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Ms Nosipho Ngcaba
The Director-General
Department of Environmental Affairs
Private Bag X 447
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Dear Ms Ngcaba

Attention: Mr Stuart Mangold

DRAFT PROTOCOL ON ENVIRONMENTAL MANAGEMENT FOR SUSTAINABLE DEVELOPMENT

Background and request

1. We have scrutinised the draft "Protocol on Environmental Management for Sustainable Development" ["the draft Protocol"], which is to be signed by the Southern African Development Community SADC ["SADC"] Member States, in terms of *paragraph 5.20(a) of the Manual on Executive Acts of the President of the Republic of South Africa* and with reference to *Chapter 5 of the Constitutional Handbook for Members of the Executive* ["the Handbook"], the Constitution of the Republic of South Africa, 1996 ["the Constitution"], international instruments such as the SADC Treaty and domestic legislation. We have indicated certain suggested amendments directly on the text of the Protocol.

2. We very briefly deal with the provisions of the draft Protocol consequentially.

Ad Preamble

The Member States of SADC, mindful of the principles and objectives of SADC as stated in Articles 4 and 5 of the SADC Treaty which guides their relations on cooperation and regional integration and Articles 21 and 22 of the SADC Treaty which provide for areas of cooperation and mandates Member States to conclude Protocols as may be necessary in each area of cooperation in order to foster regional development and integration, *inter alia* reaffirm the important role of sound environmental management in the social and economic well-being and livelihoods of the people of the region, in the supply of food, in ensuring food security and the alleviation of poverty and they express their desire to conclude the Protocol to supplement the SADC Treaty.

Ad Article 1

This Article defines the terms and expressions which are used in the Protocol. As indicated on the text of the Protocol, certain words and expressions which are defined in this Article do not appear in the text of the Protocol. Only words and expressions which are used in the Protocol must be defined.

Ad Article 2

The Protocol apply to all activities by the State Parties relating to environmental management, including-

- (a) marine, aquatic and terrestrial environment and the atmosphere;
- (b) natural resources; and
- (c) environmental management by nationals of State Parties.

Ad Article 3

In implementing the Protocol, the State Parties shall cooperate in good faith and shall be guided by, and give effect to, the 21 principles set out in this Article.

Ad Article 4

The main objectives of the Protocol are to-

- (a) enhance the protection of the environment in order to contribute to human health, wellbeing and poverty alleviation;
- (b) promote equitable and sustainable utilisation of natural resources and the environment for the benefit of the present and future generations;
- (c) promote the shared management of transboundary environment and natural resources; and
- (d) promote effective management and response to impacts of climate change and variability.

Ad Article 5

Member States shall take measures to manage and control the transboundary effects of air pollution through –

- (a) the development of air quality monitoring systems and the necessary capacity;
- (b) managing and reducing emissions from transportation, power generation, urban, industrial and agricultural processes, among others, generated in one State Party and potentially impacting on the air quality of other State Party or Parties;
- (c) the promotion of low carbon emissions trajectories particularly in the context of climate change and global warming; and
- (d) promoting the use of cleaner and low carbon technologies.

In this regard we have considered the provisions of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) ["AQA"], which is integrated with the National Environmental Management Act, 1998 (Act No. 107 of 1998) ["NEMA"], and we are of the opinion that AQA satisfies this obligation.¹

Ad Article 6

¹ For a detailed discussion of AQA, see Fuggle & Rabie's: *Environmental Management in South Africa* 2nd Edition at 585 to 629.

States Parties shall take measures to ensure that activities within their jurisdiction and control do not cause significant transboundary environmental impacts. In this regard each Party shall adopt and enforce appropriate national legislation necessary to ensure prevention and control of pollution. From a South African perspective, there are certain national legislative provisions which can be used for pollution and environmental harm or degradation, whatever the source and whatever the medium is that is being polluted. In this regard attention is drawn to the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) which is, *inter alia*, specifically aimed at –

- (a) avoiding and minimising the generation of waste;
- (b) reducing, re-using, recycling and recovering waste; and
- (c) preventing pollution and ecological degradation.²

Ad Article 7

State Parties shall take measures following the principles of sound management of chemicals, through, *inter alia*, -

- (a) initiatives to elaborate national chemical profiles, regional and national frameworks and strategies for chemical management and establishing chemical focal points; and
- (b) the management of transboundary movements of hazardous chemicals and their disposal especially in developing countries in accordance with provisions of the Basel Convention, Stockholm Convention and Rotterdam Convention and other relevant conventions.

Ad Article 8

State Parties shall take measures to conserve ecosystems, including their biodiversity and unique habitats, which provide goods and services that support livelihoods of the people and enhance aesthetic values of the region. Regarding South Africa's obligation in this regard, we wish to draw the Department's attention to

² Section 2.

the provisions of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).³ Section 3 of the Act provides as follows:

“In fulfilling the rights contained in section 24 of the Constitution, the state through its organs that implement legislation applicable to biodiversity, must –

- (a) manage, conserve and sustain South Africa’s biodiversity and its components and genetic resources; and
- (b) implement this Act to achieve the progressive realisation of those rights.”

We have considered the Act as a whole and are of the opinion that the necessary measures are in place to give effect to South Africa’s obligations in this regard.

State Parties shall also adopt the necessary legislative and administrative measures to protect and manage natural heritage for the benefit of present and future generations. With regard to the latter obligation, the Department’s attention is drawn to the National Heritage Resources Act, 1999 (Act No. 25 of 1999). This Act introduced a new dispensation for the conservation of what used to be called “national monuments” and what will now be known as “heritage resources”. A heritage resource is any place or object of cultural significance. The Act refers to the cultural heritage resources of South Africa as the “national estate”. Section 3 of the Act provides that for the purposes of the Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered as part of the “national estate” and fall within the sphere of operations of heritage resources authorities. The Act makes provision in Chapter II for mechanisms for the protection and management of heritage resources.

Ad Article 9

³ This Act was enacted to give domestic effect to the Convention on Biological Diversity to which South Africa is a State Party. Other international Agreements intended to be implemented by the Act are the Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES], the Convention on Wetlands of International Importance [“the Ramsar Convention”] and the Bonn Convention on Migratory Species of Wild Animals.

Article 9 provides that State Parties shall take measures to combat desertification and land degradation and implement sustainable land management practices through –

- (a) the control of soil erosion;
- (b) ensuring that land tenure systems are environmentally sustainable;
- (c) promoting sustainable forestry and land use practices;
- (d) promoting environmentally sustainable land use planning
- (e) integrated water-shed management;
- (f) fire management; and
- (g) integrated financing for sustainable land management.

NEMA manages land-use planning at several levels. The National Environmental Management Principles mentioned in Chapter 2 prescribe those land-use planning principles that must be applied throughout the country.

Ad Article 10

State Parties shall take measures to mitigate adverse environmental impacts on marine and coastal environment as well as inland water resources. With regard to adverse environmental impacts on the marine and coastal environment, it should be noted that the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)⁴ contains detailed provisions relating to marine and coastal pollution control in Chapter 8. For instance, authorisation is required for the discharge of effluent into coastal waters,⁵ and there is a prohibition on incineration or dumping at sea,⁶ unless authorised by dumping permits.⁷ Schedule 2 of the said Act contains the waste assessment guidelines for assessing wastes or other material for dumping at sea. Section 73 of the Act also requires the Minister of Environmental Affairs, progressively and subject to available resources, to develop a national action list to provide a mechanism for screening waste and

⁴ This Act implements the 1996 Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, which came into effect in 2006.

⁵ Section 69.

