

Understanding the Legal and Institutional Frameworks Governing Mangrove Conservation and Sustainable Use in Kenya



An initiative by:



Federal Ministry
for Economic Cooperation
and Development



IUCN Environmental Law Centre

Main areas of work



Protected Areas



Coastal & Marine Conservation



Environmental Crime



Climate Change Adaptation



Water Governance



Provide expertise on various environmental legal matters



Assist governments, judges, prosecutors or other stakeholders to get a better understanding of environmental legal issues



Support the elaboration of legal tools and policies at international and national levels to ensure the inclusion of environmental interests

Timeline

Legal and policy analysis

Literature review

Assessment in 7 case study countries by
local legal experts

Elaboration of
policy briefs

Putting advice into
practice

Common findings and
recommendations

Legal experts
meeting

Capacity
building
workshop

Publication
launched

2017

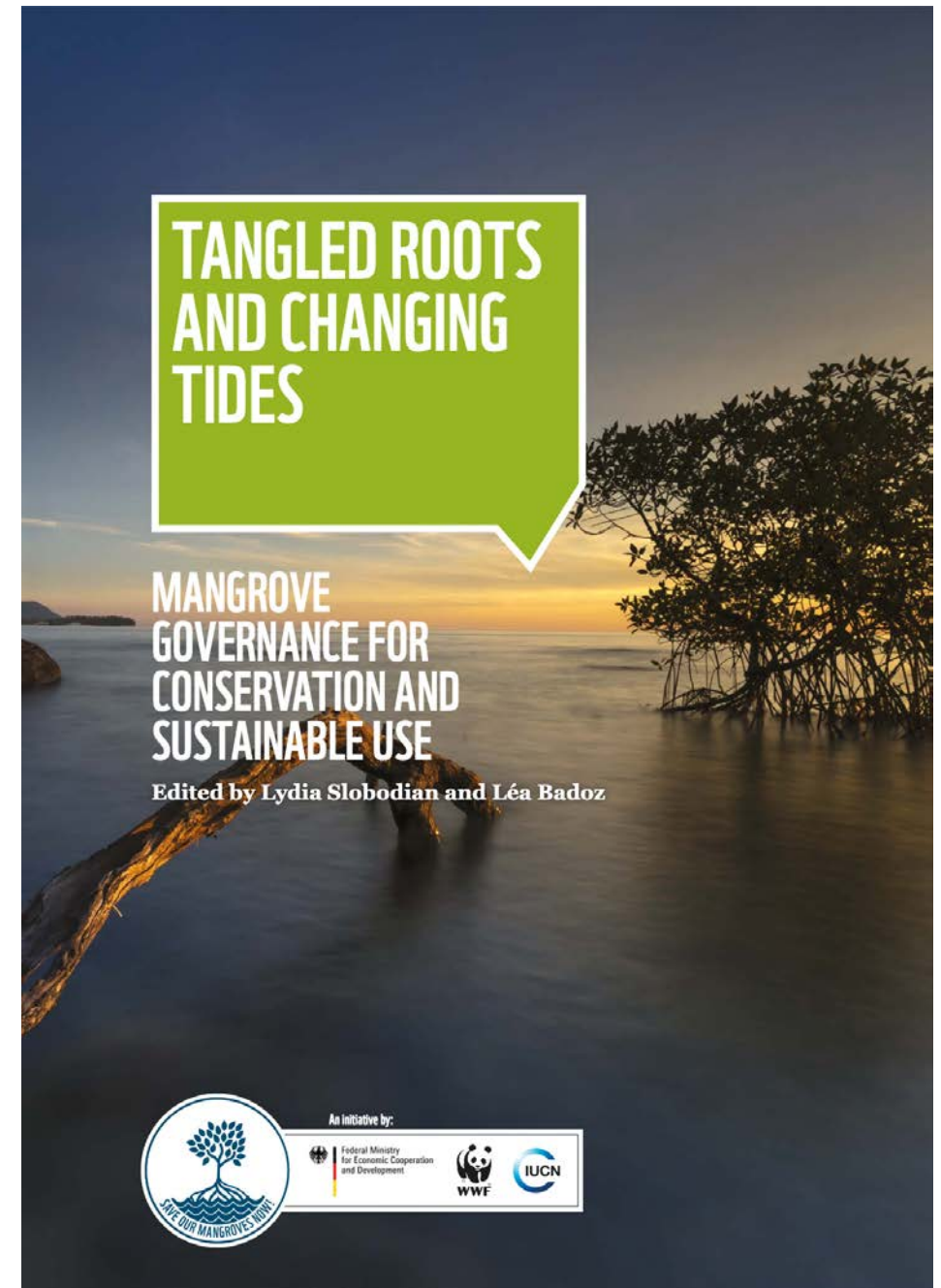
2018

2019

2020

Tangled Roots and Changing Tides

- Review of international and National legal and governance frameworks and recommendations
- 7 case studies:



Recommendations



Adopt a dedicated national-level policy or plan



Ground mangrove conservation and sustainable use in constitutional norms and international obligations



Ensure coordination across government agencies through mechanisms for cooperation, communication and information sharing



Strengthen institutional capacity at all levels,



Monitor and promote implementation and compliance



Adopt measures to ensure accountability, transparency, participation and access to justice



Set up a national mangrove inventory



Engage communities, the private sector and the public



Align incentives for conservation and sustainable use



Consider measures to address indirect and underlying drivers of mangrove loss

5

KENYA A LEADER IN COMPREHENSIVENESS BATTLING INEFFECTIVENESS

By Robert Kibugi

Mangrove forests in Kenya cover over 60,000 ha across five coastal counties. They perform a range of provisioning, regulatory, supporting, and cultural functions. Mangroves are governed by various treaties to which Kenya is party, and some national legislation, the primary instruments being the Forestry Conservation and Management Act and the Wildlife Conservation and Management Act. These two laws govern mangroves either as public forests or Marine Protected Areas (MPAs), with institutional authority granted to the Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS), respectively. Under Kenyan law, management planning is the main legal tool for determining the scope and spatial spread of various activities within a public forest or MPA. There are other laws and institutions whose mandates impact mangrove management, such as fisheries, physical planning (which applies outside public forests and MPAs), water (regulating effluent discharge and pollution of mangroves), and climate change (governing the mainstreaming of adaptation and mitigation actions into mangrove governance). The Environment Management and Coordination Act (EMCA) regulates compliance with environmental standards in Kenya and provides for mandatory environmental impact assessments (EIAs) for many activities to be undertaken in mangroves, as well as annual Environmental Audits to ensure compliance with the terms of EIA licences.

It is clear that there is need to improve structures for coordination between key public institutions such as the KFS, the KWS, and the county governments. Community initiatives are critical to mangrove governance, and the forestry law provides for the creation of Community Forest Associations. These, however, have had mixed levels of success, suggesting a need for more integration between community-level institutions, counties, and national government institutions with a mandate over mangroves. The health of mangroves continues to face risks from pollution, changing land usage, illegal harvesting, and climate change. There is need for the legal system to consolidate sectoral efforts to ensure a harmonized approach of implementation and interventions that sustains the conservation of mangroves.

KEY FACTS

POPULATION: ≈ 50 million

MANGROVE COVERAGE: ≈ 61,271 ha

KEY INSTITUTIONS:

Kenya Forest Service
Kenya Wildlife Service
Kenya Marine and Fisheries Research Institute (Research)
Kenya Forestry Research Institute (Research)
Community Forest Associations
County governments



● Ramsar sites containing mangroves
● UNESCO world heritage sites containing mangroves

MAIN THREATS:



OVERHARVESTING



POLLUTION



SEDIMENTATION



DIVERSION OF
FRESH WATER

MAIN USES:



CONSTRUCTION
POLES



CHARCOAL/
FIREWOOD



AQUACULTURE



ECOTOURISM

LEGISLATION:

www.iucn.org/mangrovelaw



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Methodology



1. **Instrumental Level:** How do national and sub-national legal instruments address or implicate mangroves and activities related to mangrove conservation, use, restoration, and exploitation, directly or indirectly?



