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UNION OF THE COMOROS

CHAPTER 6: UNION OF THE COMOROS

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6 UNION OF THE COMOROS

6.1 Constitutional requirements for environmental protection in the Comoros

The Comoros Archipelago lies south of the equator in the Indian Ocean between 11°20'S and 13°14'S and 43°11'E and 45°19'E. The archipelago which is located at the northern end of the Mozambique Channel, comprises four islands: Grand Comoros (also known as Ngazidja), Anjouan (Ndjouani), Mohéli (Mwali) and Mayotte. The latter is an administrative department of France, while the three other islands make up the Union of the Comoros. These volcanic islands have an exceptional natural diversity from deep ocean channels plunging 3,000m below sea level to mountains up to 2,360m high. This range in habitats has given rise to exceptional species richness and high levels of endemism. Sadly, the biodiversity of the Comoros is under a number of threats from shifting slash and burn agriculture, deforestation for firewood, unsustainable fishing practices, extraction of coral and sand for construction, climatic change and volcanic eruptions on the one hand, and on the other, a natural fragility, high population density, high levels of poverty, an inadequate tax regime, an absence of sustainable alternatives to wood fuel, an absence of environmental impact assessments (EIAs), weak human and institutional capacities, laws that are not applied, ineffective public policy and macro-economic distortions.¹

The preamble of the Constitution of the Union of the Comoros declares *“the right to a healthy environment and the duty of all to safeguard the environment.”*

The Constitution of 2001 also sets out the exclusive responsibilities of the Union and those of the autonomous islands. However there are some shared responsibilities including health, water, energy, environment, agriculture, fisheries, tourism, etc., but there is a lack of clarity in the division of responsibilities that leaves room for interpretation and potential conflict between the Union and Island assemblies.

6.2 Institutional and administrative structure

6.2.1 National Committee for Sustainable Development

Over successive governments, this institution has evolved over time from the original National Environmental Commission, which was replaced with the Inter-ministerial Advisory Committee on the Environment, to the current National Committee for Sustainable Development (NCSD).

¹ National Biodiversity Strategic Action Plan (NBSAP), 2016

The NCSD is chaired by the General Planning Commissioner and includes public institutions and members of civil society. Its mandate is to coordinate the implementation of the National Environmental Policy and Environmental Action Plan. At island-level, the Island Committees for Sustainable Development are each responsible for developing and implementing regulatory policy and strategy within the framework of the national policy.

6.2.2 Ministry of Agriculture, Fisheries and Environment

The mandate of the Ministry of Agriculture, Fisheries and Environment (MAFE) is to:

- Define policy on all aspects of agriculture, fisheries, forestry and the environment;
- Develop regulations for the protection and sound management of natural resources and monitor their implementation in collaboration with the Islands and other relevant ministries;
- Ensure adherence to all regulations;
- Develop policies for town and regional planning, sanitation and the environment;
- Implement obligations made in terms of signed international conventions on agriculture, fisheries, forestry and the environment.

The Ministry has several departments, such as:

- The National Environmental, Forestry and Agricultural Strategies Department;
- The National Research Institute on Agriculture, Fisheries and the Environment; and
- The Directorate-General of Environment.

Other useful institutions falling under the MAFE include:

- The Information Centre and Assistance in Decision-Making, which is the main source of information on the cultural and natural heritage of the Comoros;
- The National Documentation and Scientific Research Centre, which maintains the national archives, herbarium, museum, observatory, etc.;
- The National Institute for Research in Agriculture, Fisheries and the Environment.

6.2.3 Directorate-General of Environment

The Directorate-General of Environment (DGE) was created in 1993 by Decree No. 93-115/PR. The DGE has four centralised services and three regional offices (one per Island). Its mission is to develop and participate in the implementation of government policy on environmental matters; ensure the promotion and coordination of government and non-government activities relating to the environment; and to follow-up on the implementation of obligations made in terms of international conventions relating to the environment.