⁶ Section 70.

⁷ Section 71.

other material on the basis of their potential effect on human health and the marine environment. Other domestic legislation such as the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987) and the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986) are aimed at the prevention of marine pollution. In view of the aforesaid, we are of the opinion that there are sufficient domestic measures in place to mitigate adverse environmental impacts on the marine and coastal environment.

With regard to inland [fresh] water resources, we wish to point out that the pollution thereof is primarily regulated by the National Water Act, 1998 (Act No. 36 of 1998). One of the objectives of this Act is the reduction and prevention of pollution and degradation of [inland] water resources.⁸ To this end, section 19 of the Act deals with pollution prevention. As in the case of the marine and coastal environment, we are of the opinion that this Act contains sufficient measures to prevent adverse environmental impacts on inland water resources.

Ad Article 11

Article 11 provides that State Parties shall adopt the necessary legislative and administrative measures to enhance adaption to the impacts of climate change and shall take nationally appropriate voluntary climate change mitigation measures. Currently, South Africa has little in the way of legislation which *directly* addresses climate change issues but there are specific legislative provisions that can be used for that purpose. At the apex of South Africa's legal system is the Constitution including a Bill of Rights which "applies to all law, and binds the legislature, the executive, the judiciary and all organs of state".⁹ Section 24 of the Constitution provides as follows:

"24. Environment.—Everyone has the right—

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

⁸ Section 2(h).

⁹ Section 8(1) of the Constitution.

- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

Added to section 24 is the AQA and, although AQA contains little that is aimed directly at reducing atmospheric emissions of ozone depleting substances and greenhouse gases, some of the actions taken pursuant to AQA could advance the goals of making the nation less vulnerable to climate change and reducing greenhouse gases. For instance, AQA requires the provinces and municipalities to develop air-quality plans and also regulates certain “listed activities”. If an industry undertakes a “listed activity”, it must measure and report its greenhouse gases and work towards the development and introduction of “environmentally compatible processes’, among other things.

Ad Article 12

This Article contains general undertakings of State Parties which are mainly aimed at promoting cooperation between them aimed at promoting the objectives of the Protocol and the harmonisation of laws, policies, plans and programmes on environmental management. From a South African perspective, we are not sure how and by whom the “harmonisation” process will be effected.

Ad Article 13

This Article deals with the management of shared natural resources and transboundary considerations. To that end, State Parties -

- (a) shall address the causes of environmental degradation in transboundary areas by undertaking measures in conformity with the SADC Treaty and its protocols and other international treaties and conventions of relevance to the environment, and

- (b) may, through bilateral or plurilateral means, establish instruments for co-ordination, co-operation, or integration of management of shared resources, transboundary movement of waste, and climate change, oceans and coastal management, conservation, monitoring and research, including but not limited to -
- (i) specialist scientific advisory groups;
 - (ii) joint programmes and projects;
 - (iii) joint technical, or advisory committees;
 - (iv) joint ministerial commissions with powers to allocate shared resources among States and agree on management measures;
 - (v) collaboration in law enforcement; and
 - (vi) implementation of management plans for activities with potential transboundary environmental impacts and the monitoring and evaluation thereof.

Ad Article 14

Under this Article, State Parties shall take measures to ensure the optimal use of existing resources for the enforcement of environmental law and may conclude arrangements, bilateral or otherwise, to cooperate in the provision of personnel and the use of vessels, aircraft, communications, databases and information or other assets for the purposes of environmental management surveillance and law enforcement.

Ad Article 15

State Parties shall endeavour to sign, ratify, domesticate and implement international conventions and Agreements on environment and establish joint positions and undertake co-ordinated and complementary actions with regard to international *fora*, conventions and agreements relevant to this Protocol.

Ad Article 16

State Parties shall –

- (a) develop and implement education programmes on environmental management and sustainable and responsible use of the natural environment;
- (b) foster awareness of sound environmental management and sustainable and responsible use of the natural environment;
- (c) implement policies to enhance the capacity of nationals to engage in the responsible use of natural resources on the basis of equity, participation, effectiveness, and mutual benefit;
- (d) actively work towards the enhancement of environmental management training and skills development;
- (e) encourage national and regional programmes for skills transfer from locations and institutions of best practice to all levels of practitioners and policy-makers;
- (f) promote regional professional associations and encourage their involvement in pursuit of the objectives of this Protocol;
- (g) encourage the empowerment of local authorities and communities to take charge of the management of their environment to prevent pollution and environmental degradation; and
- (h) enhance the capacity of the SADC judicial institutions for environmental justice and governance.

Ad Article 17

State Parties shall promote sustainable trade and investment practices with due consideration of potential significant environmental impacts.

Ad Article 18

State Parties shall co-operate in establishing joint research programmes and projects, with particular reference to shared natural resources, including areas of the oceans that are within national jurisdiction and on the high seas, climate change, transboundary environmental considerations and scientific problems considered common to the sub-region or parts of the sub-region. They shall also work towards

the generation and application of best scientific and indigenous knowledge as a basis for decisions on the sustainable use of natural resources.

Ad Article 19

State Parties shall co-operate in the generation and exchange of complete and detailed information essential for achieving the objectives of this Protocol, including on -

- (a) the state of the environment and environmental trends of the region;
- (b) measures taken to manage the environment;
- (c) measures taken to mitigate and adapt to the impacts of climate change;
- (d) transboundary movement of waste, stockpiles of agrochemicals and hazardous chemicals and other transboundary environmental issues;
- (e) relevant research activities and results; and
- (f) Natural Resource Accounting.

Ad Article 20

This Article establishes the four institutions which shall be responsible for the implementation of the Protocol.

Ad Articles 21 to 24

These Articles sets out the composition and functions of the institutions [Committees] established under Article 20.

Ad Articles 25 and 26

Article 25 sets out the rules of procedure for meetings and Article 26 deals with the funding for the implementation of the Protocol and other diverse financial matters. We assume that the relevant authorities have been consulted regarding provisions that have financial implications for South Africa.

Ad Article 27

State Parties shall approve a monitoring and evaluation system for this Protocol as well as programmes executed by the Secretariat to implement the Protocol.

Ad Article 28

Assets acquired by State Parties in the implementation of this Protocol shall be treated in accordance with the provisions of Article 27 of the SADC Treaty.

Ad Article 29

This Article provides that the State Parties may develop Annexes which shall form the integral part of the Protocol.

Ad Article 30

This Article deals with the settlement of disputes which may arise regarding the application, interpretation or implementation of the Protocol.

Ad Articles 31 to 33

These Articles deal with the signing, ratification and entry into force of the Protocol.

Chapter 14 of the Constitution provides for international agreements and reads as follows:

"International agreements

231. (1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.”

It is evident from section 231(1) of the Constitution that the negotiating and signing of all international agreements is the responsibility of the national executive. Such international agreements are therefore entered into by the Governments of the countries concerned which may be represented by an appropriate functionary or state department within the Government.

Turning to section 231(2) of the Constitution, the draft Protocol, in our opinion, appears to fall within the scope thereof and can therefore enter into force as indicated in Articles 31 to 33. In this regard we wish to draw the Department's attention to Chapter 5 [par 5 on page 44] of the Handbook which states that technical, administrative or executive agreements¹⁰ are agreements which –

- (a) are departmental specific;
- (b) are of no major political or other significance;
- (c) have no financial consequences; and
- (d) do not affect domestic law.

Since the Protocol has major political significance and substantial financial consequences, we submit that the Protocol is not a technical, administrative or executive agreement as contemplated in section 231(3) of the Constitution.