2. **Institutional Level:** How are the institutions structured and how well do they operate in practice in relation to issues that may affect mangroves, directly or indirectly?



3. **Behavioural Level:** How do instruments and institutions affect the behaviour of users, gov- ernment officials, regulated entities, commu- nities, civil society, and other stakeholders connected to mangroves?



4. **Outcome Level:** How do legal instruments, institutions, and behaviour of relevant actors impact the health of mangrove ecosystems?

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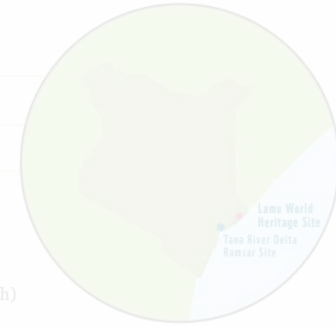
Kenya Wildlife Service

Kenya Marine and Fisheries Research Institute (Research)

Kenya Forestry Research Institute (Research)

Community Forest Associations

Kenya Wildlife Service



● Ramsar sites containing mangroves



MANAGERS



LEGISLATION:

www.iucn.org/mangrovelaw

Capacity Building Workshop

18-19 February 2019



Legal
experts



Government



NGOs



Local
communities

Objectives:

- Better understanding of the legal frameworks
- Strengthen capacity to face implementation challenges
- Foster the building of relationships and networks between participants.



Workshop report available online:

https://www.mangrovealliance.org/wp-content/uploads/2019/03/Kenya-Mangrove-Workshop-18-19Feb19_Report.pdf

Policy Brief

KENYA POLICY BRIEF

HOW CAN THE LEGAL AND POLICY FRAMEWORK BE STRENGTHENED TO ENSURE SUSTAINABLE USE AND CONSERVATION OF MANGROVES?

December 2019

Mangroves provide essential services for coastal communities' subsistence and for the economy of the country estimated at 269,448.3 KES* per hectare and per year.

*Approximately 1,633.81 U.S. dollars.

Mangroves are heavily exploited for subsistence needs and are threatened by various infrastructure projects leading to significant losses, up to 80% in some areas.



TO ADDRESS THE SITUATION:

Include local communities in management and decision-making through substantial consultation requirements.



Strengthen institutional coordination to ensure the proper implementation of the Mangrove Ecosystem Management Plan.



Clearly and specifically mention mangroves in relevant legal and policy tools.



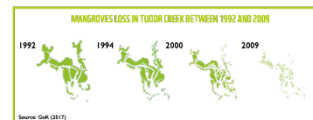
AN IMPORTANT RESOURCE UNDER SERIOUS THREAT

Kenyan mangroves cover over 60,000 ha and have an estimated value of almost 270,000 KES per hectare per year. Local communities rely on them for subsistence and the ecosystem services they provide.

Kenya reportedly lost 450 ha of mangroves per year between 1985 and 2009, and today 40% of remaining mangroves are degraded. In Tudor Creek in Mombasa County, 80% of mangroves were lost between 1992 and 2009. In Lamu, the loss of 1739 ha of mangroves between 1992 and 2019 resulted in greenhouse gas emissions estimated at over 2000 tonnes CO₂e per ha per year.

At this rate, Kenya stands to lose significant mangrove resources, causing potentially irreparable harm to fishing and tourism industries, contributing to climate change and further impoverishing local communities.

MAIN THREATS



Source: Gök (2017)

THE LAMU PORT-SOUTH SUDAN-ETHIOPIA-TRANSPORT CORRIDOR (LAPSSET) PROJECT

The LAPSSET project is a transport and infrastructure project in Kenya, which when completed, will be the country's second transport corridor. It involves multiple components and would result in the loss of up to 2,4 ha of mangroves.

IMPROVING PLANNING AND MANAGEMENT

Mangroves should be covered by adaptive management plans for public forests or marine protected areas. In practice, management plans are not consistently developed, implemented and kept up to date. In 2017, the Kenya Forest Service (KFS) developed the National Mangrove Ecosystem Management Plan 2017-2027 to complement site-specific management plans, but the impact of the plan on mangrove ecosystems is yet to be clarified. In addition, management planning is not well aligned with land-use planning frameworks.