At island-level, the regional Directors are required to ensure the operationalisation of all strategies and policies relating to the environment. Article 3 of Order No. 93-020/MDRPE-CAB sets out the roles and responsibilities of the DGE:

- Develop national strategies for the management of marine ecosystems, coasts and land and supervise the implementation of such strategies;
- Participate in the development of all plans relating to the protection and rational management of natural resources;
- Participate in the development of all laws necessary for the protection and management of the environment;
- Follow-up, in association with regulatory authorities, the application of all regulations;
- Understand the major risks posed by environmental degradation and propose measures to prevent or attenuate the problems;
- Prepare an annual State of the Environment report;
- Provide advice on environmental impact assessments (EIAs) which must accompany each application for investment or development;
- Initiate and coordinate research activities applicable to the environment and liaise with national research and training institutes;
- Develop a medium-term plan for the DGE;
- Any other activities as required by the Minister.

6.3 Policy and legal framework for EIA in Comoros

6.3.1 National Environmental Policy

The National Environmental Policy was developed in 1993, but most of the legislation outlined in the policy is yet to be written and/or made operational due to lack of capacity and funding. Furthermore, the Policy and its associated Environmental Action Plan, have never been updated to take into consideration changing issues and challenges.

6.3.2 Other Relevant Strategies and Plans

The National Biodiversity Strategic Action Plan (NBSAP), developed in 2016, provides a Vision for the period up to 2030 which is to ensure the conservation and sustainable use of biodiversity in order to meet the aspirations of the Comorian people and a dignified life in a world of change and unprecedented upheaval. The NBSAP's main objective is to contribute towards sustainable development through rational and participative management of natural resources. To achieve this objective, the NBSAP is articulated around four strategic pillars: reduction of the underlying causes of the destruction of biodiversity; reinforcement of the advantages of having a functioning, biologically diverse environment and the ecosystem

services that it provides; promotion of participatory planning and building institutional structures; and promotion of investment in food security for the rural population in order to address food insecurity and malnutrition.

The Strategy for Accelerated Growth and Sustainable Development 2015-19 was founded on the principles of participatory planning, improving the life of the population, guaranteeing equality in the access to basic social services, the promotion of cultural heritage and optimal use of natural resources, as well as the reinforcement of good governance and capacity building.

Unfortunately little has been achieved in terms of the strategic objectives of any of the initiatives described above due to weak institutional capacity, lack of financial and human resources, lack of clear responsibilities between the national and island administrations, and ongoing political instability.

6.3.3 Climate Change Policies and Programmes

Climate change models suggest that in the time period 2040-2069, there will be an increase in annual average rainfall of 3.1% ($\pm 0.45\%$) typified by a drier dry season (June to August) and a wetter rainy season. Annual temperatures are expected to increase by more than 1°C by 2050, with an expected rise in sea level of 20 cm in the same time horizon. Extreme weather events are expected to increase in frequency and intensity.

The National Adaptation Plan for Climate Change, 2003 has as its main objective the reduction in the negative effects of climate change on the livelihoods of people living in the most vulnerable zones and to increase their resilience to climate change.

6.3.4 Environmental Law

The National Self-Assessment project to build capacity for environmental management under the auspices of the UNEP/GEF found that the legal and regulatory framework is incomplete and does not meet the current need to establish an enabling framework for implementation. Furthermore, implementing texts for the international conventions on the environment ratified by the country, are either not promulgated, or if they have been gazetted, they are not being implemented.

The framework Environmental Law (No. 94-018/AF) of June 1994, modified by Law No. 95-007/AF of 19 June 1995 and Ordinance No. 00-014 of 9 October 2000, define the general principles for the protection of the environment and require an EIA for all projects which could have an adverse impact on the environment (Article 11). Projects cannot proceed without an environmental authorisation from the DGE, however, projects which take place in the marine environment require joint approval from the relevant line ministry and the DGE (Article 32).

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These laws proscribe the fundamental rules for the management of the environment and its protection against all forms of degradation in order to safeguard and promote rational use of natural resources, to fight against different forms of pollution and thereby to ameliorate the quality of life and ecosystem functioning.

