and Protocols:*

Today all ten Eastern African countries have ratified the Convention. Following a regional workshop in Zanzibar (6-9 October 1997) the GPA produced a regional overview and action plan on land-based pollution. Among its activities: to assess pollution loads affecting the marine environment, and their harmful effects; to set up monitoring programmes and development strategies; prepare and implement a regional action plan; and strengthen capacity of coastal States to intervene in case of accidents and emergencies.

#### *5.2. Lesson learnt from the conventions of relevance to this consultancy:*

##### *5.2.1 Forum for cooperation by stakeholders:*

The Nairobi Convention is a partnership Convention. It recognizes that the success in the protection, management and development of the coastal and marine environment of the WIO region will depend on effective partnerships built on strategic linkages between governments, NGOs and the private sector<sup>50</sup>.

The Nairobi Convention is an important platform for dialogue between Governments and the civil society at the regional and national level.

It is advisable that the Maputo Convention encourages and adopts this partnership arrangement right from the onset. This will not only empower and strengthen the focal points but also contribute to capacity building and exchange of technical experiences and expertise.

##### *5.1.3.2 Design of projects for funding:*

Both conventions contain an array of fairly general provisions which together provide a comprehensive framework for the protection, management and development of the marine and coastal environment. Working jointly and in a collaborative effort, the conventions addresses each member states needs in the management of marine and coastal environment in a coordinated and coherent manner.

The work Programme for the Nairobi Convention 2008-2012 promotes an ecosystem-based, multi-sector approach in policy and management, taking into consideration, whole systems rather than individual components and focusing on systems integrity. It is this ecosystem based approach to the management of the environment that makes it very attractive and largely contributed to the financial support by international and other organisations for the projects designed under the convention.

The Global Environment Facility (GEF), with the support of the Contracting Parties to the Nairobi Convention and their development partners, have embraced the ecosystems approach and are investing over \$78 million, between 2004 and 2012, to support Large Marine Ecosystems projects in the Western Indian Ocean.

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<sup>50</sup> UNEP website on Nairobi Convention

#### *5.1.3.3 Technical protocols:*

In recognition of the general nature of the provisions, both Conventions also make provision for the development of technical protocols with a view to making the Conventions operational. In this context, any country ratifying or acceding to the convention must also ratify or accede to at least one of the protocols.

To this end, contracting parties to both conventions have adopted a Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency. The objective of this is to facilitate the development of regional arrangements to supplement national arrangements for effective combating of major spillages of oil and other harmful substances from ships. The provisions cover the development of legislation and contingency plans, exchange of information, reporting of incidents and mutual assistance.

#### *5.1.3.4 Pooling resources to boost technical capacity:*

Contracting parties to the Nairobi Convention have also adopted a Protocol Concerning Protected Areas and Wild Flora and Fauna in the Eastern African Region. The objective of this is to promote the implementation of measures to preserve biodiversity and ecosystems, and especially rare, threatened or endangered species and habitats, and migratory species. In addition, the protocol aims to promote educational programmes, scientific and technical research and cooperation and information exchange.

The idea of creating a forum through which various technical experts from different countries can interact and share ideas is an effective tool for boosting the technical capacity of each country with those of experts from international and regional organisations who have the capacity to address increasingly complex scientific and technical issues.

#### *5.1.3.5 Other regional conventions:*

In addition to the above there are at least three other environmental conventions that have been negotiated under the auspices of the OAU/AU. They are the Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa (1991) i.e. the Bamako Convention; the African Convention on the Conservation of Nature and Natural Resources (1968), and Revised African Convention on the Conservation of Nature and Natural Resources i.e. the Maputo Convention. There is need for those that have not yet come into force to be ratified in order to bring them into force so as to enable the implementation process to commence<sup>51</sup>.

Given the above, it is clear that African countries are in position to ratify regional conventions under the auspices of the OAU/AU including the Maputo Convention. With respect to implementation, the willingness to implement is there except that there is need for technical and other support to facilitate effective implementation of the convention.

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<sup>51</sup> See Annex 1 on the status of these conventions.