RECOMMENDATIONS

- Ensure management plans are adopted and published in the Kenya Gazette, as provided by the Forest Act and the Wildlife Act, and develop new plans to replace expiring ones.
- Subject the National Mangrove Ecosystem Management Plan to a Strategic Environment Assessment, as required under Section 57A of EMCA.
- Amend the 2018 Land Use and Physical Planning Act, the Forest Act, and the Wildlife Act to require coordination in land use planning and management planning.

2 POLICY BRIEF

HIGHLIGHTING MANGROVES IN POLICIES AND LEGISLATION

Mangroves are not explicitly referenced in the main legal tools for conservation in Kenya. They are only included indirectly with respect to their locations between high and low water marks. This lets them fall through the cracks, as they are not seen as priorities under any regime.

RECOMMENDATIONS

- Feature mangroves in the amended Forest Act and the new Forest Policy.
- Amend the Wildlife Act to clarify its application to mangroves.
- Adopt regulations under the Forest Act to implement the Nairobi Convention and CBD through ensuring sustainable use of mangroves.

ENSURING ASSESSMENT OF IMPACTS

New infrastructure projects and other activities that threaten mangroves are legally required to undergo an impact assessment process. However, these processes often do not sufficiently consider mangrove impacts and allow damaging and costly projects to go through.

RECOMMENDATIONS

- Amend the Forest Act to require explicit assessment of direct and indirect impacts on mangroves prior to final decision-making in relation to EIAs, development permissions, and effluent discharge permissions for all activities that affect mangroves.
- Ensure EIAs and Environmental Audits for any activities impacting mangroves integrate climate risks and vulnerability assessments as required by section 20 of the Climate Change Act.
- Adopt regulations under the Forest Act to establish a public inventory of mangroves compiling information from research, monitoring and EIAs on mangrove coverage and health.



BUILDING INSTITUTIONAL COORDINATION

There is a lack of effective coordination between the counties, KFS and the Kenya Wildlife Service (KWS) in mangrove management. The implementation structure proposed in the Mangrove Ecosystem Management Plan has not been realized.

RECOMMENDATIONS

- Create a National Mangrove Management Committee and county level committees that incorporate all stakeholders, as provided in the Mangrove Ecosystem Management Plan.
- Adopt regulations under the Forest Act, the Wildlife Act and the Physical and Land Use Planning Act to introduce a mandatory requirement for consultation between responsible agencies during spatial or physical planning, management and monitoring processes.
- Employ Presidential Executive Orders to clarify mandates of national institutions, and modify laws to define the role of the counties, especially when they overlap.
- Adopt administrative coordination actions to ensure communication and harmonize actions among institutions.

POLICY BRIEF 3

INVOLVING COMMUNITIES IN DECISION-MAKING

Community Forest Associations (CFAs) can manage mangroves under a management agreement signed with KFS. Fisheries actors involved in Beach Management Units (BMUs) can support management of activities affecting mangrove areas.

RECOMMENDATIONS

- Develop and operationalize sustainable harvesting plans for mangroves in consultation with communities, clarifying benefit-sharing arrangements.
- Amend the Fisheries Management and Development Act to enhance and clarify the role of BMUs in managing mangrove areas.
- Review legal requirements to integrate meaningful consultations with communities, stakeholders and different public agencies in management planning processes, adopting the standard found in section 24 of the Climate Change Act.



STRENGTHENING AND IMPLEMENTING INTERNATIONAL COMMITMENTS

International Commitments	Situation	Recommendations
First Nationally Determined Contribution (NDC) (2015) United Nations Framework Convention on climate Change	Does not specifically mention mangroves.	• Constitute and convene the National Climate Change Council, to approve the Second National Climate Change Action Plan (NCCAP), which specifically recognises mangroves. • Include specific targets and indicators for the conservation of mangroves in the second NDC, aligned to also serve CBD reporting.
National Biodiversity Strategy and Action Plan (NBSAP) (2000) Convention on Biological Diversity	Highlights major problems impacting mangroves, but outdated.	Revise the NBSAP, with focus on ensuring mangrove conservation and sustainable use.
Voluntary Commitments on Ocean Action Sustainable Development Goal 14	Kenyan government committed to establishment of the National Ocean and Fisheries Council to coordinate and harmonize ocean governance.	Clarify whether an oceans mandate can be added to the mandate of the Fisheries Advisory Council, or how a mandate on oceans governance can be designed and implemented.