The term 'environment' includes the soil and sub-soil, water resources and marine environment, the atmosphere and biodiversity (Article 18). It thus does not encompass the social environment, nor the work environment.

6.3.5 Regulations and guidelines

There are no Regulations or guidelines available for the EIA process in Comoros. However, several World Bank-funded projects have had Environmental and Social Management Frameworks (ESMFs) developed for them to guide the small sub-projects being funded by the Bank e.g. ESMFs were developed for the management of out-of-date and waste medicines (2019) and the Comoros Social Fund Project (2003).

6.3.6 Offences and penalties

Articles 73-88 of Law No. 94-018/AF as amended by Law No. 95-007/AF, set out the penalties for various offences against the provisions of these and other related environmental laws. These are summarised in Table 6.1.

Table 6.1: Offences and penalties

Offence	Penalty
Commencement of a development project or construction without an environmental authorisation; failure to undertake an EIA as required; concealing key elements of design; violating the conditions of the Authorisation; failure to control impacts	Imprisonment of 1-5 years and/or a fine of 1 million Comorian Francs (CF).
Disposal of all solid wastes, liquid effluents or gases which may be harmful to water quality or anyone who conducts works in violation of Articles 26-30 of the Law	Imprisonment of 1-6 months and/or a fine of 30,000 – 100,000 CF.
Anyone who conducts works or activities in the marine environment without an authorisation and/or who disposes solid wastes in the sea and violates Articles 32-24 of the Law	Imprisonment of 2-5 years and/or a fine of 100,000 - 3 million CF.
Violation of any requirements set out in Articles 41-44 relating to biodiversity	Imprisonment of 6 months to 5 years and/or a fine of 150,000 - 3 million CF.
Violation of Articles 46, 51 and 52 regarding biodiversity and forest protection	Imprisonment of 6 months to 5 years and/or a fine of 50,000 - 1 million CF.
Failure to obtain authorisation to construct urban dwellings	Fine of 500,000 to 2 million CF
Infractions relating to the protection of cultural heritage	Imprisonment of 1-5 years and/or a fine of 1 -5 million CF.
Importation or illegal transit of hazardous wastes through territorial waters without authorisation	Imprisonment of 1-5 years and/or a fine of 1 -5 million CF.

In all cases, the Judge may issue a stop-work notice until the environmental impacts have been rectified or made good. Furthermore, the Director-General of DGE may recover all costs of damage from the culprit (Article 74).

6.3.7 Fees

The law states that a fee is payable upon approval of the EIA and the issuance of an environmental authorisation, but the quantum is unknown.

6.3.8 Environmental standards

Although Article 27 of Law 94-018/AF makes provision for the ministers of environment and public health to make potable water quality standards, these and other standards for environmental quality e.g. air, water, noise emissions, have never been made. In the absence of such national standards, World Bank/IFC and WHO standards should be adopted.

6.3.9 Certification of Consultants

There are no formal requirements for EIA consultants to be certified and registered in Comoros.

6.4 EIA procedural framework in the Comoros

6.4.1 EIA process

Decree No. 01-052/CE of 19 April 2001 governs the EIA process. This Decree includes an Annex with a list of works and developments which require an EIA. Commentators on the legal situation in the Comoros regarding the application of the EIA laws and regulations all make the observation that the minimal human and financial resources available at national, island and local level have not allowed the exercise of this Decree. Significant capacity building at all levels of governance is thus required.

The environmental law does not have a system in place for screening or pre-evaluation of small-scale projects and there is no mention of scoping.

Article 12 Law No. 95-007/AF of 19 June 1995 stipulates that an EIA report must include:

- An analysis of the baseline environment of the project site and its surroundings;
- An evaluation/assessment of the predicted consequences of the project on the natural and social environment;
- Presentation of measures to reduce or prevent negative impacts on the environment, as well as any potential alternatives to project implementation.

Order No. 12-012/VP of March 2012 establishes and sets the terms of reference for an EIA Evaluation Committee, but it is not known if this has ever been constituted, as no EIAs have been conducted to date in the Comoros.