The Department's attention is however drawn to paragraph 5.21 of the *Manual on Executive Acts of the President of the Republic of South Africa* which obliges the Department of International Relations and Cooperation to confirm whether or not an international instrument is “technical, administrative or executive” in nature.

Ad Articles 34 and 35

The Protocol shall remain open for accession by any member State and no reservation or exceptions may be made to the Protocol.

Ad Articles 36 and 37

¹⁰ As contemplated in section 231(3) of the Constitution.

A State Party may propose amendments to the Protocol and may also withdraw therefrom.

Ad Article 38

The original of the Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States. The Executive Secretary of SADC shall register the Protocol with the Secretariats of the United Nations and the African Union and any other relevant organisations which the Council of Ministers may determine.

Ad General

We wish to point out that the Protocol will impact on the business of the Departments of Science and Technology, Trade and Industry, Finance and law enforcement agencies and we assume that they have been consulted in the negotiating of the Protocol.

Conclusion

Subject to our aforementioned remarks and our comments and suggestions on the attached draft Agreement, no provision of the proposed draft Agreement is, as far as we could ascertain, in conflict with the domestic law of the Republic of South Africa.

Yours sincerely



J PIENAAR/ H MEKWA/ S MASAPU

FOR THE CHIEF STATE LAW ADVISER

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

DRAFT

PROTOCOL ON ENVIRONMENTAL MANAGEMENT FOR SUSTAINABLE DEVELOPMENT

April 2013

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PREAMBLE

We, the Heads of State and Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Madagascar
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of the Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

Enjoined as Member States of the Southern African Development Community established in terms of the SADC Treaty of the Southern African Development Community Treaty (hereinafter referred to as the "SADC Treaty");

Mindful of the principles and objectives of SADC as stated in Articles 4 and 5 of the SADC Treaty of the Southern African Development Community which guides their relations on cooperation and regional integration;

Mindful of the obligations of the Member States in other international treaties and principles of international law which govern their relations as sovereign States;

Considering Articles 21 and 22 of the SADC Treaty which provide for areas of cooperation and mandates Member States to conclude Protocols as may be necessary in each area of co-operation in order to foster regional development and integration;

Reaffirming the important role of sound environmental management in the social and economic well-being and livelihoods of the people of the region, in the supply of food, in ensuring food security and the alleviation of poverty;

Recognising the United Nations Conference on Environment and Development (UNCED) held in June 1992 and the Rio Declaration and its principles as well as Agenda 21, a blueprint for sustainable development;

Taking into account the provisions of the negotiated outcome of the World Summit on Sustainable Development (WSSD) held in September 2002, the Johannesburg Plan of Implementation (JPOI), which sets out 37 targets for achieving sustainable development, and the Millennium Development Goals;

Further acknowledging the negotiated outcome of the United Nations Conference on Sustainable Development, Rio+20, held in Rio de Janeiro in June 2012 and the provisions of the outcome document "the Future we want";

Comment [J1]: Both "co-operation" and "cooperation" are acceptable. However, it must be decided which word to use and the word chosen must then be used consistently.

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Comment [J2]: It appears that this sentence is incomplete.

Considering the importance of ensuring the monitoring and evaluation of treaties and Protocols, other signed agreements as well as programmes and to assess their effectiveness and efficiency at the regional level;

Recognising that in an increasingly global context, the environment is linked to global security in respect of issues such as global climate change, desertification, biodiversity loss, diminishing water resources and the degradation of the earth's capacity to assimilate pollution and waste;

Considering that the sub-Saharan region is particularly vulnerable to the impacts of climate change, which is compounded by its low adaptive capacity;

Recognising the need to promote gender equality, reduce the impact of HIV/AIDS and acknowledging the role of civil society and the private sector in environmental management and the protection of the environment;

Committed to capacity building for sustainable development and sound environmental management and integrity at national and regional levels;

Further understanding the cross-cutting nature of environment and its link to poverty, food security and conscious of our responsibility to our peoples and future generations and the need to ensure the right to a healthy environment;

Conscious that environmental management and protection has important linkages to other SADC sectors and Protocols;

Acknowledging the special position of landlocked and Small Island Developing SADC Member States;

Recognising the unique transboundary nature of natural resources and ecosystems, and the need to jointly co-operate and integrate actions at a regional level to optimise the sustainable use of the natural resources of the region for the continued benefit of the peoples of the region;

Convinced also of the need to achieve coherence in the Region's intra-regional, inter-regional and multilateral commitments and negotiations on environment as well as intra-regional trade, investment and commercial development as essential to the economic integration of the Region;

Further convinced that the development of a comprehensive regime for the protection of the environment and dependent and associated ecosystems is in the interest of the people of the Region and mankind as a whole; and

Desiring to conclude a Protocol to supplement the Treaty to this end;

HEREBY AGREE as follows:

Comment [13]: The Preamble is not complete.

PART 1: DEFINITIONS, SCOPE, PRINCIPLES AND OBJECTIVES

ARTICLE 1. DEFINITIONS AND USE OF TERMS

(1) In this Protocol the terms and expressions defined in Article 1 of the SADC Treaty shall bear the same meaning, and unless the context otherwise ~~requires~~indicates; -

~~(2) In this Protocol, unless the context otherwise requires:~~

"Invasive Alien Species" refers to plants, animals, pathogens and other organisms that are non-native to an ecosystem, and which may cause economic or environmental harm or adversely affect human health. In particular, they impact adversely upon biodiversity, including decline or elimination of native species - through competition, predation, or transmission of pathogens - and the disruption of local ecosystems and ecosystem functions;

Comment [34]: This expression does not appear in the text of the Protocol.

"Biodiversity or Biological Diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems;

"Biological Resources" means genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystem with actual or potential use or value for humanity;

Comment [35]: This expression does not appear in the text of the Protocol.

"Biosafety" means the protection of biological diversity from the potential risks posed by living and genetically modified organisms resulting from modern biotechnology;

"Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

"Bush encroachment" refers to the conversion of a grassland-dominated vegetation type to one that is dominated by woody species, as well as increasing woody plant density;

Comment [36]: See our comment: *Ad Article 1* in our covering letter.

"Climate Change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

Comment [37]: Words or expressions which are defined must be used *verbatim* as they appear in the inverted commas. Thus, if they are used in a lower case they must be defined as such and *vice versa*.

"Committee of Ministers" means the committee of Ministers responsible for environment matters;

"Committee of Senior Officials" means the committee of senior Officials responsible for environment matters;

"Cradle to grave principle" means a product's life cycle and performance from creation to disposal;

"Desertification" refers to the process of land degradation in arid, semi-arid and dry sub-humid areas, resulting from various factors, including climatic variations and human activities;

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

"Environment" means the entire range of living and non living factors that influence life on the earth and their interactions;

"Environmental Economics" refers to a branch of economics that deals with the impacts of interaction between man and nature and finds human solutions to maintain harmony between man and nature;

"Environmental goods and services" refers to ecological services rendered to humanity by the natural environment in the form of life supporting systems and/or biodegradation of waste products;

"Environmental impact assessment (EIA)" refers to a tool used to identify the environmental, social and economic impacts of a project prior to decision-making. It aims to predict environmental impacts at an

early stage in project planning and design, find ways and means to reduce adverse impacts, shape projects to suit the local environment and present the predictions and options to decision-makers;

“Environmental indicators” means a parameter, or a value derived from parameters, that points to, provides information about and/or describes the state of the environment, and has a significance extending beyond that directly associated with any given parametric value. The term may encompass indicators of environmental pressures, conditions and responses;