## Chapter 6 Regional monitoring mechanism:

### 6.1 UNESCO experience:

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) when faced with the issue of member states failing to ratify a convention after negotiation decided to form a commission to monitor the ratification of conventions. The commission is to be made up of limited number of delegates of Member States representing the electoral groups and serving on a rotational basis. The commission is to report regularly on its work<sup>52</sup>. In order to ensure speedy ratification by AU member states, the contact person for Ghana recommends that “[E]ach Country and the Ministry, Agency or Department involved should establish an effective Coordinating Unit to facilitate the ratification, implementation and the enforcement of national legislations on the conventions”<sup>53</sup>. As is the case with Ethiopia, there is need for a forum e.g. a Coordinating Unit, which would bring all the stakeholders together. At this forum, roles and responsibilities should be assigned and time frame established in order to ensure compliance. The idea of a commission or coordinating unit is a long term plan. It involves resources in form of technical expertise and financial support.

Given the international and regional nature of conventions, participants at the validation meeting recommended that the AU ensure the setting up of a monitoring framework under AMCEN and reporting on the progress of the ratification process of the Maputo Convention. It was also recommended that AU Develop the TOR on monitoring and reporting on the progress of ratification for the Bureau’s proposed role as the regional monitoring body for the Maputo Convention. The TOR is to be submitted to AMCEN for approval and implementation.

### 6.2 Proposed Draft Decision and TOR for the Bureau:

#### 6.2.1 Explanatory Note

1. Given the spirit of unity under the African Charter and the fact that the environment is affected not only by what is done within the borders of a particular country but increasingly by what other countries do within and beyond their borders, there is need for the continent to move as one in environmental management in the interest of conservation.
2. Further still, Africa needs to reconcile its development needs and poverty reduction with the sustainable management of its natural resources. Through the Maputo Convention, member states could jointly be able to develop projects for the effective promotion of the mainstreaming of environmental management in their respective development planning.
3. In ratifying and effectively implementing the Maputo Convention, the continent will enjoy the spirit of joint ownership to a convention that would contribute to the fight against poverty and reduction on dependency on foreign aid.

<sup>52</sup> Item 29 of the provisional agenda paragraph 5 Session 171 of UNESCO Executive Board Meeting (171 EX/49) Paris, 28 February 2005 Original: Spanish

<sup>53</sup> Ref Annex II

4. Despite several resolutions calling for ratification of the Maputo Convention, most member states have not responded to the call. It is therefore essential to adopt necessary measures so that the process of approval and ratification of this convention, prior to its application, can be completed successfully. For this reason there is need to establish a mechanism to monitor the ratification as well as the effective implementation of the Maputo Convention prior to the convention coming into force and the setting up of the Secretariat under Article XXVII.

5. It is proposed that the AMCEN Bureau be given additional functions i.e. to monitor the ratification of Maputo Convention.

It is further proposed that member states be penalised for not acting promptly on requests made to them by the Bureau.

#### *6.2.2 Proposed Draft Decision:*

In light of the foregoing, the following draft decision is proposed:

This AMCEN meeting,

##### 1. Considering:

- (a) the commitment by member states to undertake individual and joint action for the conservation, utilization and development of the global and in particular the African environment;
- (b) that in the same spirit of joint responsibility, there is need for all stakeholders to be involved in the process;
- (c) that in the fulfilment of the said commitment we have negotiated the Revised Convention on the Conservation of Nature and Natural Resources (i.e. the Maputo Convention) which must be ratified by States;
- (d) that, notwithstanding the rate at which our environment is being degraded and the importance of the implementation of the Maputo Convention to check this degradation, the competent national authorities have not ratified the Convention,

##### 2. Decides:

- (a) that the AMCEN Bureau (the Bureau), in addition to the current function, monitor the ratification of Maputo Convention;
- (b) that the proposed functions of the Bureau include, to:
  - ensure, by all possible means, that conventions that have been approved are ratified by Member States so that they can be applied;
  - ensure that all Member States, at the conclusion of negotiation of a convention, identify a contact person and provides the address of the identified contact person to the Bureau;
  - maintain constant communication with the contact person on the status of ratification;
  - raise the awareness of Member States, through AU regional offices and identified contact persons, in order to attain its obligation;
  - recommend to Member States that they make every effort within their power to ensure that the competent national authorities ratify conventions;

- where possibly, assist contact person and technical teams overcome bottlenecks that might arise in the ratification process;
- recommend to Member States that they promote the effective implementation of the convention once ratified and provide initial guidelines for implementation;
- provide timely report to the COP/Ministerial Committee and secure their close cooperation in the fulfillment of the additional functions.

### *6.3 Bureau's role in triggering ratification:*

At the validation workshop, participants proposed that since AMCEN Bureau is made up of 5 countries representing the 5 regions, each of the 5 countries could target 3 countries to persuade to ratify the Maputo Convention as a way of triggering ratification by other countries.



