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KENYA



Environmental Policy Gaps

Analysis of Existing Legislations, Conflicts & Inconsistencies
Affecting Climate Change Response in Kenya

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List of Abbreviations and Acronyms

AF	Adaptation Fund
ASALs	Arid and Semi-Arid Lands
CC	Climate Change
CCD	Climate Change Directorate
CCFs	Climate Change Funds
CDM	Clean Development Mechanism
CIDPs	County Integrated Development Plans
CSA	Climate Smart Agriculture
CSOs	Civil Society Organizations
EAC	East African Community
GCF	Green Climate Fund
GESIP	Green Economy Strategy and Implementation
GHG	Green House Gases
GoK	Government of Kenya
KFS	Kenya Forestry Service
MTPs	Medium-Term Plans
NAMA	Nationally Appropriate Mitigation Action
NAP	National Adaptation Plan
NCCAP	National Climate Change Action Plan
NCCC	National Climate Change Council
NCCRS	National Climate Change Response Strategy
NCCS	National Climate Change Secretariat
NDC	Nationally Determined Contributions
NDEF	National Drought Emergency Fund
NEC	National Environment Council
NEMA	National Environment Management Authority
NIE	National Implementing Entity
REDD	Reduction of Emissions from Deforestation and forest Degradation
SDGs	Sustainable Development Goals
TI	Transparency International
UNCSD	United Nations Conference on Sustainable Development
UNFCCC	United Nations Framework Convention on Climate Change

Executive Summary

Climate change is becoming one of the most serious challenges to Kenya's achievement of its development goals as described under Vision 2030. Kenya is already highly susceptible to climate-related hazards, and in many areas, extreme events and variability of weather are now the norm; rainfall is irregular and unpredictable, while droughts have become more frequent during the long rainy season and severe floods during the short rains. The arid and semi-arid areas are particularly hard hit by these climate hazards, thereby putting the lives and livelihoods of millions of households at risk. This has culminated to the President of Kenya, officially declaring drought in parts of Kenya a National disaster on 8th September 2021.

Agricultural activities including crop and livestock production have been affected by the below average rainfall in the affected areas with failures of both the 2020 short rains (Oct-Dec) and the 2021 long rains (March-May) in some counties. Farmers experienced below average harvests that resulted in reduced household income, making it difficult for families to purchase food. There has been reduced milk availability for sale or consumption for pastoral households. Households across the affected regions are employing different coping strategies. These include reduced frequency of food consumption, reduced portion of size of meals and reliance on less preferred food.

Affected households have experienced a series of shocks in recent years in addition to drought conditions, including a desert locust invasion and the ongoing COVID-19 pandemic. Reduced household income to purchase non-food items and lack of water for hand washing is also undermining efforts to prevent the spread of COVID-19 and crowding near water sources increases risk of COVID-19 community transmission.

With the Country currently grappling with effects of Climate Change and the global COVID-19 Pandemic, it is essential that the country develops strategies, Policies and Laws that safeguards the needs of the most vulnerable populations. Sectoral policies must be coherent so that they are vertically aligned with the National and International Policies. This will not only be making economic sense but will also ensure that there are sufficient governance structures anchored on providing an enabling environment for implementation.

This Report reviews some of the existing environmental laws and policies in Kenya in order to Identify the governance gaps, conflicts and inconsistencies affecting Climate Change response. The report then assesses some international best standards and practices in the environmental sector, identifying how legislation in Kenya can be improved to comply with international best standards and lastly proposes amendments to the existing legislation and gives recommendations to the existing policies to address the inconsistencies and conflicts.

Main Findings

- Climate Change has impacted on the Kenyan Economy, posing as a threat to the attainment of development goals as envisaged in Vision 2030. The Most vulnerable groups including women, children, the elderly, people with disabilities and Indigenous groups have been impacted the most with their livelihoods at risk. This has not been made easy by emerging risks like locusts and COVID-19
- The Government of Kenya has put in place measures to address climate change and contribute to the implementation of national commitments to the Paris Agreement, the Hyogo Framework for disaster risk reduction / Sendai Framework for disaster risk reduction, 2030 Agenda for Sustainable Development and the African Union's Agenda 2063.
- There is a robust climate change governance and Institutional arrangements for addressing environmental and Climate Change issues in the Country. Some of these policies are National while others being sectoral, all geared towards providing an enabling environment for addressing the impacts of Climate Change.
- Some of the existing Environmental and Climate Change Laws and Policies lack coherence, have governance gaps and do not have a clear funding mechanism for implementation of different actions.
- There is a lack of clear linkage of policy, planning and budgeting at the grass root levels. Despite the Climate Change Act (2016) providing for mainstreaming of Climate Change into the County Integrated Development Plans (CIDP), clear planning at the grassroots level is still lacking hindering Climate Change Response.
- Since the Adoption of the Climate Change Act of 2016, there has been In adequate Institutional coordination of climate change action and Non-functional Structures. The National Climate Change Council (NCCC) has not been meeting regularly as stipulated in the Act.
- The NCCAP (2013–17) had nine mitigation measures and 29 enabling actions measures that facilitate achievement of mitigation and adaptation targets. However, as of May 2017, which was the last year of the plan, only three of the nine mitigation actions had been completed while the rest were in progress. Similarly, only three of the 29 enabling actions had been implemented fully, whereas no progress had been made in implementing seven of the actions. 19 of the enabling actions were in progress and most of them were carried over to the second NCCAP(2018-2022).

The findings indicated that the absence of internal coherence in laws and policies has resulted in duplication and overlap in execution of institutional mandates, with a sub-optimal outcome for Kenya.

The various sectoral laws, policies and institutional mandates that define roles and functions required for climate change response should therefore be harmonized in order to enhance coordination and mainstream climate change into their functions.

1. INTRODUCTION

This report is part of Transparency International Kenya's Climate Governance and Integrity Program (CGIP) which advocates for good governance, transparency and accountability in Climate Finance in order to make investment more effective. One of the programs first level action areas is Advocacy through research-based interventions and contributions to national institutions and stakeholders. Under the program, TI-Kenya plans to spearhead efforts to Review Existing Environmental legislations, Identify the Conflicts, Gaps and Inconsistencies and thereafter propose amendments.

Policy coherence is the systematic promotion of mutually reinforcing policy actions across government departments and agencies creating synergies towards achieving the agreed objectives (OECD 2004:3) Analyses of coherence are vital to identify where policies in different sectors are horizontally supporting or conflicting with one another, as well as the ways in which they are aligned vertically between national commitments to international agreements (Chandra and Idrisova -2011).

Coherent policy approaches can lead to greater effectiveness and efficiency, and can reduce competition for limited budgets and resources (Akhtar-Schuster et al. -2011).

