

# 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 2,633.81 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.

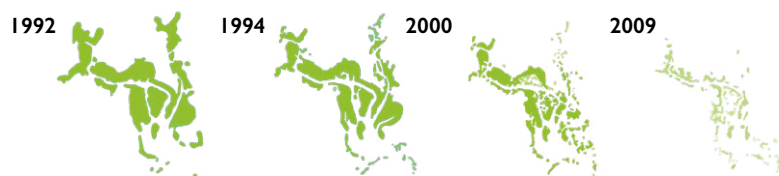
Kenya reportedly lost 450 ha of mangroves per year between 1985 and 2009, and today 40% of remaining mangroves are degraded. In Tudor Creek in Mombasa County, 80% of mangroves were lost between 1992 and 2009. In Lamu, the loss of 1739 ha of mangroves between 1992 and 2019 resulted in greenhouse gas emissions estimated at over 2000 tonnes CO<sub>2</sub>e 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



## MANGROVES LOSS IN TUDOR CREEK BETWEEN 1992 AND 2009



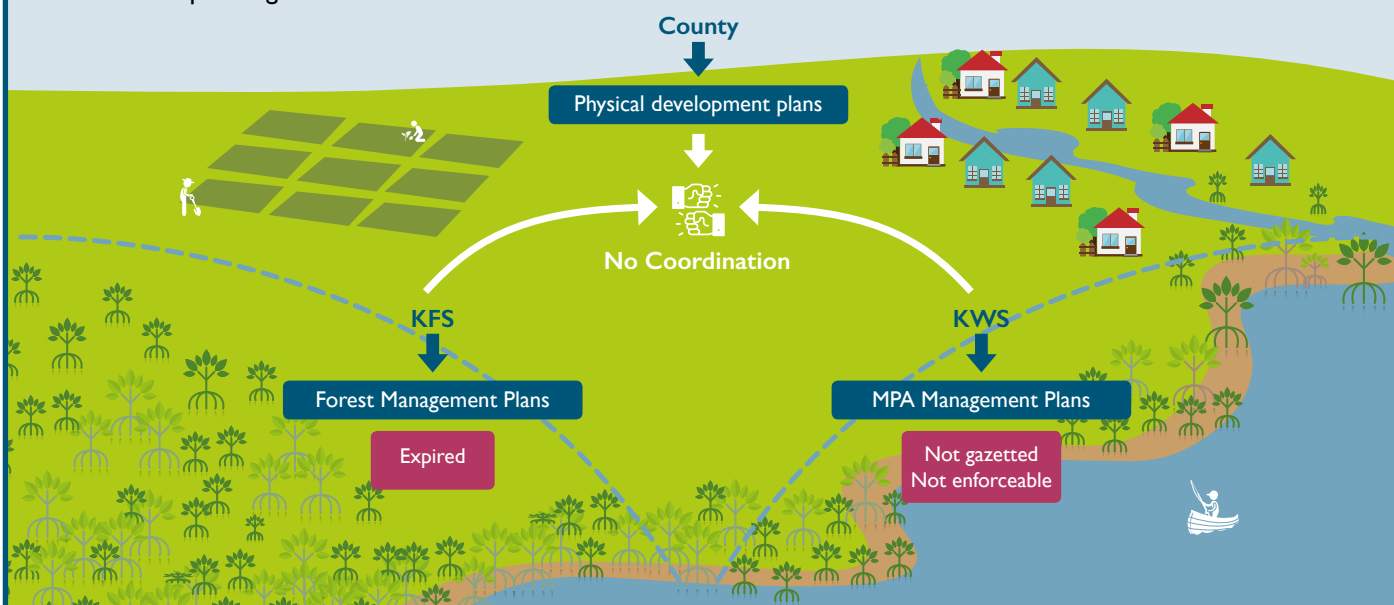
Source: GoK (2017)

## 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.

## 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.

## 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

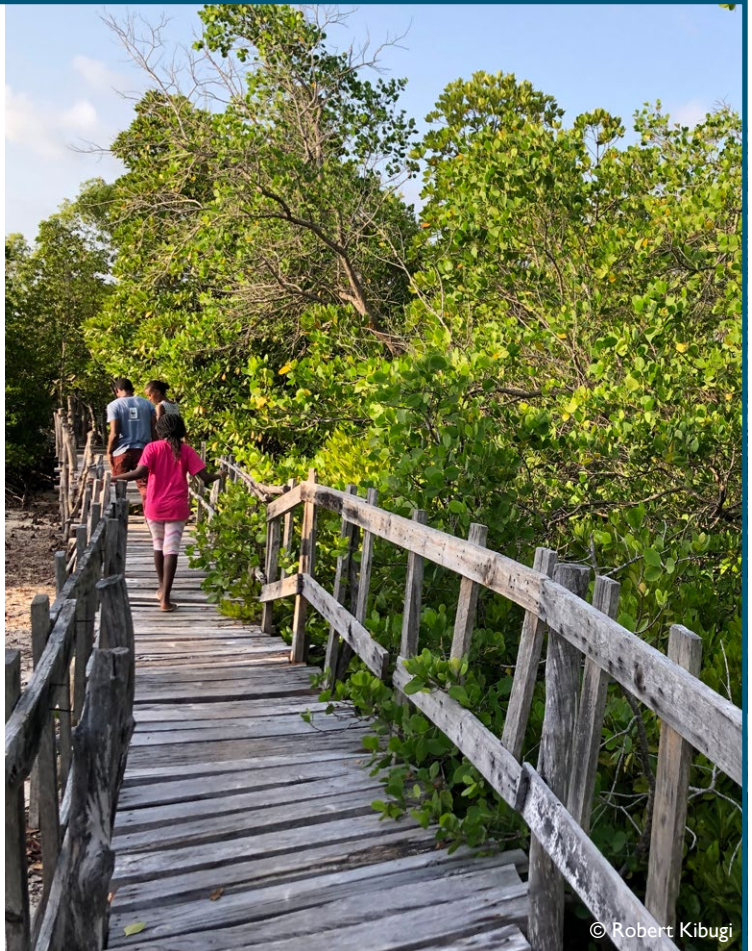
- Feature mangroves in the **amended Forest Act** and the new **Forest Policy**.
- Amend the **Wildlife Act** to clarify its application to mangroves.
- **Adopt regulations under the Forest Act** to implement the Nairobi Convention and CBD through ensuring sustainable use of mangroves.

## 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.



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	Highlights major problems impacting mangroves, but outdated.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

## SOURCES AND FURTHER READING

GoK (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. KMFRI, Mombasa, Kenya.

Kibugi, R. (2019). "Kenya: a leader in comprehensiveness battling ineffectiveness", in Slobodian, 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.