### 7.1 Implementation strategies:

The validation meeting recognised that effective implementation cannot be addressed at this stage given the low response from selected countries, inadequate data collected and the fact that the Maputo Convention is not yet in force. Most importantly, the consultant admitted that addressing effective implementation strategies would require multi-disciplinary efforts and not the input of the consultant alone.

At the same time, in order to eliminate impasse or delay following ratification and coming into force of the Maputo Convention, the consultant provides the following guidelines and requests that the Bureau initiates implementation.

### 7.2 Guidelines for effective implementation:

Based on the lesson learnt from the Nairobi Convention, the Consultant recommends the following guidelines for initiating implementation by the identified actors. The Consultant recommends that they be considered so that there is no lull after ratification and coming into force of the Maputo Convention.

#### 7.2.1 Secretariat interim arrangements:

Following the coming into force of the Maputo Convention and prior to the decision of the COP referred to in Article XXVII.2 the Consultant advises that the Bureau assists the Chairperson in performing the functions of the Secretariat under Article XXVII.3.

#### 7.2.2 Proposed TOR for Bureau:

It is proposed that the Bureau takes on the following additional role in addition to post ratification duties:

1. Instigate and encourage member states that have ratified and those who take steps towards ratification of the Maputo Convention to begin awareness campaigns.
2. Encourage the technical teams to commence development of projects and programs for national and regional implementation. They should take into account the cultural aspects in environmental management as well.
3. Bureau should promote communications amongst states. The Bureau should be the collection center for project proposals from member states. The Bureau would then identify common areas of concerns, cooperation and the necessary coordination and collaborative actions necessary.

*The technical protocols in the Nairobi Convention provides a mechanism for regional cooperation, coordination and collaborative actions, and enables the Contracting Parties to harness resources and expertise from a wide range of stakeholders and interest groups towards solving interlinked problems of the coastal and marine environment.*

4. Bureau should coordinate member states activities with other relevant international bodies and conventions.
5. Encourage member states under the AU to jointly begin soliciting for funding.

6. Ensure a smooth handover to the Secretariat under the Convention.

#### 7.2.3 Member states technical team:

1. Ensure the Bureau is informed of the appointed focal point under the Convention. This will ensure a smooth handover by the Bureau and contact person of their respective responsibilities during the interim period.
2. Demystify the Maputo Convention. The technical team should sit at a round table composed of themselves, relevant civil society and NGOs (including international NGOs especially IUCN) and:
  - (a) Develop mechanisms for creating awareness of the Convention and its potentials (by printing simple pamphlets and brochures it is easy to create awareness and impact at this stage).
  - (b) Transform the Convention into an action plan or programs for implementation. Each member state should be encouraged by the Bureau to design action plan for individual and joint cooperation in addressing an identified area of environmental concern.

*[The program for the Nairobi Convention covers eleven regions amongst them the west and central African region, and the East African region. To ensure effective implementation, for each region an action plan was developed which included the development of a regional convention and technical protocols signifying the commitment of participating countries to address individually and jointly their common problems. Maputo convention provides avenue for cooperation in implementation].*

3. The technical team should adopt an ecosystems approach in the design of the action plans and programs. An ecosystems approach recognizes the effect of the environment on the resource being exploited and the effect of resource exploitation on the environment. This approach ensures that there is a balance between sustainable use and the fair and equitable sharing of the benefits arising out of the utilization of marine and coastal resources over time.
4. Based on the ecosystems and any other effective innovative approach, design projects and programs that would attract funding under the Climate Change Convention or any other international MEAs that has potential for adequate funding.

*[Partnerships between the Nairobi Convention and regional non-governmental organizations such as IUCN and Western Indian Ocean Marine Science Association (WIOMSA) have encouraged government focal points to work together with NGOs to share expertise and experience with an aim of stemming the multitude of problems associated with unplanned urbanization and poor regulatory regimes<sup>54</sup>.]*

5. Solicit for funding especially for the initial stages.

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<sup>54</sup> UNEP website on Nairobi Convention

## Chapter 8 Practice manual

### *8. Practice Manual:*

Initially the Consultant was to develop a practice manual to assist member states in the implementation process. Under the terms of reference, the Consultant was required to undertake a desk review of appropriate and relevant regional and international documents on MEAs. The regional and international documents were identified with the assistance of the client. The review was for the purpose of identifying their usefulness to the ratification process especially in the preparation of the proposed Manual or any other relevant document.