That said, major implementation challenges exist in Kenya, caused to a great extent by the fact that government ministries and departments often operate in relative isolation of each other, characterized by a lack of communication, information sharing and collaboration (Stringer et al. -2012). Stringer et al. (-2014) identify a number of approaches that can promote institutional support for cross-cutting policies, practices and partnerships. These include strengthening national level coordination and clearer definition of roles across sectors; partnership development drawing on competencies of different stakeholders across sectors; steps to facilitate learning and knowledge sharing; and the development of mechanisms that permit more equitable and transparent distribution of costs and benefits.

Therefore, from TI-Kenya's implementation of the project on Safeguarding the Climate and Climate Finance against Corruption which recognizes policy/law formulation, review, and implementation as a crucial component of climate change response, this study has been conducted in Kenya which has been a leading jurisdiction in sub-Saharan African on matters of legislation regarding the management of its environmental resources. Besides, Stakeholders in several thematic areas have also been championing the development of legislation in their areas of expertise. This has resulted in a patchwork of several legislations that are not harmonized leading to creation of a mosaic of different institutions with different mandates that either work in isolation or with minimal interaction and little interagency cooperation which affects climate change response in the country and also proper oversight on utilization of resources allocated.

This was a desk policy study (secondary research) which generally employed a policy evaluation research technique that determined the impact of different Environmental and Climate Change policies, programs and Strategies in order to identify the governance gaps, conflicts, and inconsistencies affecting climate change response and thereby develop recommendations to address the conflicts. Content analysis of information gathered from secondary data sources was carried out and including summarizing, categorizing, direct quoting and comparisons.

2. BACKGROUND

a) Background of Kenya's Environmental and Climate Change Context and Measures taken

Climate change has increased the frequency and magnitude of extreme weather events in Kenya that have led to the loss of lives, diminished livelihoods, reduced crop and livestock production, and damaged infrastructure, among other adverse impacts. An example is the torrential rains and severe flooding from March to May 2018 that devastated communities that were already struggling to recover from a prolonged drought. Climate change is likely to negatively impact Kenya's future development and achievement of the goals of Kenya Vision 2030 – the long-term development blueprint – and the Government's Big Four agenda for 2018 – 2022. The Big Four Agenda focuses on ensuring food and nutritional security, affordable and decent housing, increased manufacturing and affordable healthcare.

From the adverse effects of Climate Change, Kenya has shown its commitment to addressing climate change by enacting the Climate Change Act (2016). The Act provides a regulatory framework for an enhanced response to climate change. It provides mechanisms and measures to transition to a low carbon climate-resilient development. This pathway emphasizes sustainable development and prioritizes adaptation, recognizing the importance of increasing the climate resilience of vulnerable groups, including women, youth, people with disabilities, and marginalized and minority communities.

Several steps have been made in building policy frameworks to guide the management of the Environment in Kenya.

- First, **Sessional Paper No. 10 of 1965** on African Socialism and its Application to Planning in Kenya recognized the need to conserve natural resources for all future generations and expressed concern about the quality of the environment.
- The **National Development Plans**, which have been prepared since the early 1970s, have devoted specific sections to environmental protection and management.
- In 1982, the National Environment Secretariat (NES) in the Ministry of Environment and Natural Resources (MENR) (now Ministry of Environment, Water and Natural Resources) collaborated on drafting a **National Environment Enhancement and Management Bill**.
- In 1989, the NES, through the Inter-ministerial Committee on the Environment, initiated a **sessional paper on the environment**.
- In 1994, a **National Environment Action Plan**, which was developed to guide the use of natural resources and environmental management, was prepared (GoK 1994).
- In 1999, the Formulation of the **Environmental Management and Coordination Act (EMCA)** Which was Assented to in 1999 and commenced in 2000 spearheaded the process of Environmental and Climate Change Policies.
- The ACT Provided for the establishment of an appropriate legal and institutional framework for the management of the environment and for the matters connected therewith.

-
- EMCA established the following Institutions and Committees;
 - NEMA
 - National Environment Council
 - Provincial and District Environment Committees
 - Public Complaints Committee.

From the above, Kenya Made other Significant Milestones in the formulation of Environmental and Climate Change Related Strategies, Policies, Laws and Legislations. Kenya has contributed to the implementation of national commitments to the Paris Agreement, the Hyogo Framework for disaster risk reduction/Sendai Framework for disaster risk reduction, 2030 Agenda for Sustainable Development and the African Union's Agenda 2063. In addition, Kenya being a member of the East African Community (EAC) is committed to taking action to support the achievement of the EAC Climate Change Policy.

The Journey of Climate Change began in 2010 with the launch of the National Climate Change Response Strategy (NCCRS). This was followed by the National Climate Change Action Plan (NCCAP 2013-2017 and 2018-2022). The NCCAP guides the transition to a low carbon climate resilient development pathway for Kenya, in support of Kenya's achievement of sustainable development goals and towards the continued attainment of Vision 2030. It calls for addressing climate change through the mainstreaming of climate change actions in development planning, budgeting and implementation which is to be carried out in the Medium-Term Plans (MTPs).

National Adaptation Plan and the Green Economy Strategy and Implementation Plan (GESIP) were finalized in 2016. A national climate change framework policy, which outlines the regulatory framework for enhanced response to climate change, was endorsed was also finalized in 2018. It is anticipated that these policies will strengthen efforts to address climate change.

The Enactment of the Climate Change Act in 2016 was a key milestone for Kenya. The Act aims to strengthen climate change governance coordination structures and outlines the key climate change duties of public and non-state actors. It establishes a high-level National Climate Change Council chaired by the President, a Climate Change Directorate as the lead technical agency on climate change affairs; and a Climate Change Fund as a financing mechanism for priority climate change actions/interventions. Climate desks/units have been established in certain line ministries, such as the Ministry of Agriculture and the Ministry of Energy and Petroleum, staffed by relevant Climate change desk officers. The Act is to be applied across all sectors of the economy, and by both the national and county governments. Mainstreaming of climate change has to some extent been undertaken at the county government level, where some counties have taken measures to include climate change in their County Integrated Development Plans (CIDPs) and to develop relevant county legislations and Policies.

It is expected that there will be an increase in emissions from the energy sector as Kenya striving to be a newly industrialized middle-income country by 2030, However, the Government emphasizes its commitment towards enhancing geothermal, wind, solar and other clean energy development. Climate change impacts continue to slow down the attainment of its national development goals. Kenya will continue making investments with both domestic and international resources to adapt to climate change and realize its abatement potentials.

