

UNEP NAIROBI CONVENTION

Report on Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Western Indian Ocean Region: Proposed Annex to Article 9 on “Tools and Instruments.”

A. Background and Rationale

In the Third Negotiation Meeting on the Integrated Coastal Zone Management (ICZM) Protocol in the Western Indian Ocean (WIO) 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 including 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, to assist in this task, and provided him with 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

During the Third Negotiation Meeting in Zanzibar, the Contracting Parties 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 ICZM | |

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| | | protocol. | |
| “Institutional instruments” | Bodies set up to implement and coordinate the activities undertaken, including ICZM committees, national environmental authorities, sector ministries, local government authorities, municipalities, academic and research institutions. | | Bodies set up to implement and coordinate the activities undertaken thereon |
| “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 | 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. |

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| | | <p>and risk planning, disaster loss profile and risk financing and development planning;</p> <p>Also includes “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” | Formal written or enacted document, including Acts, policies, regulations, protocols, strategies, conventions/treaties, agreements. | 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. | |
| “administrative instrument” and “tools” | Used for the management of integrated coastal management affairs or the conduct of integrated coastal | | |

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| | management. Administrative tools are embedded in the established institutions, and include licenses, permits and guidelines | | |
| “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 | Technical measures used at managing coastal resources, including technical measures, regulatory measures and |

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| | | <p>collection, planning, assessment, integration, implementation, response or evaluation processes.</p> | <p>economic measures:</p> <p>“technical measures” such as geographical information systems (GIS), marine protected areas (MPA), or Area Based Management, coastal 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 environmental impact assessment (EIA), strategic environmental assessment(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</p> |
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| | | | measures |
| “(framework) 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 environmental indicators, socio-economic indicators, and ICZM effort evaluation indicators. | Categories include sustainability indicators(resource abundance and value addition to natural capital), impact indicators, performance indicators, and integration indicators (multi disciplinary management involving all sectors at policy, legislative and sector levels and even at regional level) | Examples include periodic data collection, regular assessment, periodic research, socio-economic assessment and environmental audit. |

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 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 |
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| Environmental impact assessment(EIA) | “means a systematic examination conducted to determine whether or not a | “EIA” means environmental impact assessment | | “means a systematic examination conducted to determine whether or not a |

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| | programme, activity or project will have any adverse impacts on the environment” | | | programme, activity or project will have any adverse impacts on the environment” |
| Environmental audit(EA) | “means the systematic, documented, periodic and objective evaluation of how well environmental organization, management and equipment are performing in conserving or preserving the environment” | | | “means the systematic, documented, periodic and 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 standards” |
| Strategic | “means a formal | | | |

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| environmental assessment(SEA) | and systematic process to analyse and address the environmental effects of policies, plans, programmes and other initiatives” | | | |
| Ecosystem | “means a dynamic complex of plant, animal, micro-organism communities and their non living environment interacting as a functional unit” | | “means a dynamic complex of plant, animal, micro-organism communities and their non living environment interacting as a functional unit” | “means a dynamic complex of plant, animal, micro-organism communities and their non living environment interacting as a functional unit” |
| Coastal zone | “means any area declared to be a protected coastal zone under section 55” | | “means the area comprising coastal public property, the coastal protection zone, coastal access land and coastal protected areas, the seashore, coastal waters and the exclusive economic zone and includes any aspect of the environment on, in, under and above such area”. | |
| Coastal setback line | | | “means a line determined by a member of Executive Council of a coastal province in | |

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| | | | accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives” | |
| Environmental planning | “means both long term and short term planning that takes into account environmental exigencies” | | | |
| Monitoring | | ‘includes the inspection, measurement, sampling or analysis of any discharge of a pollutant, or of any environmental medium in any locality, whether periodically or continuously” | | |

It is apparent from the sample of definitions above that there is a general convergence of the definition and meaning of key environmental and ICZM terms. Thus it should be easier to agree on definitional issues in the proposed ICZM protocol and it’s Annex.

E. Implementation of ICZM and Framework Indicators

There were very useful inputs from the discussion groups established during the Third Negotiation Meeting in Zanzibar. It was generally understood and agreed that the Annex to Article 9 should include measurable indicators to guide its implementation. Categories of indicators include sustainability indicators (resource abundance and value addition to natural capital), impact indicators, performance indicators, and integration indicators (multi

disciplinary management involving all sectors at policy, legislative and sector levels and even at regional level).