#### *8.1 Ramsar Manual:*

From the onset, the Consultant expressed reservation as to whether a manual will be possible given that the Convention has not come into force. Given the present status and the scarcity of information from consultations with selected countries a Manual would be impossible to produce. The consultant draws attention to the fact that the first Ramsar failed due to lack of attractive information to publish in it. It was revived when the Convention was in force and effective implementation was in place. During the discussion of the Road Map with the Client it was agreed that possibility of Manual or strategies be explored.

#### *8.2 Indigenous peoples and climate change manual:*

The Consultant also considered the Manual on indigenous peoples and climate change. This manual has been written to empower indigenous peoples to participate more effectively in shaping relevant policies and actions taken to address issues related to climate change. It also aims to enlighten non-indigenous peoples on indigenous peoples' experiences and perspectives on climate change. The content of the Manual shows that it was well researched. The use of colourful photographs adds attractiveness of the Manual. It is clear that multiple disciplinary efforts are required in the production of a Manual of this nature.

#### *8.3 The UN Treaty Handbook*

Prepared by the Treaty Section of the United Nations Office of Legal Affairs, the Handbook is provided for information only and does not constitute formal legal or other professional advice. The Handbook is a practical guide to the depositary practice of the Secretary-General and the registration practice of the Secretariat. The handbook is intended as a contribution to the United Nations efforts to assist States in becoming party to the international treaty framework. It is a good starting point and reference material for member states of the AU to follow on steps towards ratification. The contact person from Ethiopia recommends the Handbook as appropriate and relevant on ratification of conventions and treaties. According to the contact person for Ethiopia, the said Handbook could assist the AUC come out with effective strategies for promoting speedy ratification and implementation of the Maputo Convention and other future conventions and instruments under the auspices of the AUC.

At the validation meeting participants also noted the usefulness and necessity for the following documents:

- Handbook on how to implement the Maputo Convention.
- Manual on ratification procedures.

It was agreed that they to be drafted at a later stage to assist the implementation process.

#### *8.4 AU Legal Department Study Report*

Though still at its early stages of development, the Study report was the most focused and useful document the Consultant came across. There is need to develop it further. The Consultant recommends loose leaf binding so that it can be constantly updated. The study is geared towards making recommendations for uniform ratification policies and laws. Though the Consultant has reservations about uniform ratification laws, the material on relevant legislation and procedures for ratification have been of immense assistance to this consultancy. There is need for samples of the necessary documents mentioned in the ratification process for each country to be included in the report. It is a big step towards the formation of a Manual on ratification processes in Africa.

#### *8.5 Deliverables:*

At the validation meeting, it was agreed that strategies, flyer on Maputo Convention and a Maputo Convention Kit also be developed by the Consultant.

## *Chapter 9 Recommendations of strategies to AUC and UNEP:*

The recommendations in the first draft report and those made at the validation workshop are incorporated as follows:

### *9.1 Key actors:*

Participants identified the following institutions as key actors: Member States (i.e. Ministry responsible for foreign affairs, justice, Line Ministries and Parliament); Regional Economic Communities; African Union Commission; Partners (e.g. national and international Non-Governmental Organizations (NGOs); Civil Society Organization (CSO); Intergovernmental Organizations (IGOs); and Development Partners.

### *9.2 The roles and responsibilities assigned were as follows:*

#### *9.2.1 Member States:*

- Designate of contact person and eventually a focal point for the Maputo Convention.
- Ensure the promotion of sensitization and awareness of the Maputo Convention.
- Prioritize the ratification of the Maputo Convention in the relevant institutions at the national level.
- Initiate the process of ratification and the deposit of instruments of ratification with the AUC.
- Introduce the culture of timely and constant reporting on the progress of the ratification process.
- Continue building up and calling for commitment by member states on resolutions passed and actions agreed to at the Executive Council meetings.

#### *9.2.2 Regional Economic Commissions (e.g. ECOWAS; SADC; EAC; IGAD; UMA; ECCAS; COMESA; CENSAD)*

- Participants noted that they are worthy partners in the promotion of the ratification of conventions. Participants proposed that the AUC should engage REC on the popularization of the convention rather than assign roles and responsibilities to REC.

#### *9.2.3 AU:*

- Designate a focal point for Maputo Convention and provide the required funding.
- Build partnership and create awareness amongst member states, RECs and other key stakeholders. This could be through workshops, exhibits and side events.
- Take the lead in and implement strategies for promoting ratification e.g. through developing a Manual for ratification, Handbook on ratification, a Ratification Kit/Guide on the Maputo Convention.