It is important to evaluate the performance/implementation of all these frameworks/policies, plans and programmes in Kenya that are aimed at responding to Climate Change.

b) Linkages between climate action and other development priorities.

Kenya's Blue print Vision 2030 sets eight priority sectors with a high potential to spur the country's economic growth and development. In order to mainstream climate change in these sectors, the country has put in place comprehensive policy, legal and institutional frameworks for enhanced and coordinated climate actions. More specifically, the Third Medium Term Plan (2018-2022) of the Vision 2030 recognized climate change as a cross-cutting thematic area and the need for its mainstreaming in the sectoral strategies and plans nationally and at the county levels.

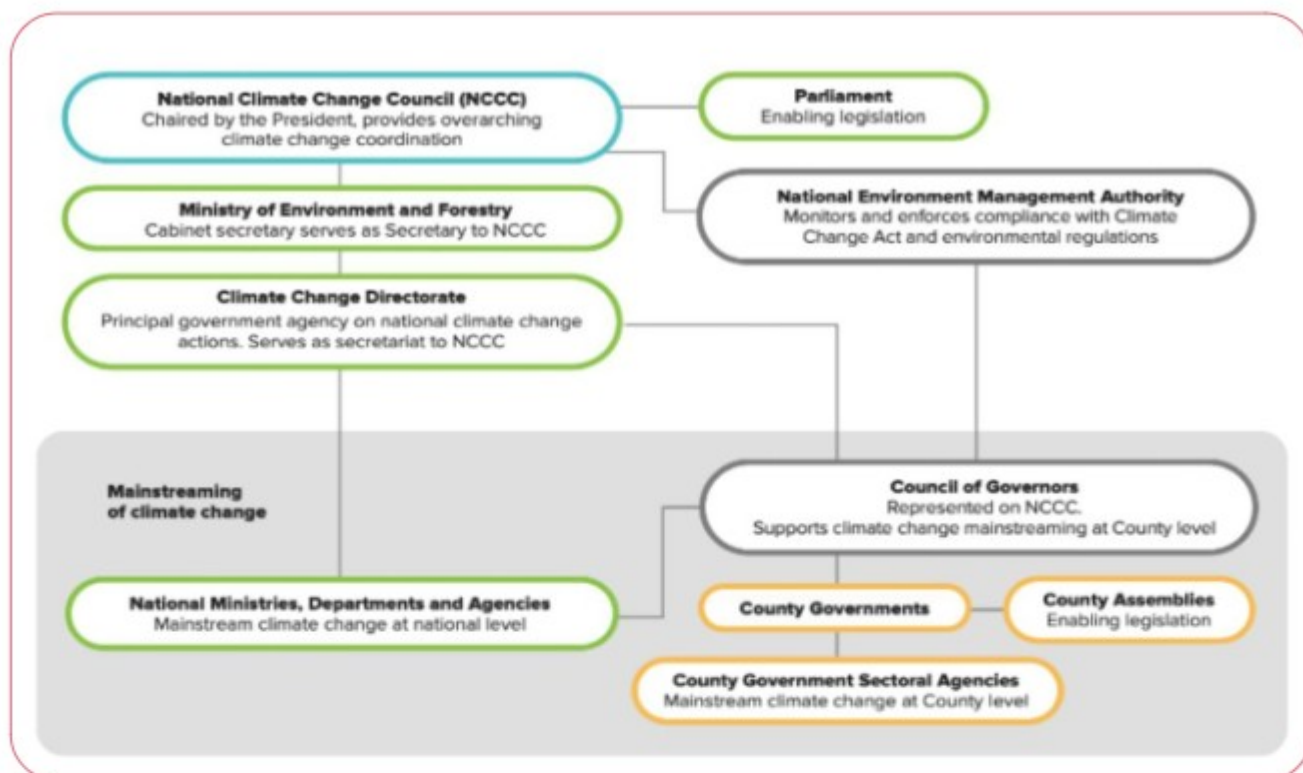
The Green Economy Strategy and Implementation Plan (GESIP) bolsters Kenya's obligation to undertake a passage to a green economy in line with the outcome of the United Nations Conference on Sustainable Development (UNCSD) held in 2012 (Rio+20 Summit). The GESIP stresses synergies between economic development, the SDGs and climate change. It identifies five themes: (1) infrastructure development, (2) building resilience, (3) resource efficiency, (4) sustainable natural resource management, and (5) social inclusion and sustainable livelihoods.

Kenya's Big Four Agenda establish priorities areas for 2018 to 2022 of ensuring food security, affordable housing, increased manufacturing and affordable healthcare. The NCCAP 2018-2022 acknowledges the impacts of climate change on Kenya's socio-economic sectors and identifies strategic areas where climate action is linked to the Big Four Agenda.

c) Implementation and Institutional Framework

Under the Climate Change Act 2016, the National Climate Change Council (NCCC) is responsible for overall coordination of all climate matters, while the Cabinet Secretary for Ministry of Environment and Forestry is responsible for CC activities, including budget planning approval, and reports to NCCC and Parliament on implementation. In discharging the duties and functions, the Cabinet Secretary is assisted by the Climate Change Directorate (CCD) responsible for Climate Change.

The Directorate is the government's lead agency on NCC plans and actions to deliver operational coordination and shall report to the Cabinet Secretary. State departments and national public entities are required to establish/ and or strengthen CC units to integrate priority climate actions into their strategies and implementation plans and to report to NCCC annually. Due to the devolved nature of governance created by the Constitution of Kenya (2010), County governments are to integrate NCCAP 2018-2022 actions into their County Integrated Development Plan (CIDPs) for the 2018-2022 period and designate a county executive committee member to coordinate CC affairs to enhance climate action at sub-national levels of government. The below figures shows the Institutional Framework under the Climate Change Act of 2016;



3. REVIEW OF EXISTING ENVIRONMENTAL LAWS AND POLICIES IN KENYA AND GOVERNANCE GAPS AFFECTING CLIMATE CHANGE RESPONSE

Climate change is becoming one of the most serious challenges to Kenya's achievement of its development goals as described under Vision 2030. Kenya is already highly susceptible to climate-related hazards, and in many areas, extreme events and variability of weather are now the norm; rainfall is irregular and unpredictable, while droughts have become more frequent during the long rainy season and severe floods during the short rains. The arid and semi-arid areas are particularly hard hit by these climate hazards, thereby putting the lives and livelihoods of millions of households at risk. As a result, it is important to review some of the existing Environmental Laws and Policies in Kenya in order to identify the governance gaps, conflicts and inconsistencies affecting Climate Change response.

It is important to note that Kenya has had only 3 Notable National Laws on Environment and Climate Change with several other National Policies, Strategies and Frameworks.