SOURCES AND FURTHER READING

Gök (2017). National Mangrove Ecosystem Management Plan. Kenya Forest Service, Nairobi, Kenya.
Kairo, J. G. (2019). Mangrove and NDC - Integrating mangroves in Kenya's nationally determined contributions. KMFRU, Mombasa, Kenya.
Kibugi, R. (2019). "Kenya: a leader in comprehensiveness battling ineffectiveness". In: Skolodjian, L. N., Badoz, L. (eds). Tangled Roots and Changing Tides: mangrove governance for conservation and sustainable use. WWF Germany, Berlin, Germany and IUCN, Gland, Switzerland. Additional sources, not specified in this policy brief, can be found in the publication.

4 POLICY BRIEF

Policy Brief

KENYA POLICY BRIEF

HOW CAN THE LEGAL FRAMEWORK BE STRENGTHENED AND CONSERVATION IMPROVED?

December 2019

Mangroves provide essential ecosystem services to the coastal communities and the economy of the country. They are valued at 269,448.3 KES* per hectare and per year. Mangroves are heavily degraded in Kenya. They are threatened by various infrastructure projects leading to significant losses, up to 80% in some areas.



**Value of
mangroves**



The views expressed in this policy brief do not necessarily reflect those of UNODC, WWF or KFS. The policy brief has been obtained based on a comprehensive study of mangrove governance in Kenya and the outcomes of a series of expert consultations. It is a part of the Kenyan Mangrove Ecosystem Assessment for Sustainable Use project, which is part of the Kenyan Mangrove Ecosystem Assessment for Sustainable Use project, which is part of the Kenyan Mangrove Ecosystem Assessment for Sustainable Use project.



**Threats to
mangroves**



RECOMMENDATIONS

- Ensure management plans are adopted and published in the Kenya Gazette, as provided by the Forest Act and the Wildlife Act, and develop new plans to replace expiring ones.
- Submit the National Mangrove Ecosystem Management Plan to a Strategic Environment Assessment, as required under Section 57A of EPMA.
- Amend the 2018 Land Use and Physical Planning Act, the Forest Act, and the Wildlife Act to require coordination in land use planning and management planning.

2 | POLICY BRIEF



**Legal and
institutional gaps
&
recommendations**

HIGHLIGHTING MANGROVE POLICIES AND LEGISLATION

Mangroves are not explicitly mentioned in the Forest Act and the new Forest Act. However, they are mentioned in the Wildlife Act and the Physical and Land Use Planning Act. The Forest Act and the Wildlife Act are the primary laws governing mangrove management in Kenya. The Physical and Land Use Planning Act is also relevant as it governs land use and physical planning. The Forest Act and the Wildlife Act are the primary laws governing mangrove management in Kenya. The Physical and Land Use Planning Act is also relevant as it governs land use and physical planning.

ENSURING ASSESSMENT OF IMPACTS

New infrastructure projects in mangrove areas are likely to have significant impacts on the ecosystem. It is important to ensure that these impacts are assessed and managed. The Forest Act and the Wildlife Act are the primary laws governing mangrove management in Kenya. The Physical and Land Use Planning Act is also relevant as it governs land use and physical planning.

RECOMMENDATIONS

- Amend the Forest Act to require explicit assessment of direct and indirect impacts on mangroves prior to any development project in mangrove areas.
- Establish a Mangrove Ecosystem Assessment Committee to oversee the assessment process.
- Adopt regulations under the Forest Act to establish a public inventory of mangroves, compiling information from research, monitoring and data on mangrove coverage and health.