National legislation requires the publication of EIAs, but the procedures for preparing and drafting the EIA report are not specified.

6.4.2 Appeal procedures

Recourse to justice is possible in the event of failure of an amicable settlement relating to decisions made about a project, but this is warned against as it involves long delays, excessive costs and a complex legal process.

6.4.3 Monitoring and enforcement

It would appear that there is insufficient human and financial capacity at national and island level to monitor and enforce the environmental laws, let alone the conditions attached to a project authorisation.

6.4.4 Public participation

National legislation sets out the procedures for public participation, but only in general terms. There are no regulations or guidelines on specific measures to be followed for public participation and consultation.

6.4.5 Strategic Environmental Assessment

There is no reference to the application of Strategic Environmental Assessment for policies, plans and programmes in any of the environmental laws and decrees.

6.5 Other relevant environmental legislation in the Comoros

Legislation concerning the environment in the Comoros is spread between a number of ministries and laws. Both the ministries and the laws are frequently changed and, therefore, the following (Table 6.2) is merely a guide to possible relevant legislation. The reader is urged to check the latest situation.

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Table 6.2: Other potentially applicable sectoral legislation

Sector	Primary agency	Title and date of document	Purpose
Water resources	MAFE: DGE	Water Law No. 94-037 of 21 December 1994	It aims to ensure the sustainable management of water resources in a manner permitting its conservation and protection against all forms of degradation and pollution on the one hand, and its sustainable use and exploitation to meet different needs and priorities in the country on the other hand. The Law sets out the field of application, fundamental principles, the institutional framework for the management of water resources, protection of water resources especially against the negative impacts of water pollution, stormwater management, different use of water, and fines and penalties for contravention of the law.
Water quality and pollution control	MAFE: DGE Ministry of Health, Solidarity, Social Protection and Gender Promotion: Dept of Public Health	Water Law No. 94-037 of 21 December 1994 Articles 24-30 of Law No. 94-018/AF	Defines water resources and offers protection against all forms of pollution.
Marine environment	MAFE: Fisheries	Law No. 94-018/AF	Articles 31-36 define the marine environment. Emphasis is placed on the importance of the marine environment to the Comoros economy. Makes provision for the Minister to make regulations regarding fishing. Requires all developments in the marine environment to have an environmental authorisation. Prohibits the disposal of all waste into the ocean.
Waste management	MAFE: DGE	Law No. 94-018/AF	Articles 29 and 59-67 prohibit the disposal of all types of solid, liquid and gaseous wastes in or alongside any water course if such disposal will cause pollution. Article 34 controls marine pollution and effluent discharge from ships and other marine craft. Article 38 allows the Minister to pass a Decree regulating or prohibiting the use of hazardous substances – particularly those used in agriculture, including their transport and disposal.
Air quality and ozone-depleting substances	MAFE: DGE	Law No. 94-018/AF	Articles 37-38 allow for regulations to be made regarding the emission of noxious gases and to take measures to limit/reduce the importation, production, consumption and export of any substance which could affect the ozone layer.
Mining and quarrying	Ministry of Economy and Investments	Law No. 89-020 of 22 February 1989 Decree No. 06-019/PR	The law relates to the exploitation of quarries. Mining of sand from beaches and mining coral is strictly prohibited. The decree relates to quarrying for stone