“Eutrophication” refers to the process whereby nutrients accumulate in a body of water. This process is often accelerated by nutrient-rich discharges from agriculture or sewerage, leading to a rapid and excessive growth of algae and water plants and undesirable changes in water quality;

“Evaluation” refers to the process of determining the worth or significance of a development activity, policy or program to determine the relevance of objectives, the efficacy of design and implementation, the efficiency or resource use, and the sustainability of results;

“Extended producer responsibility” refers to actions which extend a persons financial and physical responsibility of the product to a post-consumer stage of the product and include, waste minimisation programmes, financial contributions to any fund that has been established to promote the minimisation, recovery, reuse and recycling of waste; awareness programmes to inform the public of the impacts of waste emanating from the product on human health and the environment and any other measures to reduce the potential impacts of the product on the human health and the environment;

“Genetically Modified Organism (GMO)” means an organism whose genome has been engineered in the laboratory in order to favour the expression of desired physiological traits or the production of desired biological products;

“Hazard” means a source of or exposure to danger;

“Hazardous chemicals” refers to chemical substances that poses a threat to human health and the environment. Hazardous chemicals are toxic, corrosive, ignitable, explosive or chemically reactive;

“Hazardous Waste” means waste that causes substantial or potential threats to human health and or the environment;

“International environmental instrument” refers to any international agreement, declaration, resolution, convention or protocol which relates to the management of the environment;

“Indigenous knowledge” means knowledge and skills that people in a given community have developed over time, and continue to develop. It is based on experience, often tested over centuries of use, adapted to local culture and environment, dynamic and changing and forms the basis for decision making;

“Land degradation” means reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of rain-fed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land uses or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as: soil erosion caused by wind and/or water; deterioration of the physical, chemical and biological or economic properties of soil; and long-term loss of natural vegetation;

"Management Plans" means refer to course of action for ensuring that undue or reasonably avoidable impacts of an intervention are prevented or minimised and monitored while the positive benefits are enhanced;

"Member State" means a State which is a member of the Southern African Development Community (SADC);

"Monitoring" means the collection, compilation and analysis of information on the environment and related activities;

"Natural heritage" means natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; and natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty;

"Natural Resources" means material source of wealth, such as fauna and flora, fresh water, mineral deposits, that occurs in a natural state and has economic value;

"Natural Resources Economics" means a branch of economics that deals with the supply, demand, and allocation of the Earth's natural resources with the objective of better understanding the role of natural resources in the economy in order to develop more sustainable methods of managing those resources and ensure their availability to future generations;

"Natural resource accounting" refers to an accounting system that deals with stocks and stock changes of natural assets, comprising biota (produced or wild), subsoil assets (proved reserves), water and land with their aquatic and terrestrial ecosystems;

"Persistent Organic Pollutants" means chemical substances that persist in the environment, bioaccumulate through the food web, and pose a risk of causing adverse effects to human health and the environment;

"Precautionary principle" refers to the principle which states that preventative measures are to be taken when there are reasonable grounds for concern that an actual or planned activity within the territory or under the jurisdiction and control of a Member State may bring about an undue significant adverse impact, even if there is no conclusive scientific evidence of a causal relationship between the activity and the adverse impact;

"Pollution" means negative change in the environment caused by:-

- (a) substances;
- (b) radioactive or other waves; or
- (c) noise, odours, dust or heat;

"Pollution" means the introduction into the environment of any substance caused by the action of man which has, or results in, significant harmful effects to mankind or the environment. This will include any substance which makes the environment less fit in any way for its intended use;

Comment [18]: "Pollution" is defined twice.

"The polluter-pays principle" refers to principle according to which the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution;

"Protocol" means this instrument of implementation of the Treaty and includes any Annex, Amendment or extension thereof which form an integral part of this Protocol; a formal agreement between Member States which aims to ensure harmonised sustainable environmental Management.

"Public Private Partnership" means a contract between a public sector institution/municipality and a private party, in which the private party assumes substantial financial, technical and operational risk in the design, financing, building and operation of a project;

"SADC Region" means the geographic area of the Member States of SADC;

"Salinisation" means an increase in salt concentration in an environmental medium, notably soil;

"Sanitary and Phytosanitary (SPS) Measures" means measures to protect humans, animals, and plants from diseases, pests, or contaminants. These apply to all sanitary (relating to animals) and phytosanitary (relating to plants) measures that may have a direct or indirect impact on international trade;

"Subsidiary instrument" means an agreement entered into by two or more Member States in accordance with, and for the purposes of achieving the objectives of this Protocol;

"Surveillance" means the monitoring and supervision of environmentally related activities to ensure compliance with control measures;

"Sustainable development" refers to development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

"Sustainable trade and investment" refers to trade and investment that places sustainable development at the centre of its decision-making processes;

"State Party" means a country that has ratified or acceded to this Protocol;

"Treaty" means the Treaty of the Southern African Development Community;

"Transboundary" means traversing from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved;

"Waste" means an undesirable superfluous by-product, emission or residue (gaseous, liquid or solid) of any process or activity which has been discarded, accumulated or been stored for the purpose of discharging, processing [or disposal]

ARTICLE 2. SCOPE

This Protocol shall apply to all activities by the State Parties relating to environmental management, including the following issues, within their jurisdiction of the Member States, *inter alia*: -

- (a) the marine, aquatic and terrestrial environment and the atmosphere;
- (b) natural resources;
- (c) environmental management by nationals of State Parties, and other activities directly related thereto;

ARTICLE 3. PRINCIPLES

In implementing this Protocol, the State Parties shall cooperate in good faith and shall be guided by, and give effect to, the principles set out in this Article, amongst others:

1. The State Parties shall have, in accordance with the SADC Treaty and the principles of international law, the sovereign right to use their natural resources to meet their developmental needs sustainably and a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment and natural resources of other States.
2. Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
3. Sustainable development requires the consideration of all relevant factors avoiding altogether all that can be avoided or minimised where appropriate. These factors are: -
 - (a) the disturbance of ecosystems and loss of biological diversity;
 - (b) pollution and degradation of the environment;
 - (c) the disturbance of landscapes and sites that constitute the nation's cultural heritage;
 - (d) waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
 - (e) the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
 - (f) the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
 - (g) a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
 - (h) negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.
4. Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and must take into account the effects of environmental decisions on people and ecosystems by pursuing the selection of the best practicable environmental option.
5. Equitable access to environmental resources, benefits and services must be pursued and special measures may be taken to ensure access thereto by categories of disadvantaged groups to meet basic human needs and ensure human well-being.

6. The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation.
7. The implementation of this Protocol shall promote gender equality and strive to address any other targeted inequalities that are identified as such by the State Parties.
8. Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including indigenous knowledge.
9. Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
10. The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
11. The State Parties shall ensure intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.
12. Actual or potential conflicts between the State Parties should be resolved amicably ~~and~~ or through appropriate conflict resolution procedures.
13. Global and international responsibilities relating to the environment must be discharged in the interest of State Parties.
14. The environment is held in public trust for the people, that is, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.
15. Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, oceans and island sensitive areas, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.
16. The "Polluter pays" principle shall apply in so far as the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.
17. The "Precautionary principle" shall apply where the assumption of the worst-case scenario with respect to actions whose outcomes are uncertain and a risk-averse approach must be followed that recognises the limits of current knowledge about the environmental consequences or decisions or actions.
18. The "Cradle to Grave" principle shall apply, where the responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.
19. Extended producer responsibility shall apply for the furtherance of the promotion of sustainable consumption and production practices.

Comment [J9]: This sentence is too long and is unmanageable.