DISCUSSION

There is a lack of explicit coordination between the various laws and the Kenya Wildlife Service (KWS) in mangrove management. The implementation structure proposed in the Mangrove Ecosystem Management Plan has not been evaluated.

RECOMMENDATIONS

- Create a National Mangrove Management Committee and county-level committees that incorporate all stakeholders, as provided in the Mangrove Ecosystem Management Plan.
- Adopt regulations under the Forest Act, the Wildlife Act, and the Physical and Land Use Planning Act to introduce a mandatory requirement for consultation between responsible agencies during spatial or physical planning, management and monitoring processes.
- Impose Presidential Executive Orders to clarify mandates of national institutions, and modify laws to define the role of the counties, especially when they overlap.
- Adopt administrative coordination schemes to ensure communication and harmonize actions among institutions.

3 | POLICY BRIEF



STRENGTHENING AND IMPLEMENTING INTERNATIONAL COMMITMENTS	
<p>Paris Nationally Determined Contribution (NDC) (2015)</p> <p>Kenya's NDC includes a commitment to conserve mangroves as part of its climate change strategy.</p>	<p>Convention on Biological Diversity (CBD) (2000)</p> <p>Kenya is a party to the CBD, which recognizes the importance of mangroves for biodiversity conservation.</p>
<p>National Biodiversity Strategy and Action Plan (NBSAP) (2008)</p> <p>The NBSAP identifies mangroves as a key biodiversity area and calls for their conservation.</p>	<p>Convention on Biological Diversity (CBD) (2000)</p> <p>Kenya is a party to the CBD, which recognizes the importance of mangroves for biodiversity conservation.</p>
<p>Voluntary Commitments on Ocean Action</p> <p>Kenya has committed to the Sustainable Development Goals, which include targets for marine and coastal ecosystems.</p>	<p>Convention on Biological Diversity (CBD) (2000)</p> <p>Kenya is a party to the CBD, which recognizes the importance of mangroves for biodiversity conservation.</p>

SOURCES AND FURTHER READING

GoK (2017). National Mangrove Ecosystem Management Plan. Kenya Forest Service, Nairobi, Kenya.

Karo, J.G. (2019). Mangrove and NDC - Integrating mangroves in Kenya's nationally determined contributions. KPERI, Mombasa, Kenya.

Klug, R. (2019). "Kenya: a leader in comprehensiveness testing ineffectiveness". In: Sokodan, L.N., Bado, L., (eds). Targeted Assessment and Closing Gaps mangrove governance for conservation and sustainable use. WWF, Germany, Berlin, Germany and WCS, Gland, Switzerland. Additional sources, not specified in this policy brief, can be found in the publication.

4 | POLICY BRIEF



Value of mangroves

Mangroves provide essential services for coastal communities' subsistence and for the economy of the country estimated at **269,448.3 KES** (approximately 2,633.81 U.S. dollars) **per hectare and per year.**

Table 2: Valuation of mangrove ecosystem in Kenya

Product and services	KES ha ⁻¹ yr ⁻¹
Building poles	30,659.5
Fuelwood	4,505.0
Onsite fisheries	9,612.7
Beekeeping	1,249.5
Integrated aquaculture	408.0
Education & Research	65,469.6
Tourism	782.0
Carbon sequestration	21,896.0
Shoreline protection	134,866.1
Total	269,448.3

(Source: KMFRI)



Threats to mangroves



OVERHARVESTING



POLLUTION



SEDIMENTATION



DIVERSION OF
FRESH WATER

- 450 ha of mangroves lost per year between 1985 and 2009
- 40% of remaining mangroves are degraded
- 80% of mangroves were lost In Tudor Creek between 1992 and 2009



- 1739 ha of mangroves were lost in Lamu between 1992 and 2019 resulted in greenhouse gas emissions estimated at over 2000 tonnes CO₂e per ha per year.

THE LAMU PORT-SOUTH SUDAN-ETHIOPIA- TRANSPORT CORRIDOR (LAPSSET) PROJECT

The LAPSSET project is a transport and infrastructure project in Kenya, which when complete, will be the country's second transport corridor. It involves multiple components and would result in the **loss of up to 2,4 ha of mangroves**.



