

NAIROBI CONVENTION

Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Western Indian Ocean Region:

Proposed Annex Art 9 on “Tools and instruments.”

A. Background and Rationale

In the Third Negotiation Meeting for on the Integrated Coastal Zone Management (ICZM) Protocol in the Western Indian Ocean held on 21-24 November 2016 in Zanzibar, the United Republic of Tanzania, the Contracting Parties requested the Nairobi Convention Secretariat to undertake the following tasks in relation to the proposed Annex to Article 9 of the Protocol:

- i. Compile information on the structure and definitions of the Annex to the ICZM Protocol and harmonize with reference to the presentations on “Structure and Definitions of Tools and Instruments” made by the Contracting Parties during the Third Negotiations meeting held on 21-24 November 2016;
- ii. Analyze the national legislations and harmonize the various definitions of terms related to ICZM implementation, for example “environmental impact assessment” and “strategic environmental assessments”;
- iii. Draft the Annex and fill in gaps in the structure as proposed by the Contracting Parties based on the use of international best practices;
- iv. Review and update key areas in the Annex to Article 9 which include planning, implementation, market based, legal and planning tools; ICZM instruments and indicators;
- v. Develop a clause to cater for emerging issues such as Marine Spatial Planning, and analyzing the role of non- state actors(community based organizations, civil society organizations and the private sector among others);
- vi. Review and improve the text of the Annex to contain guiding principles of the minimum requirements that each Contracting Party should meet in the implementation of the ICZM Protocol;
- vii. Improve the drafting of Article 9 of the ICZM Protocol which appears to infringe on the sovereignty of States by making it mandatory for States to adopt instruments contained in the Annex.

The Secretariat subsequently contracted a Consultant as directed by the Contracting Parties, and provided to him relevant primary documents including the report of the Third Negotiation Meeting, the Third Negotiated Draft of the ICZM Protocol and the draft of the Annex that was presented during the Third Negotiation Meeting in Zanzibar.

B. Structure of Annex to Article 9

The Contracting Parties during the Third Negotiation Meeting agreed on the following basic structure of the Annex:

- i. Definition of ICZM tools and instruments with alternatives coming from the working groups in the Third Negotiation Meeting;

- ii. A broad categorization of the ICZM tools (planning tools, implementation tools, etc) which give room for flexibility;
- iii. ICZM instruments;
- iv. Indicators.

Each of the parts of the structure is elaborated in the draft Annex to Article 9 below.

C. Definitions in Annex to Article 9

It is necessary to define some of the key terms in the Annex to Article 9. While the key definitions of terms is provided in an article in the primary legal instrument (convention or protocol), it is not unusual to provide additional definitions in annexes to legal instruments such as protocols, or in subsidiary legislation in the case of national legislation. This helps further clarify technical terms and concepts, as well as provide context for details and easy references in the annexes. Consequently, in the present case, part of the structure of the proposed annex could include definitions of key technical terms that would aid in understanding and implementation of the annex.

Some of the key terms for definition, as noted also in the Third Negotiation Meeting, include “ICZM instruments”, “ICZM tools”, “strategic environmental assessments”, “environmental impact assessments”, and “environmental assessment”, among others. The Third Negotiation Meeting on the ICZM Protocol in Zanzibar provided some thoughts on the definitions of key terms as highlighted in the table below:

Table 1: Summary of Key definitions

| Key Term | Group 1 | Group 2 | Group 3 |
|---------------------------------------|--|--|---|
| “ICZM Instrument” and its derivatives | A measuring device used to gauge the level or position, speed etc. of something | A set of policy, planning, legal, institutional, and economic and technology based measures aimed at implementing the purpose, goals, principles and objectives of the ICZ protocol. | |
| “Institutional instruments” | Bodies set up to implement and coordinate the activities undertaken, including ICZM committees, national environmental authorities, sector ministries, local | | Bodies set up to implement and coordinate the activities undertaken thereon |

| Key Term | Group 1 | Group 2 | Group 3 |
|------------------------------------|---|---|---|
| | government authorities, municipalities, academic and research institutions. | | |
| “planning instruments” and “tools” | Document(s) that is formally adopted under planning legislation by a state and used to manage the use and development of land. Planning tools include strategic environmental assessment, coastal setback lines, zoning and spatial planning, sensitivity mapping and vulnerability assessment, environmental impact assessment, environmental auditing, coastal strategies, plans and programmes; contingency planning; marine and protected areas; disaster risk reductions, geographical information systems; and remote sensing | Strategic measures aimed at guiding decision makers in the immediate and future allocation of interventions towards sustainable management of coastal resources in accordance with the objectives of the protocol. Includes strategic planning with components such as monitoring and enforcement, resource management tools such as marine spatial planning, coastal zoning and restoration, marine protected areas, and integrated water resources management; state of the environment planning including environmental action plans (standards, codes, guidelines and regulations); disaster and risk planning, disaster loss profile and risk financing and development planning; Also includes | Process making plan to implement ICZM identified goals and objectives to be achieved, formulating strategies to achieve them, arranging or creating the means required, measures aimed at guiding future development. |