Comment [J10]: This sentence is too long. Consider redrafting.

20. The principles of environmental economics shall be applied in assessing the full costs and benefits of ecosystem goods and services as well as alternative environmental policies to deal with air pollution, water quality, toxic substances, waste and global warming.
21. The principles of natural resource accounting shall apply for State Parties to account for the state and quality of the environment and natural resource base by bringing the environment into national accounting through deductions from the GDP for various aspects of environmental degradation such as the value of pollution abatement and control expenditure, the value of environmental damage during the accounting period and the depletion of natural resources.

ARTICLE 4. OBJECTIVES

1. The main objectives of this Protocol are to:
 - (a) enhance the protection of the environment in order to contribute to human health, wellbeing and poverty alleviation;
 - (b) promote equitable and sustainable utilisation of natural resources and the environment for the benefit of the present and future generations; and
 - (c) promote the shared management of trans-boundary environment and natural resources; and
 - (d) ~~P~~promote effective management and response to impacts of climate change and variability.

2. In order to achieve these objectives, State Parties shall cooperate by:
 - (a) contributing towards sustainable development through the adoption of sound environmental management principles and procedures;
 - (b) ensuring equitable access and sharing of benefits that accrue from genetic resources;
 - (c) ensuring that sustainable development objectives are mainstreamed into trade and socio-economic policies, programmes and plans in the region;
 - (d) promoting trade in environmental goods and services for the development of the economies of the State Parties;
 - (e) facilitating value addition and beneficiation of the region's natural resources to maximise benefits;
 - (f) enhancing the restoration, rehabilitation and remediation of degraded and polluted environments;
 - (g) promoting complementarity in implementing transboundary environmental management activities;
 - (h) facilitating harmonisation of environmental policies, legislation, law enforcement and natural resources governance;
 - (i) monitoring and reporting on environmental trends and implementation of transboundary programmes in the region including development and implementation of early warning systems and environmental risk assessments;
 - (j) facilitating the development, implementation and coordination of environmental assessment procedures, environmental management instruments and standards;
 - (k) developing and implementing co-ordinated and where feasible, joint climate change mitigation and adaptation strategies and implementation of co-ordinated environmental disaster management responses;
 - (l) managing the collection, storage, movement and disposal of transboundary waste and hazardous chemicals including radioactive materials;

- (m) preventing and controlling air, water and soil pollution and degradation of the region's natural resources;
- (n) promoting sustainable land management practices so as to prevent soil erosion, land degradation, deforestation, desertification, overgrazing and bush encroachment; and
- (o) promoting the use of environmental economics and natural resources accounting in development planning;

PART 2: MANAGEMENT OF THE ENVIRONMENT AND TRANSBOUNDARY CONSIDERATIONS

ARTICLE 5. AIR QUALITY

Member States shall take measures to manage and control the transboundary effects of air pollution through:-

- (a) the development of air quality monitoring systems and the necessary capacity;
- (b) managing and reducing emissions from transportation, power generation, urban, industrial and agricultural processes, among others, generated in one State Party and potentially impacting on the air quality of other State Party or Parties;
- (c) the promotion of low carbon emissions trajectories, particularly in the context of climate change and global warming; and
- (d) promoting the use of cleaner and low carbon technologies.

ARTICLE 6. WASTE AND POLLUTION

1. States Parties shall take measures to ensure that activities within their jurisdiction and control do not cause significant transboundary environmental impacts. In this regard each Party shall adopt and enforce appropriate national legislation necessary to ensure prevention and control of pollution.
2. State Parties shall take measures to address the weak or non-existent systems for management of wastes including domestic, industrial, medical, agricultural, electronic, hazardous and radioactive waste; through developing and implementing integrated waste management strategies and legislation with obligations for waste reduction, sorting, re-use and recycling.
3. State Parties shall take measures to manage and control the transboundary effects of hazardous wastes through:-
 - (a) enhancement of capabilities to manage hazardous wastes as required by the Basel Convention;
 - (b) the prohibition of transboundary movements of hazardous wastes and their disposal, as stipulated by the Basel Conventions; and
 - (c) the prohibition of -the illegal or unregulated dumping of hazardous wastes on land, at sea and in internal waters.

ARTICLE 7. CHEMICALS MANAGEMENT

State Parties shall take measures following the principles of sound management of chemicals, through inter alia: -

- (a) initiatives to elaborate national chemical profiles, regional and national frameworks and strategies for chemical management and establishing chemical focal points; and
- (b) the management of transboundary movements of hazardous chemicals and their disposal especially in developing countries in accordance with provisions of the Basel Convention, the Stockholm Convention, and the Rotterdam Convention and other relevant conventions.

ARTICLE_8. BIODIVERSITY AND NATURAL HERITAGE

1. State Parties shall take measures to conserve ecosystems, including their biodiversity and unique habitats, which provide goods and services that support livelihoods of the people and enhance aesthetic values of the region.
2. State Parties shall take measures to ensure and promote -the sustainable management and utilisation of local and transboundary biological diversity including: -
 - (a) natural forests, woodlands, water catchment areas and other terrestrial ecosystems;
 - (b) wildlife;
 - (c) fisheries and marine resources;
 - (d) aquatic and marine ecosystems;
 - (e) wetlands;
 - (f) agro-biodiversity; and
 - (g) genetic resources.
3. State Parties shall adopt the necessary legislative and administrative measures to protect and manage natural heritage for the benefit of present and future generations.
4. State Parties shall take measures to ensure and safeguard equitable access and sharing of benefits deriving from genetic and biological resources of a regional and transboundary nature.
5. State Parties shall take measures to eradicate, control and prevent the introduction of invasive alien species.
6. State Parties shall put in place sound biotechnology and biosafety policies to manage Living/Genetically Modified Organisms.
7. State Parties shall take measures to secure and manage ecosystem services that provide natural buffering mechanisms to risks posed by climate change and implement this through ecosystem based adaptation strategies.

ARTICLE_9. SUSTAINABLE LAND MANAGEMENT

State Parties shall take measures to combat desertification and land degradation and implement sustainable land management practices through: -

- (a) the control of soil erosion;
- (b) ensuring that land tenure systems are environmentally sustainable;
- (c) promoting sustainable forestry and land use practices;

- (d) promoting environmentally sustainable land use planning;
- (e) integrated water-shed management;
- (f) fire management; and
- (g) integrated financing for sustainable land management.

ARTICLE 10. MARINE AND INLAND WATER RESOURCES

State Parties shall take measures to mitigate adverse environmental impacts on marine and coastal environment as well as inland water resources through:-

- (a) adequate and proper sanitation, sewage disposal and treatment;
- (b) development and adoption of regional water quality standards for domestic, agricultural and industrial use;
- (c) protection of inland water bodies, particularly wetlands;
- (d) prevention and management of eutrophication and salinisation of inland surface and subterranean water resources;
- (e) implementation of programmes for the management of marine pollution;
- (f) integrated coastal zone management; and
- (g) development of ocean management policies that recognise and value the goods and services accrued nationally and regionally.

ARTICLE 11. CLIMATE CHANGE

1. State Parties shall adopt the necessary legislative and administrative measures to enhance adaptation to the impacts of climate change.
2. State Parties shall take nationally appropriate voluntary climate change mitigation measures.
3. State Parties shall take measures to address the negative impacts of climate change on:-
 - (a) food security;
 - (b) water resources;
 - (c) health;
 - (d) economic activities, particularly agriculture, tourism, energy and industrial development;
 - (e) fisheries; and
 - (f) infrastructure.
4. State Parties shall take measures to develop early warning systems and disaster management strategies.
5. State Parties shall participate in the sub-regional and international climate change programmes in order to access the benefits related to technology transfer, financing, and capacity building.