**Legal and
institutional gaps
&
recommendations**

1. Improving Planning and Management
2. Highlighting Mangroves in Policies and Legislation
3. Ensuring Assessment of Impacts
4. Building Institutional Coordination
5. Involving Communities in Decision-making



Legal and institutional gaps & recommendations

1. Improving Planning and Management





Legal and
institutional gaps
&
recommendations

1. Improving Planning and Management



RECOMMENDATIONS

- **Develop new management plans to replace expiring ones.**
- Subject the National Mangrove Ecosystem Management Plan to a **Strategic Environment Assessment**
- **Amend the legal framework** to require coordination in land use planning and management planning



Legal and institutional gaps & recommendations

2. Highlighting Mangroves in Policies and Legislation



Mangroves are not explicitly referenced in the legal framework



RECOMMENDATIONS

- Feature mangroves in the amended **Forest Act** and the new **Forest Policy**.
- Amend the **Wildlife Act** to clarify its application to mangroves.
- **Implement the Nairobi Convention and CBD** through ensuring sustainable use of mangroves.



Legal and institutional gaps & recommendations

3. Ensuring Assessment of Impacts



Environmental Impact Assessments fail at adequately addressing the impacts on mangroves



RECOMMENDATIONS

- **Require explicit assessment of direct and indirect impacts on mangroves** prior to final decision-making
- **Ensure EIAs and Environmental Audits** for any activities impacting mangroves integrate climate risks and vulnerability assessments
- **Establish a public inventory of mangroves** compiling information from research, monitoring and EIAs



Legal and institutional gaps & recommendations

4. Building Institutional Coordination



There is a lack of effective coordination between the counties, KFS and the Kenya Wildlife Service (KWS)

RECOMMENDATIONS



- Create a **National Mangrove Management Committee** and county level committees (see Mangrove Ecosystem Management Plan).
- **Mandatory requirement for consultation between responsible agencies**
- **Clarify mandates of national institutions**, and modify laws to define the role of the counties, especially when they overlap.
- **Ensure communication and harmonize actions** among institutions.



Legal and institutional gaps & recommendations

5. Involving Communities in Decision-making



Community Forest Associations (CFAs) and fisheries actors involved in Beach Management Units (BMUs) can support management of mangroves but their role is not enhanced in the current framework

RECOMMENDATIONS



- Develop and operationalize **sustainable harvesting plans** in consultation with communities
- Enhance and clarify the role of **BMUs** in managing mangrove areas.
- Integrate **meaningful consultations with communities**, stakeholders and different public agencies in management planning processes



International commitments

International Commitments	Situation	Recommendations
<p>First Nationally Determined Contribution (NDC) (2015)</p> <p>United Nations Framework Convention on climate Change</p>	<p>Does not specifically mention mangroves.</p>	<ul style="list-style-type: none">• Constitute and convene the National Climate Change Council, to approve the Second National Climate Change Action Plan (NCCAP), which specifically recognises mangroves.• Include specific targets and indicators for the conservation of mangroves in the second NDC, aligned to also serve CBD reporting.
<p>National Biodiversity Strategy and Action Plan (NBSAP) (2000)</p> <p>Convention on Biological Diversity</p>	<p>Highlights major problems impacting mangroves, but outdated.</p>	<p>Revise the NBSAP, with focus on ensuring mangrove conservation and sustainable use.</p>
<p>Voluntary Commitments on Ocean Action</p> <p>Sustainable Development Goal 14</p>	<p>Kenyan government committed to establishment of the National Ocean and Fisheries Council to coordinate and harmonize ocean governance.</p>	<p>Clarify whether an oceans mandate can be added to the mandate of the Fisheries Advisory Council; or how a mandate on oceans governance can be designed and implemented.</p>

Suggested Next steps

Engage with all stakeholders in a dialogue process to disseminate the findings of the policy brief

- ☐ Send hard copies and email to the Policymakers and key senior officers
- ☐ Social media tagging respective office
- ☐ Side events during relevant international conferences
- ☐ Workshop with all stakeholders in the process of creating a dialogue

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