Monitoring and evaluation (M&E) is critical to successful implementation of the Protocol. Therefore, it is necessary to elaborate an indicator set that will measure progress towards the successful outcome of the instruments and tools set out in the Annex and the short and long term management targets. The UNEP-GEF establishes three types of indicators: a) process indicators, b) stress reduction indicators and c) environmental status indicators:

a) **Process Indicators** focus on the processes *or outputs* that are likely to lead towards a desirable outcome. They demonstrate actual on-the-ground institutional, political, legislative and regulatory progress in resolving the environmental and other problems facing the WIO region. They should assist in tracking the institutional, policy, legislative and regulatory reforms necessary to bring about change.

b) **Stress reduction indicators** relate to project objectives or *outcomes*. In particular, they focus on concrete actions that reduce environmental stress. Stress reduction indicators indicate the rate of success of specific on-the-ground actions implemented by the WIO countries. Often a combination of stress reduction indicators in several nations will be needed to produce detectable changes in coastal zone management.

c) **Environmental state indicators** are *goal orientated* and focus on actual improvements of ecosystem quality that usually extends beyond the lifetime of a project. They are measures of actual success in restoring or protecting the targeted coastal zones or water bodies. It can take a number of years before sufficient stress reduction measures are implemented in a sufficient number of countries to detect an environmental state change in the WIO region. Some of Environmental Status Indicators include the following:

- i. Measurable improvements in trophic status;
- ii. Improved (measurable) ecological or biological indices;
- iii. Improved recruitment of classes of targeted fish species/diversity/keystone species;
- iv. Increase in the availability of fishing resources;
- v. Changes in local community income/social conditions as a result of improvements in environmental conditions;
- vi. Stakeholder awareness raised and involvement documented;
- vii. Reduction of pollutant concentrations in coastal areas and port zone (heavy metals, persistent organic compounds concentrations, etc.);
- viii. Relevant coastal habitats rehabilitated; and
- ix. Reduced number of threatened species

The draft Annex elaborated below seeks to provide for the Contracting Parties to define indicator categories to guide the effective implementation of the Protocol and its Annex.

F. Review and re-drafting of the Annex

As noted above, the mandate of this assignment includes review of the existing draft Annex, and re drafting it according to the structure proposed, and in accordance with international best practice. The draft below seeks to respond to this mandate. However, it is worthy to note that ICZM Protocols are rare globally. Only the Mediterranean Convention framework has an

existing ICZM Protocol, while the WIO region is developing its instrument. All other regions do not have regional legal instruments specifically for coastal zone management. Some, like the Black Sea Convention framework have included ICZM in their strategic action plans (SAP) as part of the key environmental management approaches, alongside others like integrated ecosystem approach(EA) and integrated river basin management(IBRM). In the Mediterranean, apart from the ICZM protocol, there is an ICZM Implementation Action Plan, which details technical aspects of the implementation of the ICZM protocol, and links them with other approaches like EA and IBRM.

G. Emerging Issues, Guiding Principles and Review of Article 9

The mandate of this assignment also includes addressing what the Third Negotiation Meeting in Zanzibar described as “emerging issues”. Examples include marine spatial planning, the role of non state actors in the implementation of the ICZM protocol including the Annex. Moreover, it was noted that there was need to address the current drafting of Article 9 to avoid apparent encroachment on state sovereignty.

Consequently, while review and re drafting of the Annex is happening, it is also necessary to review and re-draft Article 9, and possibly Articles 10 and 11. Indeed, some of the highlighted “emerging issues” must necessarily be anchored in the Article before they are further elaborated in the Annex.

Moreover, in the Third Negotiation Meeting in Zanzibar it was observed that the language and framing of Article 9 appears to infringe on the sovereignty of States by making it mandatory for Contracting Parties to adopt the instruments and tools contained in the Annex. The key word that implies mandatory obligation is “shall” rather than “may”.

It is proposed that Article 9 could be re-drafted as follows:-

“1. Each Contracting Party may, in implementing this Protocol, adopt such legal, institutional, administrative and planning instruments and tools as provided for in Annex XXX.

2. A Contracting Party may, in the choice of instruments and tools for implementation of the Protocol, apply them singularly or in combination, and individually or in collaboration with other contracting parties.”

H. Draft ANNEX ON INSTRUMENTS AND TOOLS (Article 9, 10 and 11)

1. **Definitions:** In this Annex,

“ICZM instruments” means a set of policy, planning, legal, institutional, and economic and technology based measures aimed at implementing the purpose, goals, principles and objectives of the ICZM Protocol;

“ICZM tools” means a set of diverse methodologies or approaches used in integrated coastal zone management that are applied in data collection, planning, assessment, integration, implementation, response or evaluation processes;

Or

“ICZM tools” means a set of technical measures used in managing coastal resources, including technical, regulatory and economic measures;

“Institutional instruments” means bodies set up to implement and coordinate the activities undertaken, including ICZM committees, national environmental authorities, sector ministries, local government authorities, municipalities, academic and research institutions;

Or

“Institutional instruments” means bodies set up to implement and coordinate the activities undertaken thereon;

“Planning instruments” means document(s) that is/are formally adopted under planning legislation by a state and used to manage the use and development of land;

Or

“Planning instruments” means 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. This 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;

Or

“Planning instruments” means process making measures to implement ICZM identified goals and objectives to be achieved, formulating strategies to achieve them, arranging or creating the means required, and measures aimed at guiding future development.