PART 3. IMPLEMENTATION

ARTICLE 12. GENERAL UNDERTAKINGS OF STATE PARTIES

1. Responsibility for the implementation of this Protocol is essentially national, but in the case of shared resources and issues of regional nature, State Parties shall cooperate with one another to ensure that the Objectives of this Protocol are achieved.
2. State Parties shall take appropriate measures at national and international levels necessary for the harmonisation of laws, policies, plans and programmes on environmental management including research and monitoring aimed at promoting the objectives of this Protocol.
3. State Parties shall take measures required to harmonise standards, processes and procedures with particular reference to regional and transboundary environmental management.
4. State Parties shall refrain from taking any measures which may hinder the implementation of this Protocol.
5. State Parties shall ensure the participation of all stakeholders within their jurisdiction in the promotion of the Objectives of this Protocol, in accordance with Article 23 of the SADC Treaty.
6. State Parties shall promote gender equality and strive to address any other inequalities in the implementation of this Protocol.
7. Since natural resources are national assets, the State Parties shall take appropriate measures to regulate the use and protection of their natural resources against over-exploitation, whilst creating an enabling environment and building capacity for the sustainable utilisation of these resources.
8. State Parties shall establish standardised formats and requirements for the application of relevant environmental management tools.
9. State Parties shall monitor and exchange information on transboundary movement of wastes and hazardous substances.
10. State Parties shall take responsibility for transboundary management of wastes and hazardous substances in terms of relevant Multilateral Environment Agreements.
11. State Parties shall take responsibility for the management of transboundary natural resources and shared ecosystems.
12. State Parties shall develop relevant implementation plans for this Protocol.
13. State Parties shall develop the necessary capacity to implement the objectives of the Protocol.
14. State Parties shall facilitate the movement of personnel, vehicles, and equipment engaged in agreed trans-boundary activities pursuant to the objectives of this Protocol.
15. State Parties shall take necessary measures to promote the management and control of the spread of invasive alien species.
16. State Parties shall contribute to the production of regular state of the environment reports and the development of appropriate environmental indicators for the monitoring of key environmental trends for the SADC Region.

ARTICLE 13. MANAGEMENT OF SHARED NATURAL RESOURCES AND TRANSBOUNDARY CONSIDERATIONS

1. State Parties shall address the causes of environmental degradation in transboundary areas by undertaking measures in conformity with the SADC Treaty and its protocols and other international treaties and conventions of relevance to the environment.
2. The State Parties may, through bilateral or plurilateral means, establish instruments for co-ordination, co-operation, or integration of management of shared resources, transboundary movement of waste, and climate change, oceans and coastal management, conservation, monitoring and research, including but not limited to:
 - (a) specialist scientific advisory groups;
 - (b) joint programmes and projects;
 - (c) joint technical, or advisory committees;
 - (d) joint ministerial commissions with powers to allocate shared resources among States and agree on management measures;
 - (e) collaboration in law enforcement; and
 - (f) implementation of management plans for activities with potential transboundary environmental impacts and the monitoring and evaluation thereof.
3. State Parties may agree on management plans for shared resources and transboundary environmental issues which may include the following components:
 - (a) harmonised, or integrated systems to monitor natural resources and environmental assessment programmes, agreed scientific methodologies and preparation of best scientific advice on sustainable levels of exploitation;
 - (b) agreed management measures, and specification of means for implementing and enforcing such measures;
 - (c) principles, policies, and means for allocation of shared resources;
 - (d) means for fostering joint venture enterprises.
4. State Parties shall develop early warning systems and environmental risk assessments with respect to transboundary environmental issues.
5. State Parties shall develop and implement co-ordinated environmental disaster management responses.
6. State Parties shall take measures and to cooperate in clean-ups, restoration, rehabilitation and remediation of transboundary degraded and polluted environments.
7. State Parties shall develop, implement, enforce, monitor and evaluate management plans consistent with the objectives of this Protocol.
8. State Parties shall endeavour to ensure that all stakeholders participate at the appropriate level, in decision-making processes that affect the management of shared resources and transboundary goods and services.

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ARTICLE 14. LAW ENFORCEMENT

1. State Parties shall take measures to ensure the optimal use of existing resources for the enforcement of environmental law.

2. State Parties shall agree upon activities detrimental to the environment, to be deemed as offences.
3. State Parties shall co-operate in the harmonisation and use of monitoring systems and surveillance resources with a view to minimise cost.
4. The State Parties may conclude arrangements, bilateral or otherwise, to co-operate in the provision of personnel and the use of vessels, aircraft, communications, databases and information, or other assets for the purposes of environmental management surveillance and law enforcement.
5. The State Parties shall designate competent institutions and persons to act as environmental management enforcement officers.
6. The State Parties shall strive to harmonise the technical specifications and emerging technologies of interest to environmental management surveillance activities.
7. State Parties shall establish appropriate arrangements to co-operate in dealing with suspected environmental criminals who cross from one Member State to another.
8. State Parties shall enact laws, conclude arrangements and establish procedures for the extradition to each other of persons charged with or convicted of offences of contravening the environmental laws of the State Party seeking the extradition of such persons.
9. State Parties shall take measures to strengthen the capacity of their judicial systems to effectively prosecute perpetrators of environmental crimes or offences.
10. Should some State Parties wish to provide that a penalty imposed by each one of them under their environmental management laws be enforced by another State Party or Parties, they may agree on procedures for that purpose consistent with their national laws.
11. State Parties shall establish region-wide comparable levels of penalties to be imposed for activities that constitute offences against the environment;

ARTICLE 15. INTERNATIONAL RELATIONS

1. State Parties shall endeavour to sign, ratify, domesticate and implement international conventions and ~~Agreements~~ on environment.
2. The State Parties shall endeavour to establish joint positions and undertake co-ordinated and complementary actions with regard to international *fora*, conventions and agreements relevant to this Protocol.
3. State Parties may make specific provisions in their environmental management and other relevant legislation in line with the provisions of the Rio Declaration, JPoI emanating from the World Summit on Sustainable Development, Rio+20 and other relevant and applicable Multilateral Environment Agreements;

PART 4:—CROSS-SECTORAL ISSUES

ARTICLE 16. HUMAN RESOURCES DEVELOPMENT

1. State Parties shall develop and implement education programmes on environmental management and sustainable and responsible use of the natural environment.
2. State Parties shall foster awareness of sound environmental management and sustainable and responsible use of the natural environment.
3. State Parties shall implement policies to enhance the capacity of nationals to engage in the responsible use of natural resources on the basis of equity, participation, effectiveness, and mutual benefit.
4. State Parties shall actively work towards the enhancement of environmental management training and skills development.
5. State Parties shall encourage national and regional programmes for skills transfer from locations and institutions of best practice to all levels of practitioners and policy-makers.
6. State Parties shall promote regional professional associations and encourage their involvement in the pursuit of the objectives of this Protocol.
7. State Parties shall encourage the empowerment of local authorities and communities to take charge of the management of their environment to prevent pollution and environmental degradation.
8. The capacity of the SADC judicial institutions shall be enhanced for environmental justice and governance.