- Inform member states of obligation to ratify the Maputo Convention.
- Develop the TOR on monitoring and reporting on the progress of ratification for the Bureau's proposed role as the regional monitoring body for the Maputo Convention and submit the TOR to AMCEN for approval and implementation.
- Ensure the setting up of a monitoring framework under AMCEN and reporting on the progress of the ratification process of the Maputo Convention.
- The Legal Department and the Environment division of the AUC to promote ratification of Maputo Convention during all AU meetings e.g. AU Summit meetings, Ministerial meetings.
- Use the regional offices under the AUC to promote the ratification of the Maputo Convention.
- Support and facilitate contact persons or institutions in the ratification process.
- Build partnership/synergies with related international MEAs e.g. COB, CITES, Climate Change
- Initiating the implementation processes in anticipation of the entry into force of the convention e.g. preparing for the setting up of the secretariat under the convention.

#### 9.2.4 Partners (e.g. NGOs, CSOs, IGOs, Development Partners, Private Sectors)

- Resource mobilization.
- Awareness creation and dissemination of information.
- Advocacy and lobbying.
- Technical support.
- Capacity building.

### 9.3 Other recommendations:

#### 9.3.1 Funding strategies:

Apart from the recommendations on the structure of the report and the arrangement of the recommendations, participants also recommended that the Maputo Convention, once in force, should be mainstreamed to the Climate Change Convention to attract funding.

#### 9.4 Way forward (immediate):

Participants recommended that for the immediate purpose the following documents be drafted by the Consultant with the assistance of the ACU Legal department for presentation at the next AMCEN meeting:

- Ratification Kit for Maputo Convention.

- Strategy Document.
- Executive Summary of the consultant report.
- Flyer or Brochure on Maputo Convention.
- Draft Decision.

#### *9.5 Way forward (future):*

- Participants also noted the usefulness and necessity for the following documents to be drafted at a later stage to assist the implementation process:
- Handbook on how to implement the Maputo Convention.
- Manual on ratification procedures.

#### *9.6 Other recommendations:*

Apart from the recommendations on the structure of the report and the arrangement of the recommendations, participants also recommended that the Maputo Convention, once in force, should be mainstreamed to the Climate Change Convention to attract funding.

#### *9.7 Possible incentives:*

Proposals have been given for monetary incentives during implementation or to facilitate at the initial stages of implementation. At least some form of recognition should be made for those who ratify conventions under the auspices of AU. A grand entrance at the beginning of a session could be an incentive for delegations of countries that have ratified the convention. It is advisable that the views of the technical persons or the designated or appointed National authority for the Convention be sought in order to explore this further and come up with meaningful and attractive incentives that would be worth competing for by member states.

#### *9.8 Possible penalties:*

At the validation meeting, participants proposed that in meetings at which such resolutions are resolved and passed, AUC should design different colour flags to be placed before the head of delegation of each member state. The colour of the flag would reflect the status of ratification of a convention by the respective member state. A “red flag” could be used to reflect “very poor performance” i.e. the member state has neither negotiated nor signed the convention; blue for “those who negotiated but have not signed or ratified”; and green for the member states that negotiated/signed but not ratified a convention; and white for those who have ratified the convention.

## 10. Conclusion and way forward

Africa is committed to sustainable management of her environment and its resources. This commitment must be visible at the highest level of political leadership and representation.

Africa needs to be united and act as one in the management of the environment. The spirit exhibited at the Copenhagen Summit should continue and be strengthened. At the Copenhagen Summit on the climate change negotiations, Africa had one voice since the member states had pushed for meaningful support to African Negotiators to develop the framework for an African Common Position on climate change. Through joint efforts Africa was well prepared for Copenhagen and had a big impact<sup>55</sup>. The same spirit should be adopted in lobbying for technical support, developing projects and programs for funding and lobbying for funds.

The Consultant recommends that the AUC and UNEP takes seriously the recommendations in this report and ensure that they are implemented. In order to avoid further delays following ratification, the Consultant advises that AUC and UNEP also activates actions as recommended in Chapter 7 on implementation strategies.

For this reasons the consultant welcomes the idea of having the AMCEN Bureau as the monitoring body. As an in-house organ, it will be able to oversee and ensure smooth handover until the Secretariat is effectively in place.

The EC-ACP program is an import step in the ratification process. The Consultant recommends that the work begun be continued until an effective Manual that addresses the concerns of each member state to guide ratification and initial stages of implementation is in place.

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<sup>55</sup> Dr. Abebe Haile Gabriel UNEP Addis Ababa Highlights Vol6 No.10 October 2009