The Laws include;

- a) The Environmental Management and Coordination Act (EMCA, 1999)
- b) The Constitution of Kenya (CoK, 2020)
- c) The Climate Change Act (2016)

Other Complementary Laws from different sectors include;

- a) Agriculture Act (2012)
- b) Water Act (2016)
- c) Forest Conservation and Management Act (2016)
- d) Fisheries Management and Development Act, (2016)
- e) Mining Act (2016)
- f) Energy Act (2019)

Since 2015, Kenya has built on the National Climate Change Response Strategy (NCCRS 2010), The 1st National Climate Change Action Plan (NCCAP 2013 – 2017) and the National Adaptation Plan (NAP 2015-2030) by developing and submitting its Second National Communications to the UNFCCC, Ratifying the Paris Agreement in 2016, Developing its Green Economy Strategy and Implementation Strategy (GESIP 2016-2017), Developed the National GCF Strategy, Developing its Second National Climate Change Action Plan (NCCAP II 2018-222) and revising its NDC in 2020.

These policies and plans set out a low carbon climate resilient development pathway for Kenya in line with Vision 2030 which aims to transform the country into a newly industrialized middle-income country by 2030.

In 2016, Kenya became one of the first African countries to pass a Climate Change legislation in the form of the Climate Change Act 2016. Leaders understood that in order to succeed in boosting climate resilience and reducing greenhouse gas emissions, they would need to be proactive.

They call it a “whole-of-government approach,” thus climate change units were created in every governmental ministry, state agency and county government. (GIZ Country Case Study).

Kenya's Climate Change Act 2016 established a Climate Change Council headed by the President to guide the main streaming of climate action at national and county governments.

The act also established a Climate Change Directorate (CCD) to coordinate implementation of the climate action.

Lastly the Act Proposed the establishment of Kenya Climate Fund which is to be a financing mechanism for priority climate Change actions and interventions approved by the Council.

The Ministry of Environment and Forestry (MEF) is required to prepare a National Climate Change Action Plan (NCCAP) as the instrument for implementation of climate action. The first NCCAP (2013-2017) was published in 2013, the second NCCAP (2018-2022) was developed and reviewed by a multi stakeholder consultation process.

A key element to achieve the country's long-term development goal is the mainstreaming of climate change adaptation to the Medium-Term Plans for the implementation of Vision 2030.

Through the INDC, Kenya introduced a comprehensive program of adaptation action, which was to build resilience to climate change across the different sectors and communities by supporting livelihoods and economic activities.

Kenya is already implementing adaptation and mitigation actions recommended in the NCCAP II and will continue to do so. The priority mitigation activities being promoted and implemented cover all the six IPCC sectors, and include:

- Boosting of energy and resource efficiency across the different sectors.
- Achieving and maintaining a tree cover of at least 10% of the country's land area.
- Expansion of geothermal, solar and wind energy production, other renewables and clean energy options.
- Enhancing Clean energy technologies to reduce over-reliance on wood fuels.
- Introduction of Low carbon and efficient transportation systems.
- Climate smart agriculture (CSA) in line with the newly launched National CSA Framework.
- Sustainable waste management systems.

The Ministry of Environment and Forestry through the National Climate Change Secretariat (NCCS), coordinates implementation across various sectors by the national and county governments, and other players in the planning process on Adaptation and mitigation which was built on the first NCCAP and the NAP.

Even though the first NCCAP 2013-2017 was not fully implemented, there was substantial progress in its implementation. NCCAP 2013 - 2017 helped the country to deliver on domestic goals, and international obligations under the UNFCCC. It identified **38** priority actions, including **nine** mitigation actions, and **twenty-nine** enabling actions in the areas of climate finance, knowledge management, legislation and policy, and performance measurement. **Seven** actions were completed, **twenty-five** were in progress as of May 2018, and many have been carried over to NCCAP 2018-2022. **Six** actions did not progress, five of which were under the National Performance and Benefit Measurement sub component.

(a) NCCAP 1 Progress on Adaptation

Priority actions on adaptation were summarized in NCCAP 2013-2017 and elaborated in the National Adaptation Plan (NAP) 2015-2030. Over the 2013-2017 period, GoK and its partners took action to reduce climate change-related vulnerabilities and build adaptive capacity. Emphasis during the period was on disaster risk reduction, humanitarian action, preparedness and response actions, and other priorities identified in the NAP.

At the National level, many actions in NAP 2015-2030 were undertaken through the National Drought Management Authority (NDMA), including ending drought emergencies, establishment of the National Drought Emergency Fund (NDEF), and initiatives in ASALs aimed at helping the most vulnerable in times of drought.

Coping strategies of the most vulnerable people in Turkana, Wajir, Mandera, Marsabit and other ASAL Counties were enhanced through provision of support during droughts.

Adaptation actions supported by development partners were on adaptation within the agriculture sector, including irrigation projects, enhancing the climate resilience of pastoralists and sustainable land management.

Considerable progress was made in improving access to climate information services, providing loans for smallholder farmers to invest in resources that increase their climate resilience, and establishing insurance schemes for smallholder farmers. Adaptation actions also helped to improve climate risk management, and natural resource-related knowledge in ASALs and, built the capacity of government to enable adaptation-related actions.

Kenya also made considerable progress on increasing the availability of freshwater sources and improving the resilience of water towers.

Adaptation action at community levels was supported through the Integrated Programme to Build Resilience to Climate Change and Adaptive Capacity of Vulnerable Communities in Kenya, which was supported by the UNFCCC Adaptation Fund, and implemented by the National Environment Management Authority (NEMA) in its role as the National Implementing Entity (NIE) to the Adaptation Fund. The initiative focused on food security, water management, coastal ecosystem management, and environmental management.

At county level, many County Governments integrated climate change in their 2013 County Integrated Development Plans (CIDPs); acknowledging that climate change poses threats to their sustainable development. Garissa, Kitui, Makueni and Wajir County Governments passed regulations to establish County Climate Change Funds (CCCFs).

Legislation on the County Climate Change Fund (CCCF) was developed in Isiolo, County and was awaiting approval by the County Assemblies as of September 2018. Other Counties, such as Kisumu, established institutional structures to mainstream climate change in plans and programs.

The private sector was an active partner in the implementation of adaptation-related actions. It provided technologies, insurance products, and climate information services; many of which are facilitated by smart-phone applications. Various companies have also been active in building the climate resilience of farmers in their supply chains.

(b) Progress on Mitigation

NCCAP 2013-2017 identified six priority action areas for emission reductions and had quick-win or short-term actions that would trigger the process of meeting the long-term goals. These short-term actions included the development of funding proposals and improving the measurement of GHG emissions and sinks. A key quick-win achievement was the approval of a grant of Euro 20 million from the International Nationally Appropriate Mitigation Action (NAMA) Facility for Nairobi's Bus Rapid Transit (BRT) system, which will be implemented as part of NCCAP 2018-2022.