“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;

“Legal instrument” means 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;

Or

“Legal instrument” means formal written or enacted document, including Acts, policies, regulations, protocols, strategies, conventions/treaties, agreements;

“Administrative instruments” means instruments 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;

“Information instruments” include such instruments 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” means 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;

Or

“Market based instruments” means 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;

Or

“Market based instruments” means measures addressing markets, prices and other economic variables to provide incentives for the sustainable management of coastal resources;

“Indicators” means measurement(s) that provides a simplified view of a more complex phenomenon, or provides insights about a trend or event that cannot be readily observed;

Or

“Indicators” means and include sustainability indicators (resource abundance and value addition to natural capital), impact indicators, performance indicators, and integration indicators (multi disciplinary management involving all sectors at policy, legislative and sector levels and even at regional level);

“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” means the systematic, documented, periodic and objective evaluation of how well environmental organization, management and equipment are performing in conserving or preserving the environment;

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

“Environmental planning” means both long term and short term planning that takes into account environmental exigencies;[Kenya]

“Coastal zone” means any area declared to be a protected coastal zone under the relevant national legal or planning instrument;[Kenya]

Or

“Coastal zone” means “means the area comprising coastal public property, the coastal protection zone, coastal access land and coastal protected areas, the seashore, coastal waters and the exclusive economic zone and includes any aspect of the environment on, in, under and above such area”[South Africa];

“Coastal set back line” means a line determined by a member of Executive Council of a coastal province in accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives”[South Africa];

“**Strategic environmental assessment**” means a formal and systematic process to analyse and address the environmental effects of policies, plans, programmes and other initiatives;

“**Monitoring**” includes the inspection, measurement, sampling or analysis of any discharge of a pollutant, or of any environmental medium in any locality, whether periodically or continuously [Mauritius];

2. **[Instruments]** In accordance with Articles 9, 10 and 11, the Contracting Parties may adopt the following legal, institutional, administrative, planning and financial and market based instruments in order to implement ICZM in their respective areas of jurisdiction:
 - i. Legal instruments, including relevant laws, regulations, policies and related instruments;
 - ii. Institutional and administrative instruments, including through establishment of national institutions, provincial or local level institutions and bodies, as well as facilitation of and collaboration with non state actors such as civil society organizations and the private sector;
 - iii. Planning instruments including 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;
 - iv. Financial and market based instruments including taxes, subsidies, tradable permits, and deposit refund systems

3. **[Tools]** The Contracting Parties may also adopt any of the following ICZM tools in the implementation of the Protocol including the requirements of this Annex:
 - i. Legal, institutional and administrative tools such as licenses, permits and guidelines;
 - ii. Planning tools including 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.

- iii. Assessment tools, including three broad categories: socio-economic assessment tools such as feasibility studies, poverty and social impact analysis; environmental assessment tools such as environmental impact assessment and auditing, strategic environmental assessment, ecosystem valuation; and integrated assessment tools such as cost benefit analysis and scenario creation and forecasting modelling.
 - iv. Financial and market based tools including valuation taxes, subsidies, tradable permits, deposit refund systems.
4. For coastal set back lines, and other instruments and tools as appropriate, the following considerations shall be taken into account by the Contracting Party concerned:
 - (a) the vulnerability of the coastal zones to natural risks and climate change impacts;
 - (b) the need to protect coastal ecosystems, habitats and species;
 - (c) the geographical constraints of specific territories, such as small islands;
 - (d) the need to protect coastal infrastructure and other existing developments, private property, and public safety;
 - (e) the need to secure public access to the coastal zone;
 - (f) the need to preserve the aesthetic value of the coastal zones; and,
 - (g) the need for proximity to the sea of certain developments which are dependent on water.
 5. Each Contracting Party shall endeavour to ensure that in the design and implementation of the various instruments and tools elaborated in this Annex, non state actors including civil society organizations and the private sector are appropriately involved and encouraged to make their contributions.
 6. The Contracting Parties shall define indicator categories including environmental indicators, socio-economic indicators, and ICZM effort evaluation indicators, sustainability indicators(resource abundance and value addition to natural capital), impact indicators, performance indicators, and integration indicators (multi disciplinary management involving all sectors at policy, legislative and sector levels and even at regional level).
 7. A Contracting Party may choose to apply any instruments and tools or indicator categories singularly or in combination, and individually or in collaboration with other contracting parties.

References

Kenya: EMCA Amendment Act No 5 2015

Kenya: Environmental Management and Coordination Act (EMCA) 1999.

Mauritius: Environment Protection Act No 19 of 2002

Republic of South Africa: Act No 24 of 2008: National Environmental Management: Integrated Coastal Management Act 2008

Tanzania: Environment Management Act 2004

Tanzania: Environment Management Act 2004, Environmental Impact Assessment Regulations.

UNEP(DEPI)/EAF/ICZM-NEG3/DOC: Third Negotiated Draft Protocol on Integrated Coastal Zone Management in the Western Indian Ocean Region

UNEP(DEPI)/EAF/NEG3/ICZM/6a/en: Report of the Third Negotiations Meeting on the Text of the protocol on Integrated Coastal Zone Management in the Western Indian Ocean Region

UNEP/Black Sea Commission: Strategic Action Plan for the Environmental Protection and Rehabilitation of the Black Sea.

UNEP/MAP: (Mediterranean Action Plan-Barcelona Convention): Action Plan for the Implementation of the ICZM Protocol for the Mediterranean 2012-2019.