| Key Term | Group 1 | Group 2 | Group 3 |
|---|--|--|---------|
| | | <p>“assessment tools” including three broad categories: socio-economic assessment tools e.g. feasibility studies, poverty and social impact analysis; environmental assessment tools e.g. environmental impact assessment and auditing, strategic environmental assessment; and integrated assessment tools e.g. cost benefit analysis and scenario creation and forecasting modelling</p> | |
| “legal instrument” | <p>Formal written or enacted document, including Acts, policies, regulations, protocols, strategies, conventions/treaties, agreements.</p> | <p>International treaties, conventions and protocols or national laws, regulations, standards and other measures that regulate the application of integrated coastal zone management at the global, regional or national level.</p> | |
| “administrative instrument” and “tools” | <p>Used for the management of integrated coastal management affairs or the conduct of integrated coastal management. Administrative tools are embedded in the established institutions, and include licenses, permits and guidelines</p> | | |

| Key Term | Group 1 | Group 2 | Group 3 |
|----------------------------|--|--|--|
| “information instruments” | Include such as public disclosure requirements and awareness/education campaigns that may positively affect environmental quality by allowing consumers to make better informed choices. Information tools include labelling programmes for consumer products, information disclosure programmes and public awareness campaigns. | | |
| “market based instruments” | Policy instruments that use markets, price and other economic variables to provide incentives for polluters to reduce or eliminate negative environmental externalities. Market based tools include ecosystem valuation taxes, subsidies, tradable permits, deposit refund systems. | A set of economic measures designed to provide both incentives and disincentives with the aim of promoting conservation and sustainable management of the coastal resources while preventing negative forms of exploitation, resource depletion, pollution and environmental degradation | Measures markets, prices and other economic variables to provide incentives for the sustainable management of coastal resources |
| “ICZM Tools” | A technical object used to carry out a particular function | Set of diverse methodologies or approaches used in integrated coastal zone management that are applied in data collection, planning, assessment, integration, implementation, response or | Technical measures used at managing coastal resources, including technical measures, regulatory measures and economic measures: “technical measures” such as GIS, MPA, or Area based management, coastal |

| Key Term | Group 1 | Group 2 | Group 3 |
|--------------|--|--|--|
| | | evaluation processes. | <p>set back lines, land use planning and marine spatial planning, seasonal and spatial restrictions of certain activities (e.g. fisheries), disaster risk management, remote sensing, climate change adaptation;</p> <p>“regulatory measures” (institutional and administrative) such as EIA, SEA, policies, strategies, action plans, ecosystem approach, precautionary approach, management of fishing capacity;</p> <p>“economic measures” including taxes, incentives (positive and negative), buy back measures</p> |
| “indicators” | Measurement that provides a simplified view of a more complex phenomenon, or provides insights about a trend or event that cannot be readily observed. Indicators both quantify information and simplify information. Examples of indicator categories include | Categories include sustainability indicators (resource abundance and value addition to natural capital), impact indicators, performance indicators, and integration indicators | Examples include periodic data collection, regular assessment, periodic research, socio-economic assessment and environmental audit. |

| Key Term | Group 1 | Group 2 | Group 3 |
|----------|---|---|---------|
| | environmental indicators, socio-economic indicators, and ICZM effort evaluation indicators. | (multi disciplinary management involving all sectors at policy, legislative and sector levels and even at regional level) | |

The foregoing inputs from the Third Negotiation Meeting in Zanzibar provide very useful reference for the draft Annex to Article 9 which is elaborated below. However, it appears that in general, “ICZM tools” are specific devices, techniques or measures contained within the broader framework of “ICZM instruments” for purposes of implementation of ICZM. The “ICZM tools” are more specifically targeted implementation interventions as opposed to the more generic “ICZM instruments.”

D. National Legislations and key ICZM terms

This assignment includes “analyzing national legislations and harmonizing the various definitions of terms related to ICZM implementation. A review and analysis of various national legislations from a number of Western Indian Ocean (WIO) countries provides general convergence on the meaning of certain key environmental and ICZM terms. Table 2 below provides a summary of definitions derived from various national environmental and ICZM legislations.

Table 2: Summary of definitions of key terms in national legislations in Some WIO countries

| Key Term | Kenya | Mauritius | South Africa | Tanzania |
|--------------------------------------|--|---|--------------|--|
| Environmental impact assessment(EIA) | “means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment” | “EIA” means environmental impact assessment | | “means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment” |
| Environmental audit (EA) | “means the systematic, documented, periodic and | | | “means the systematic, documented, periodic and |

| Key Term | Kenya | Mauritius | South Africa | Tanzania |
|----------|---|-----------|--------------|---|
| | objective evaluation of how well environmental organization, management and equipment are performing in conserving or preserving the environment” | | | objective evaluation of how well environmental organization, management and equipment are performing in conserving or preserving the environment” And /Or “means a systematic evaluation of activities and processes of a project to determine how far these activities and programmes conform with the approved environmental management plan of that specific project and sound environmental management practices and applicable environmental |

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