While reducing GHG emissions is critical, Kenya prioritized mitigation actions that have adaptation and sustainable development benefits. An example was in the forestry sector, where actions to sequester carbon, such as reforestation, are expected to bring development benefits, including protected watersheds, and improved livelihoods.

MEF and Kenya Forestry Service (KFS) worked with County Governments and private land holders to plant trees and developed actions on the Reduction of Emissions from Deforestation

and forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD+).

Electricity generation from geothermal energy sources reduced GHG emissions and lessened the vulnerability of the energy sector to climate change. The total installed geothermal capacity at the end of 2016 was about 630 MW, which is an increase of about 380 MW from the 250 MW of geothermal power generation reported in June 2013. In the 2016/2017 fiscal year, installed capacity was 2,333 MW, with geothermal accounting for 44% of the electricity generation in the mix, hydro 33%, thermal 21%, and imports 2%. The capacity of renewable energy was increased under NCCAP 2013 – 2017 through geothermal projects in Olkaria, wind projects in Turkana and Ngong Hills, and several decentralized energy projects, such as mini-grids and solar photovoltaic systems for off-grid public schools.

The private sector was a critical partner, with companies generating electricity using renewable energy sources, including solar, biogas and bagasse. Companies also manufactured solar panels and established pay-as-you-go solar lighting systems for households. The Kenya Association of Manufacturers (KAM) worked with the Ministry of Energy to support energy audits, and efficiency improvements, aimed at reducing GHG emissions. The cement sector introduced energy efficiency and process improvements, while efforts to reduce energy demand at household levels embraced improved cookstoves, biogas and solar lighting.

Regarding participation in the Clean Development Mechanism (CDM), Kenya registered sixteen CDM projects and sixteen Programs of Activities in such sectors as reforestation, energy efficiency, geothermal, wind and hydro.

Kenya was also active in the voluntary carbon market; hosting the Kasigau Wildlife Corridor REDD project, which is the first activity to issue voluntary forestry carbon credits and, the Kenya Agriculture Carbon project, which is the first project in Africa to issue carbon credits for sequestering carbon in soil.

Some of the Existing Policies, Plans and Programmes on Climate Change

Climate Change is a Global Concern and demands a global solution, Kenya is an Active Player in the international efforts. The International Response to Climate Change is founded on the United Nations Framework Convention on Climate Change (UNFCCC) that entered into force in 1994.

a) Global Frameworks

The **Kyoto Protocol** which is a GHG emissions reduction treaty to these UNFCC was adopted in 1997 and Kenya ratified it in 2005. The Kyoto Protocol in an international agreement that commits developed countries, and countries in transition to market economics, to reduce their overall GHG emissions. The Kyoto Protocol created the Clean Development Mechanism (CDM), under which projects of developing countries, which reduced GHG emissions, and contributed to sustainable development, earned credits that could be sold to countries or companies with a commitment to reduce GHG emissions.

The **Paris Agreement** came into force in November 2016 and Kenya Ratified it in December 2016. The **Paris Agreement** aims at strengthening the global response to the threat of climate change, by keeping rise in global temperature during this century to well below 2°C above pre- industrial levels. Additionally, the **Agreement** aims at strengthening the ability of countries to deal with the impacts of climate change. To reach these ambitious goals, appropriate financial flows, a new technology framework, and an enhanced capacity building framework will be put in place to support developing countries. Kenya's NDC sets out the country's actions to contribute to achieving the global goal set out in the Paris Agreement.

The Sendai Framework for Disaster Risk Reduction 2015-2030

is a voluntary agreement that recognizes that the State has the primary role to reduce disaster risk, but that responsibility should be shared with other stakeholders, including local governments, the private sector, and other stakeholders. It aims at the following outcome: The substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries. Kenya adopted the Sendai Framework in 2015.

Kenya is committed to the 2030 Agenda for Sustainable Development that was adopted by world leaders, including the President of the Republic of Kenya, in September 2015 at the United Nations (UN) Sustainable Development Summit. On 1st January, 2016, the 17 Sustainable Development Goals (SDGs) officially came into Force. While the SDGs are not legally binding, governments are expected to take ownership, and establish national frameworks for their achievement. The 2030 Agenda includes dedicated goals for climate change (SDG 13), protecting, restoring, and promoting sustainable use of terrestrial ecosystems (SDG 15), and mainstreaming climate change impacts and climate actions across all the SDGs. The agenda introduces the overriding objective of “leaving no one behind” that has strong implications for the definition, and selection of climate actions.

The agenda introduces the overriding objective of “leaving no one behind” that has strong implications for the definition, and selection of climate actions. This objective prioritizes the poorest and most marginalized people, so that they progress at a higher rate than those that are better off to ensure that no one will be left behind, world leaders committed to end extreme poverty and curb inequalities by 2030 and, underscored that no goal of the 2030 Agenda will be met until it is met for everyone.

b) Regional Legal and Policy Frameworks

The **African Union's Agenda 2063** commits to climate change action that prioritizes adaptation and calls on member countries to implement the Programme on Climate Action in Africa, including a climate resilient agricultural development programme. **Agenda 2063** commits to building climate resilient economies and communities, and notes that participation in global efforts for climate change mitigation will support & broaden the policy space for sustainable development.

c) Summary of the Governance Gaps in Existing Environmental Laws and Policies in Kenya and Recommendations to address the Gaps

The Review of the existing environmental laws and policies of the Kenya indicates that the policies are scattered, disjointed and contradictory, thereby contributing further to their inadequacy in addressing climate change in the Country. For example, while the Constitution of Kenya 2020 has a goal of Increasing tree cover and the livestock (agriculture) policy encourages livestock-keepers to clear trees on rangelands to encourage grass growth. At the national level, several ministries and departments have established climate change units and climate change-related plans and policies to guide them in mainstreaming climate actions in their sectors. Some of these policies still lack institutional governance, Adequate financial provisions, Capacity and Enforcement challenges.

It has been noted that various actors working in sectors related to environment and Climate Change have expressed the need to harmonize these policies.

Below is a summary of the National Environment and Climate Change Policies and Laws, gaps facing their implementation and Recommendations on how to address the gaps;

The **East African Community (EAC)** Secretariat developed EAC Climate Change Policy and Strategy (2010) to guide Partner States and other stakeholders on the preparation and implementation of collective measures to address climate change in the region. The Policy prescribes statements and actions to guide adaptation and mitigation, reduce the vulnerability of the region, enhance adaptive capacity, and build socioeconomic resilience of vulnerable populations and ecosystems. EAC is developing a climate change bill and forest policy and strategy and exploring the establishment of an alliance on carbon markets and Climate finance. Furthermore, the EAC Protocol on Environment and Natural Resources Management has been developed to guide the partner states in their cooperation in matters related to environment and natural resource management within their jurisdictions.