ARTICLE 17. TRADE AND INVESTMENT

1. State Parties shall promote sustainable trade and investment practices with due consideration of potential significant environmental impacts.
2. State Parties shall create favourable socio- economic conditions to support the promotion of sound environmental management practices and sustainable development.
3. State Parties shall develop guidelines for mainstreaming environment considerations into regional trade and investment.
4. State Parties shall give special consideration in the establishment of joint ventures in the environmental sector to:-
 - (a) ensure sustainability of natural resources;
 - (b) promote regional food security;
 - (c) promote environmentally sustainable trade in SADC;
 - (d) promote value-added processing;
 - (e) establish a favourable cross-border investment regime through, *inter alia*,
 - (i) encouraging the mobility of key personnel and the associated transfer of skills;
 - (ii) developing key infrastructure;
 - (iii) protecting the associated assets; and

- (f) ensure that nationals and their vehicles comply with applicable domestic and international laws.
6. State Parties shall promote Public Private Partnerships (PPPs) in addressing issues of investing in environmental programmes: by, amongst others -
 - (a) facilitating policy, legislative and institutional reforms to create an enabling environment for PPPs;
 - (b) providing training and technical assistance to build capacity for PPPs; and
 - (c) providing relevant information and best practice guidelines for PPPs.
 7. State Parties shall create an enabling policy and guidelines for the promotion of investment in the Environmental Management Sector.
 8. State Parties shall promote the development and use of energy efficient and clean technologies.
 9. State Parties shall co-operate in establishing regional capacity to implement internationally recognised and acceptable environmental standards on quality control and certification.
 10. State Parties ~~s~~ may establish joint positions with regard to sustainable trade, intellectual property rights, eco-labelling of products, environmental goods and services and other trade issues of relevance to State Parties.

ARTICLE 18. SCIENCE AND TECHNOLOGY

1. State Parties shall co-operate in establishing joint research programmes and projects, with particular reference to shared natural resources, including areas of the oceans ~~that~~which are within national jurisdiction and on the high seas, climate change, transboundary environmental considerations and scientific problems considered common to the sub-region or parts of the sub-region.
2. State Parties shall work towards the generation and application of best scientific and indigenous knowledge as a basis for decisions on the sustainable use of the natural resources through *inter alia*: -
 - (a) peer review, including external evaluation of research by acknowledged centres of excellence;
 - (b) The inclusion and application of indigenous knowledge, systems and structures in decision making;
 - (c) participation in national, regional and international research fora;
 - (d-) promoting publications of regional interest, including electronic journals; and
 - (e) promoting the establishment of networks and professional associations.
3. State Parties agree that knowledge and data generated through joint regional environmental management research projects and programmes shall be shared by the participating State Parties.
4. State Parties shall endeavour to avoid duplication in research undertakings and to share costly facilities and equipment with particular reference to research and remote sensing facilities and geographical information systems.

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5. State Parties shall, in close collaboration with other regional initiatives in the areas of meteorology, cartography and the drought early warning system, endeavour to secure adequate coverage by remote sensing and geographical information systems of the full extent of the state of the environment of the SADC region.
6. State Parties shall endeavour to adopt appropriate means and approaches for the standardisation of hardware and software, particularly of vehicle monitoring and tracking systems, emerging technologies and other advanced technologies.
7. State Parties shall promote among themselves, the transfer, acquisition and mastery of technology of value to the implementation of this Protocol, with particular reference to environmentally friendly and clean technologies.
8. State Parties undertake to respect applicable intellectual property rights with reference to the utilisation of environmental technologies.

ARTICLE 19. INFORMATION MANAGEMENT, EXCHANGE AND REPORTING

1. State Parties shall co-operate in the generation and exchange of complete and detailed information essential for achieving the objectives of this Protocol, including on:-
 - (a) the state of the environment and environmental trends of the region;
 - (b) measures taken to manage the environment;
 - (c) measures taken to mitigate and adapt to the impacts of climate change;
 - (d) transboundary movement of waste, stockpiles of agrochemicals and hazardous chemicals and other transboundary environmental issues;
 - (e) relevant research activities and results; and
 - (f) Natural Resource Accounting.
2. State Parties shall ensure that effective communication strategies are developed which promote broader participation of stakeholders in order to promote participative management of the sub-region's environment.
3. State Parties shall adopt standard methods and approaches for collecting, processing, storage and disseminating environmental data and information.
4. A central data and information warehouse shall be established at the SADC Secretariat to manage, store and archive environmental publications and records to which Member States shall deposit the relevant information and data.
5. State Parties shall contribute to the production of regular state of the environment reports and the development of appropriate environmental indicators for the monitoring of key environmental trends for the SADC Region.

PART 5: INSTITUTIONAL ARRANGEMENTS

ARTICLE 20. INSTITUTIONAL FRAMEWORK

1. The following institutions are hereby established and shall be responsible for implementing this Protocol:

- (a) Committee of Ministers Responsible for the Environment;
- (b) Committee of Senior Officials Responsible for the Environment;
- (c) Technical Committee on Environmental Management;
- (d) Other Specialist Committees and Working Groups.

2. The rules of procedure that shall apply to meetings of the Committee of Ministers and any sub-committee thereof shall be the Rules of Procedures of Meetings of Sectoral Committees of Ministers made in pursuance of Article 20 of the Treaty and approved by the Summit.

ARTICLE 21. COMMITTEE OF MINISTERS RESPONSIBLE FOR THE ENVIRONMENT

1. The Committee of Ministers shall comprise the Ministers responsible for the environment from the State Parties;
2. The powers and functions of the Committee of Ministers shall be to -
 - (a) establish the policy and strategy of the Environmental management Sector;
 - (b) consider and recommend for approval by the Council the annual reports of the Sector;
 - (c) consider and approve recommendations on regional projects and programmes;
 - (d) consider and approve recommendations on rules and regulations governing the sector;
 - (e) monitor the implementation of this Protocol;
 - (f) consider any matter having a bearing on the objectives, direction, areas of co-operation, and implementation of this Protocol brought to its attention by a Member State, the Committee of Senior Officials or the SADC Secretariat;
 - (g) recommend to the Council amendments to the Protocol and changes or modifications to the structure of the Sector;
 - (h) consider any matter referred to the Committee of Ministers by the Council;
 - (i) create such other organs as may be necessary for the implementation of this Protocol;
 - (j) identify and introduce new areas of co-operation which may be agreed to be areas of co-operation in terms of this Protocol;
 - (k) resolve disputes on environmental issues between Member States; and
 - (l) recommend to the Council of Ministers the adoption of instruments to regulate co-operation in any particular area of co-operation, such subsidiary arrangements being consistent with the provisions of this Protocol.

ARTICLE 22. COMMITTEE OF SENIOR OFFICIALS RESPONSIBLE FOR THE ENVIRONMENT

1. The Committee of Senior Officials shall consist of Permanent Secretaries or officials of equivalent rank responsible for the environment in Member States.
2. The functions of the Committee of Senior Officials shall be to:-
 - (a) examine all reports and documents put before them by the Technical Committee and the Environmental management Sector Co-ordinating Units and reporting to the Council of Ministers accordingly;
 - (b) implement, monitor and report on policies, strategies, programmes and projects instituted by the Committee of Ministers;

- (c) advise the Committee of Ministers on policies, strategies, programmes and projects to be submitted to the Council;
- (d) recommend to the Committee of Ministers the creation of such other organs as may be necessary for the implementation of this Protocol, and
- (e) provide regular updates to the Committee of Ministers on the status of the implementation of this Protocol.