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Sector	Primary agency	Title and date of document	Purpose
		of 21 February 2006	and the requirement to rehabilitate.
Forests and forestry	MAFE: National Environmental, Forests and Agricultural Strategies Department	Law No. 88-006/PR of 1988	Provides the legal framework for reforestation and forest management.
		Law No. 12-001/AU	Regulates forestry and reforestation practices.
Roads	Ministry of Transport, Posts, Telecommunications Transport Scheme Management and Monitoring Unit Environmental Implementation Unit (in future)		
Agriculture and fisheries	MAFE: National Environmental, Forests and Agricultural Strategies Department	Law No. 07-011/AU	Relates to the sustainable development and management of fisheries and aquaculture
Land management Land tenure	Ministry of Territory Development, Urbanism and Land Affairs	Very old decrees from 1911, 1931, 1934 and 1946	Relating to land tenure systems and servitudes amongst others.
Biodiversity protection and conservation	MAFE: DGE	Law No. 94-018/AF	Articles 46-49 relate to biodiversity protection and management.
		Order No. 01/31/MPE/CAB of 14 May 2001	Relates to the protection of natural fauna and flora.
		Order No. 01/32/MPE/CAB of 14 May 2001	Contains the adoption of the National Biodiversity Strategic Action Plan (NBSAP) for biodiversity conservation
		Law No. 95-007/BD	Creates the Mohéli Marine Park and the management thereof. It prohibits industrial or commercial activities within the park; regulates eco-tourism planning and strict application of penalties in the event of violation of any regulations regarding the protection of marine species, especially turtles, coral reefs as well as the surrounding terrestrial vegetation and forests.
Biosecurity	MAFE: DGE	Law No. 95-007/AF	Article 44 prohibits the movement of live species between the islands, except with permission of the Minister of MAFE, and under the advice of a recognised scientific institution, so long as such movement would not pose a threat to the ecological equilibrium of the archipelago. Articles 39-45 allow the Minister to make regulations to control the trade and movement of species.

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Sector	Primary agency	Title and date of document	Purpose
Public Health	Ministry of Health, Solidarity, Social Protection and Gender Promotion: Dept of Public Health	Public Health Law No. 95-013/AF	Provides the framework for the protection and promotion of public health.
		Public Health Law No. 11-001/AU of 26 March 2011 and Decree No. 11-141/PR	The decree promulgates the Public Health Law.
		National Health Policy, 2015-24	This Policy is articulated around 3 general objectives: <ul style="list-style-type: none"> • Reduction in the scale and seriousness of illnesses and priority health problems including the battle against malnutrition and the need for family planning; • Improving national and community health care systems; • Reinforcing inter-sectoral collaboration for better community health outcomes.
Heritage resources	Ministry of Youth, Employment, Occupation Integration, Culture and Sport: Dept of Culture	Law No. 94-022/AF	Relates to the protection of cultural heritage.
		Law No. 81-007	Article 12 relates to inscriptions on buildings.
		Law No. 08-006	Articles 233 and 405 define the crimes relating to the destruction or degradation of monuments, statues or other public edifices.
Labour and employment	Ministry of Youth, Employment, Occupation Integration, Culture and Sport: Dept of Employment	Labour Law No. 84-108 of 2012	Article 153 requires all owners or managers (public and private sector) to take appropriate measures in the workplace to prevent the risk of accidents in the workplace and to protect the health of workers. It also requires compliance regarding the health and safety of workers, the provision of medical care and ablution facilities, the conditions of work, especially for pregnant women, and youth employment. Article 152 allows the Minister to set up an inspection panel to investigate occupational health and safety conditions and to intervene in the case of a workplace accident. Article 155 allows a labour inspector the right to issue stop-work orders if any conditions of Article 153 are being contravened.
Urban environment and planning	Ministry of Territory Development, Urbanism and Land Affairs	Law No. 94-018/AF	Articles 54-58 require all national development plans and urban zoning plans to have an EIA.
		Law No. 11-026/AU	This law regulates construction activities in the urban environment.
Gender	Ministry of Health, Solidarity, Social Protection and Gender Promotion	See Public Health laws	The health laws require the Government to treat all people equally with regard to their health.

Acronyms

CF	Comoros Franc
DGE	Directorate-General of Environment
EIA	Environmental impact assessment
ESMF	Environmental and Social management Framework
GEF	Global Environmental Facility
IFC	International Finance Corporation
MAFE	Ministry of Agriculture, Fisheries and Environment
NBSAP	National Biodiversity Strategic Action Plan
NCSD	National Committee for Sustainable Development
UNEP	United Nations Environmental Programme
WHO	World Health Organisation

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