The Lake Victoria Basin Commission developed a Climate Change Adaptation Strategy and Action Plan (2018-2023) that presents a roadmap for addressing and adapting to climate change impacts.

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Environmental Management and Coordination Act (1999)</p>	<p>EMCA was Assented to in 1999 and commenced in 2000 spearheaded the process of Environmental and Climate Change Policies. The ACT Provided for the establishment of an appropriate legal and institutional framework for the management of the environment and for the matters connected therewith. EMCA established the following Institutions and Committees;</p> <ul style="list-style-type: none"> · NEMA · National Environment Council · Provincial and District Environment Committees. · Public Complaints Committee. 	<p>The National Environment Management Authority has had challenges in the implementation of regulations that fall under the EMCA act, for instance, it has not been able to enforce properly Noise and Air Pollution regulations. Besides there has been political interference where it has been noted that in some cases, EIA certificates have been inappropriately awarded to projects that does not have a common good for the community such as the Kimwarer Dams and Dominion Farms.</p>	<p>EMCA Act needs to be revised to confirm to the current pressing Climate Change and Environmental Hazards and Risks. Proper enforcement should also be undertaken by NEMA.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Constitution of Kenya (2010).</p>	<p>The Overarching Law governing Kenya. The Constitution establishes the right to food security while emphasizing sustainable and productive management of land and natural resources, such as a goal of tree cover of 10 per cent of the country's land area. The Constitution provides for a clean and health environment (Articles 42, 69 and 70) is a fundamental right under the Bill of Rights, providing a rationale for the formulation of adaptation and mitigation legislation, policies and strategies.</p>	<p>Despite the various Articles on Environment, the Enforcement has been a challenge. Since the promulgation of the Constitution in 2010, Kenya is yet to achieve the goal of 10% tree cover.</p>	<p>Enforcement of Environment provisions in the COK 2010 needs to be considered. The productive management of land and natural resources including the goal of 10% tree cover will be crucial in the low emission development pathway strategy for the nation by 2030.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Kenya Vision 2030 (2008) and its Medium-Term Plans</p>	<p>Kenya Vision 2030, the country's development blueprint, recognized climate change as a risk that could slow the country's development. Climate change actions were identified in the Second Medium Term Plan (MTP) (2013-2017). The Third Medium Term Plan (2018-2022) recognized climate change as a crosscutting thematic area, and mainstreamed climate change actions in sector plan</p>	<p>Implementation of Kenya's Vision 2030 has been faced by different challenges like;</p> <ul style="list-style-type: none"> · Inadequate and limited resource allocation especially in carrying out development activities. · Political interferences and uncertain political environment. · Constant inflation compounded with the weak currency. · Global recession hence limited donor funding which is also greatly linked to donor dependency. · Corruption especially in the misappropriation of funds as seen in the free Primary Education Programme. · Inadequate and ineffective involvement by the citizens of Kenya. <p>Poor linkage of policy, planning and budgeting at the grass root levels etc</p>	<p>Vision 2030 provides an opportunity for the nation to consider mainstreaming of Climate Change in sector plans and therefore;</p> <ul style="list-style-type: none"> · There is need to adequately allocate resources in the 3rd, 4th and 5th MTPs to ensure that the development activities are carried out efficiently. <p>Besides, the 4th and 5th MTPs need to be linked by the emerging Climate change Policy provisions at the Nationally and at the Counties for effective planning and budgeting, this will ensure that mainstreaming of Climate Change Actions reach the grassroots.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Climate Response Strategy (2010)</p>	<p>Kenya's National Climate Change Response Strategy was the first national policy document on climate change. It sought to advance the integration of climate change adaptation and mitigation into all government planning, budgeting, and development objectives.</p> <p>The processes of formulating the NCCRS and its implementation action plan were participatory and consultative, and all the key sectors of the economy were addressed;</p> <p>The NCCRS highlights various measures for adaptation and mitigation to the impacts of climate change in all sectors of the economy.</p>	<ul style="list-style-type: none"> · National Budgetary Allocations for Climate Response Strategy are low. · Institutional capacity Gaps with regards to coordination of Climate Change in Kenya. For instance, the Climate Change Directorate is understaffed with majority of technical staffs retiring or nearing retirement. 	<ul style="list-style-type: none"> · The NCCRS was well drafted with involvement of all stakeholders. The document includes indicative budgets and plans for line ministries, However the ministries faced challenges in implementation since the National budgetary allocations for the Strategy were low. · Nevertheless, in seeking to operationalize the NCCRS, the government in March 2013 finalized the development of the National Climate Change Action Plan (NCCAP) which was a good step in providing the analysis and enabling mechanisms to make implementation of NCCRS successful.