ARTICLE 23. TECHNICAL COMMITTEE ON ENVIRONMENTAL MANAGEMENT

1. The Technical Committee on Environmental Management shall comprise of senior government officials (Directors of Environment or equivalent rank) with responsibility for environmental management from the State Parties.
2. The functions of the Technical Committee on Environmental Management shall be to:
 - (a) advise the Committee of Senior Officials on environmental management issues, proposals and projects to be submitted to the Committee of Ministers and to the Sectoral Committee of FANR Ministers for presentation to the Council of Ministers;
 - (b) analyse, implement and review the Sectoral Programme of Action for this Protocol;
 - (c) perform such other functions as may be assigned to it by the Committee of Senior Officials; and
 - (d) through the Committee of Senior Officials report to the Committee of Ministers on the state of implementation of this Protocol.

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ARTICLE 24. SPECIALIST COMMITTEES AND TECHNICAL WORKING GROUPS

1. Standing Specialist Committees and ad-hoc technical working groups shall be established by the Committee of Ministers, acting on a recommendation of the Committee of Senior Officials, to consider and advise on technical issues of interest to State Parties. The Technical Committee on Environment shall approve the terms of reference of such Specialist Committees and *ad-hoc* working groups.
2. Specialist *Ad-hoc* Committees are hereby established in the following areas:
 - (a) *(a)* Environmental Management Education and Training; and
 - (b)* Environmental Standards;
3. The Specialist Committee on Environmental Management Education and Training is established to guide and facilitate regional co-operation in training and education, in accordance with the principles of the SADC Protocol for Education and Training. The Committee shall:
 - (a) prepare and maintain a catalogue of regional vocational and tertiary training opportunities, institutional capacity, educational materials and media available both for formal training courses, for extension services and for stakeholder participation;
 - (b) examine the equivalence of formal training courses and qualifications between institutions in the Region and undertake co-ordinated actions to achieve appropriate international standards as may be required;
 - (c) identify core educational courses, modules, or units essential to the knowledge base of the environmental management sector and recognise and link centres of excellence in providing such educational opportunities, to include, *inter alia*, regional courses for environmental management enforcement officers; and

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- (d) examine constraints to staff and student mobility in the sector, and recommend upon means to reduce or remove such barriers.
4. The Specialist Committee on Environmental Standards is established to recommend harmonised measures, consistent with the requirements of the markets, consumer protection, and human health which may be adopted by State Parties to improve quality and market access in the Region. The Committee shall address, *inter alia* –
 - (a) the relevancy and application of internationally acceptable norms and standards ;
 - (b) issues related to the World Trade Organisation Agreement on the application of Sanitary and Phytosanitary Measures;
 - (c) harmonised sanitary certificates;
 - (d) arrangements for auditing and accreditation of national laboratories;
 - (e) issues generated by changing market conditions and requirements of importing States;
 - (f) procedures and practices regarding trade; and
 - (g) issues related to the packaging and labelling of products.
 5. The Committee of Ministers, acting on the recommendation of the Committee of Senior Officials, may establish other *ad hoc* technical working groups, to consider and advise upon technical issues of interest to the State Parties.

ARTICLE 25. RULES OF PROCEDURE FOR MEETINGS

The rules of procedure that shall apply to meetings of all institutions responsible for implementing this Protocol shall be the Rules of Procedures of Meetings of Sectoral Committees of Ministers made in pursuance of Article 20 of the Treaty.

ARTICLE 26. FINANCIAL PROVISIONS

1. State Parties shall endeavour to allocate the necessary funds for the effective implementation of this Protocol at the national level.
2. The cost of administering and managing the activities of this Protocol shall be borne by State Parties which are signatories to this Protocol.
3. Council of Ministers shall ensure that adequate resources are allocated to support the relevant implementation of the provisions of this Protocol.
4. Programmes and projects of the Environment Sector may be financed by funds legitimately solicited from various sources, including the international donor community and other co-operation partners.
5. The Environment Sector may accept gifts, grants, legacies and donations from any source so long as such acceptance is in conformity with SADC Rules and Procedures.
6. State Parties may grant incentives to promote sound environmental management practices.
7. State Parties may establish a regional financing mechanism to finance transboundary and regional environmental programmes to be approved by the SADC Council.

ARTICLE 27. MONITORING AND EVALUATION

State Parties shall approve a monitoring and evaluation system for this Protocol as well as programmes executed by the Secretariat to implement the Protocol.

ARTICLE 28. ASSETS

Assets acquired by State Parties through the implementation of this Protocol shall be treated in accordance with the provisions of Article 27 of the SADC Treaty.

PART 6: FINAL PROVISIONS

ARTICLE 29. ANNEXES

1. State Parties may develop and adopt annexes for the implementation of this Protocol.
2. All Annexes developed to implement this Protocol shall form an integral part of the Protocol.

ARTICLE 30. SETTLEMENT OF DISPUTES

1. State Parties shall strive to resolve any dispute arising between them regarding the application, interpretation or implementation of this Protocol amicably.
2. Any dispute arising between two or more State Parties from the application, interpretation or application of this Protocol which can not be settled amicably shall be referred to the Committee of Ministers of Environment as stated in Article 22, subparagraph 2(k).
3. Any dispute arising from the interpretation and application of this Protocol which cannot be settled amicably, shall be referred to the relevant SADC judicial system.

Comment [J12]: Article 22 does not have a "subparagraph 2(k)".

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ARTICLE 31. SIGNATURE

This Protocol shall be signed by the duly authorised representatives of the Member States.

ARTICLE 32. RATIFICATION

This Protocol shall be ratified by the signatory Member States in accordance with their respective constitutional procedures.

ARTICLE 33. ENTRY INTO FORCE

This Protocol shall enter into force for those Member States which have deposited instruments of ratification thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States.

ARTICLE 34. ACCESSION

This Protocol shall remain open for accession by any Member State.

ARTICLE 35. RESERVATIONS

No reservation or exceptions may be made to this Protocol.

ARTICLE 36. AMENDMENT

1. Any State Party may propose amendments to this Protocol.
2. Proposals for amendments to this Protocol shall be made to the Executive Secretary of SADC who shall notify all the States Parties to this Protocol of the proposed amendments at least thirty (30) days in advance of the consideration of the amendments by the State Parties. Such notice may be waived by the State Parties.
3. Amendments to the Protocol shall be adopted by a decision of three quarters of all the State Parties and shall become effective thirty (30) days after such adoption.

ARTICLE 37. WITHDRAWAL

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of written notification to the Executive Secretary of SADC.
2. Any State Party that has withdrawn pursuant to paragraph 1 shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective, but shall remain bound by the obligations, financial or otherwise, herein for a period of twelve (12) months from the date of notification to the date the withdrawal becomes effective.

ARTICLE 38. DEPOSITARY

1. The original of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary of SADC shall register this Protocol with the Secretariats of the United Nations and the African Union and any other relevant organisations which the Council of Ministers may determine.

IN WITNESS WHEREOF, WE, the Heads of State or Government of SADC Member States, or our duly authorised representatives, have signed this Protocol.

Done at..... this..... day of in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

.....
REPUBLIC OF ANGOLA

.....
REPUBLIC OF BOTSWANA

.....
DEMOCRATIC REPUBLIC OF THE
CONGO

.....
KINGDOM OF LESOTHO

.....
REPUBLIC OF MADAGASCAR

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REPUBLIC OF MALAWI

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REPUBLIC OF MAURITIUS

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REPUBLIC OF MOZAMBIQUE

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REPUBLIC OF NAMIBIA

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REPUBLIC OF THE SEYCHELLES

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REPUBLIC OF SOUTH AFRICA

.....
KINGDOM OF SWAZILAND

.....
UNITED REPUBLIC OF TANZANIA

.....
REPUBLIC OF ZAMBIA

.....
REPUBLIC OF ZIMBABWE