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Kenya's Nationally Determined Contribution (NDC) (2016)</p>	<p>Under the Paris Agreement of the UNFCCC Kenya's NDC includes mitigation and adaptation contributions.</p> <p>Kenya was to ensure enhanced resilience to climate change towards the attainment of Vision 2030, by mainstreaming climate change into Medium Term Plans (MTPs) and implementing adaptation actions." The mitigation contribution "seeks to abate Kenya's GHG emissions by 30% by 2030, relative to the business-as-usual scenario of 143 MtCO₂eq." Achievement of Kenya's NDC is subject to international support in the form of finance, investment, technology development and transfer, and capacity development.</p>	<p>Under the Paris Agreement, developed countries have committed to mobilise at least US\$100 billion annually to support implementation of climate change actions in developing countries such as Kenya</p> <p>Following the development of the NDC, the national and county governments have been implementing various mitigation projects including reforestation and development of renewable energy sources. However, the contribution of these interventions to reduction in GHG emissions is yet to be fully understood due to lack of data.</p> <p>Besides, Kenya's first NDC did not provide for budgetary allocations to help in the implementation of the mitigation and adaptation actions. There was also no MRV System in Place.</p>	<p>With the gaps presented in Kenya's first NDC, Kenya revised its NDC in 2020 to include financial setup i.e. 13% of the total of USD \$62 billion upto 2030 is to be sourced locally while 87% is to be funded from international support.</p> <p>The gaps in the establishment of an elaborate MRV should have been addressed during the formulation of the first NDC. Luckily, the Revised NDC puts in place a robust MRV system that will ensure that monitoring of implementation is done as the implementation continues.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Environment Policy (2013)</p>	<p>NEP treats climate change and disaster management as emerging environmental issues. In this policy document, the government seeks to adopt mitigation and adaptation approaches to deal with climate change.</p> <p>This policy recognizes that many of the natural disasters in Kenya, such as floods, drought, landslides and fires, are climate related and that their negative impacts cut across all key sectors of the economy.</p>	<p>The NEP was to ensure sub-sector laws (water, forests and wildlife) are in harmony with EMCA for smooth implementation without conflicts.</p> <p>Besides, the Policy document was to improve coordination and cooperation among government ministries and departments by:</p> <ul style="list-style-type: none"> Strengthening the Directorate of Environment at the Ministry of Environment, Water and Natural Resources to support the Cabinet Secretary in policy development, monitoring the performance of the sector and to serve the National Environment Council (NEC). Strengthening the capacity of NEMA as the national institution responsible for the general supervision and coordination in all matters related to the environment. <p>Organizing and strengthening the capacity of environmental institutions at the national and county levels so as to make them more effective and accessible to the public.</p>	<ul style="list-style-type: none"> The Sub-sector Laws (Water, Forests and Wildlife) are still not aligned with EMCA. There is need to harmonize the above laws to ensure coherence in Environmental and Climate Change laws. NEMA is still weak in enforcement and Monitoring, the Law should be applied in order to strengthen NEMA's capacity in order to offer Country wide enforcement and supervision. <p>There still exists Capacity Challenge In NEMA that slows down general supervision and coordination of matters related to environment.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Climate Change Action Plan (2013-2017)</p>	<p>Kenya's National Climate Change Action Plan, 2013-2017 was a five-year plan that sought to further Kenya's development goals in a low carbon climate resilient manner. The plan summarizes analysis of mitigation and adaptation options and recommended actions; recommends an enabling policy and regulatory framework and sets out the next steps for knowledge management and capacity development, technology requirements; a financial mechanism and a national performance and benefit measurement system. NCCAP 2013 - 2017 helped the country to deliver on domestic goals and international obligations under the UNFCCC. One of the outstanding achievements within the NCCAP 2013-2017 period was the enactment of the Climate Change Act in May 2016.</p>	<ul style="list-style-type: none"> · There has been no Coordination Mechanism for engaging CSOs engaged in Climate Change in Kenya. · The National Climate Change Council has been facing challenges over representation in the Council and upto date the council has never sat. This is a big step back towards the implementation of climate change actions in Kenya. <p>The NCCAP (2013–17) had nine mitigation measures and 29 enabling actions measures that facilitate achievement of mitigation and adaptation targets. However, as of May 2017, which was the last year of the plan, only three of the nine mitigation actions had been completed while the rest were in progress. Similarly, only three of the 29 enabling actions had been implemented fully, whereas no progress had been made in implementing seven of the actions. 19 of the enabling actions were in progress and most of them were carried over to the second NCCAP.</p>	<p>The gaps in the implementation of the NCCAP I should have been adequately planned for and supported financially. This Could have limited the number of unimplemented mitigation and adaptation enabling actions that were carried over to the second NCCAP.</p> <p>The NCCAP one, was a classic case of good intentions by the government towards a low carbon resilient development, however from the analysis of its implementation, more effort should have been put in place to ensure that all the enabling action targets were met.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Adaptation Plan (2015-2030)</p>	<p>Kenya's National Adaptation Plan 2015-2030 (NAP) was submitted to the UNFCCC in 2017. NAP provides a climate hazard and vulnerability assessment and sets out priority adaptation actions in the 21 planning sectors in MTP II.</p>	<ul style="list-style-type: none"> · Insufficient Harmonization and Coordination of Adaptation Plans and the NCCAP · Insufficient Implementation and translation into the MTP. <p>There have been challenges with the management and administration of the Adaptation Funds. There have been cases of misappropriation of the funds which led to limited implementation.</p>	<p>The NAP is a national level plan led by the national government. The national government has a crucial role to play in delivering this plan and in building Kenya's resilience.</p> <p>The plan and its activities were to be devolved creating a two-way channel of communication and learning between national government, county level and the local level. The devolved county government structure introduced in accordance with the 2010 Constitution offers the opportunity to play a key role in delivering and coordinating adaptation at the county and community levels.</p> <p>However, there is still insufficient awareness and knowledge on how decentralizing of the NAP can be done at the county level. Climate Change is to be mainstreamed in CIDPs with a certain percentage of Annual development budget devoted to Climate Change, this is yet to be practical at the counties. TI and other watch dogs need to come on board to assess the administration of the adaptation funds in Kenya as the beneficiaries never received the whole amounts they were to receive.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Climate Change Act (2016)</p>	<p>The Climate Change Act of 2016 was the first comprehensive legal framework for climate change governance in Kenya. The objective of the Act is to “Enhance climate change resilience and low carbon development for sustainable development of Kenya.” The Act establishes the National Climate Change Council (Section 5), Climate Change Directorate (Section 9) and Climate Change Fund (Section 25). Further Part III, section 19 of the Act provides for mainstreaming climate change actions into County Government functions and states. The Act states that a county government shall integrate and mainstream climate change actions and the NCCAP into various sectors. This has guided the domestication of the Act at county level with several counties having developed their respective Climate Policies, Acts and Regulations.</p>	<ul style="list-style-type: none"> Since the Adoption of the Climate Change Act of 2016, there has been In adequate Institutional coordination of climate change action and Non-functional Structures. The National Climate Change Council (NCCC) has not been meeting regularly as stipulated in the Act. The Climate Change Directorate (CCD) has had limited capacity in coordination of the NCCAP. <p>Mainstreaming of Climate Change into Development Plans is still a challenge to County Governments (CIDPs)</p>	<p>The institutional Coordination challenge presented by the Climate Change Act needs to be urgently addressed, the National Climate Change Council needs to have its first sitting in order to undertake their mandate. The first five year tenure is coming to an end this year (2020), thus new nominations need to be fast-tracked.</p> <ul style="list-style-type: none"> Mainstreaming of climate change into CIDPs need to be enhanced. County MRV systems need to be established in order to assess such provisions in the County’s annual budgets. <p>Implementation of different sections of the Act like Section 25, on Climate Change Fund need to be established so that the climate change funds are devolved to the County and Ward levels</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Climate Change Action Plan (2017-2022)</p>	<p>Kenya's National Climate Change Action Plan, 2017-2022 is a five-year plan that seeks to further Kenya's development goals in a low carbon climate resilient. The plan set out adaptation, mitigation, and enabling actions.</p>	<p>Climate Change adaptation and mitigation measures have been integrated in the second generation CIDPs covering the period 2018–2022. And the second NCCAP has integrated the national climate change adaptation and mitigation objectives. While this is laudable, experience shows that implementation of these plans is slow.</p>	<p>Climate Change adaptation and mitigation measures have been integrated in the second generation CIDPs covering the period 2018–2022. And the second NCCAP has integrated the national climate change adaptation and mitigation objectives. While this is laudable, experience shows that implementation of these plans is slow.</p> <p>The National Climate Change Council which was to approve the NCCAP II has never sat, this brings to question the legitimacy of the NCCAP II</p> <p>Financial provisions for the implementation of the adaptation and mitigation objectives needs to be strengthened.</p> <p>Capacity building of different technocrats need to be enhanced. For effective implementation.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Kenya Climate Smart Agriculture Strategy (2017- 2026)</p>	<p>The objective of the Kenya Climate Smart Agriculture Strategy (KCSAS) is to adapt to climate change and build the resilience of agricultural systems, while minimizing GHG emissions. Planned actions will lead to enhanced food and nutritional security, and improved livelihoods.</p>	<ul style="list-style-type: none"> · Limited stakeholders inclusion especially at the County level · There has also been limited awareness. · Weak policies, legislation, enforcement and overlap of mandates among institutions involved in regulation coupled with poor coordination and collaboration among institutions and stakeholders in climate smart agriculture (CSA) have contributed to the country's inability to effectively address vulnerability and GHG emissions. <p>Further, cross cutting issues such as inadequate financing of CSA activities; limited capacity of Women, Youth, and Vulnerable Groups to participate in CSA activities; unsustainable natural resource management (NRM) and utilization; limited human resource capacity to undertake CSA; limited CSA research technology development and innovations; and inadequate data and information on CSA have also led to poor implementation of CSA activities.</p>	<p>The country requires transformation of its agricultural systems to make them more productive and resilient while minimizing GHG emissions under a changing climate.</p> <p>CSA provides an excellent opportunity for the transformation by uniting agriculture, development and climate change under a common agenda through integrating the three dimensions of sustainable development (economic, social and environmental) by jointly addressing food security and climate challenges.</p> <p>National strategies and interventions such as the National Climate Change Action Plan (2018-2022) and the Agriculture Sector Development Strategy (2010-2020) did not adequately mainstream adaptation, building resilience and mitigation of GHGs into the agricultural sector.</p> <p>Consequently, the sector needs a sound and enabling CSA strategy that will simultaneously guarantee productivity and food security while addressing climate change adaptation and mitigation.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Climate Risk Management Framework (2017)</p>	<p>The Climate Risk Management Framework for Kenya integrates disaster risk reduction, climate change adaptation and sustainable development, so that they are pursued as mutually supportive rather than stand-alone goals. It promotes an integrated climate risk management approach as a central part of policy and planning at National and County levels.</p>	<ul style="list-style-type: none"> · Lack of harmonization of programs and projects and coordination at the County level. · Insufficient capacity at National and County level for integrated climate risk management · Limited involvements of communities at risk · Insufficient financial allocation to Climate risks management. <p>Lack of platforms for sharing lessons and good practices on integrated climate risk management.</p>	<p>For effective implementation of this framework, there needs to be clear communication loop between the National and the County level planning, integration of Climate risk management requires information generated from the grassroots using local knowledge.</p> <p>This calls for sufficient financial allocation and establishment of a National and county-based platforms for sharing lessons and good practices on Climate Risk Management</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Climate Change Framework Policy (2018)</p>	<p>The National Climate Change Framework Policy aims at ensuring the integration of climate change considerations into planning, budgeting, implementation, and decision-making at the National and County levels, and across all sectors.</p>	<ul style="list-style-type: none"> · Enforcement and implementation of policies and legislation are weak. · Time delays in the formulation of the National Climate Change Framework Policy, The Climate Change Act was even developed before the policy. <p>The policy was developed after the Climate Change Act (2016) Which was not a very good practice since the Policy should have guided the formulation of the Act and not vice-versa.</p>	<p>This policy took too long to be finalized with the process beginning way before the enactment of the COK 2010. This presented a setback as well as an opportunity for revision of the policy to comply with the COK 2010 devolved systems.</p> <p>Enforcement and implementation of this policy framework needs to be fast-tracked.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>National Climate Finance Policy (2018)</p>	<p>The National Climate Finance Policy promotes the establishment of legal, institutional, and reporting frameworks for access to and management of climate finance. The goal of the policy is to further Kenya's national development goals through enhanced mobilization of climate finance that contributes to low carbon climate resilient development goals.</p>	<ul style="list-style-type: none"> · Disharmony between the treasury and the Ministry of Environment and Natural Resources · Limited Capacity to track Climate Change Finance, MRV on support received is not adequate (OECD, Rio Markers) 	<p>Thus, there is need to operationalize the Climate Change Funds at the county levels to ensure that the county governments mobilize funds for the implementation. This will boost the national climate change targets for mitigation and adaptation as provided for in the revised NDC</p> <p>There is need to also unpack the Climate Finance Landscape in Kenya. This will help in tracking climate change finances upto the county level. At the moment tracking of Climate Finance has been a challenge to the National treasury.</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Updated Nationally Determined Contribution (NDC) (2020)</p>	<p>Kenya's NDC under the Paris Agreement of the UNFCCC includes mitigation and adaptation contributions. In regard to adaptation, "Kenya will ensure enhanced resilience to climate change towards the attainment of Vision 2030, by mainstreaming climate change into Medium Term Plans (MTPs) and implementing adaptation actions." The mitigation contribution "seeks to abate Kenya's GHG emissions by 32% by 2030, relative to the business-as-usual scenario of 143 MtCO₂eq." Achievement of Kenya's NDC is subject to international support in the form of finance, investment, technology development and transfer, and capacity development.</p>	<ul style="list-style-type: none"> While Kenya's mitigation objectives in the NDC are specific, measurable and time-bound, the adaptation objectives are broader and are therefore likely to present significant MRV challenges, hindering effective tracking of adaptation progress at national and local levels. Further, a lack of awareness and technical skills on MRV among key stakeholders is also a pressing issue. Besides, the COVID-19 pandemic has exposed the vulnerability of communities in the face of a pandemic as well as climate-related shocks. This is especially so for the most vulnerable groups such as women, children, youth and people with disabilities. Past Analysis shows that the cost of inaction on climate change would be more disastrous in the long-term compared to the current impact of the pandemic. As such, climate change must be integrated in the overall post-Covid recovery. 	<p>An integrated MRV tool for Kenya has recently been validated and is designed to overcome the aforementioned challenges. However, current institutional, technical and financial resources and capabilities for MRV need to be further developed to meet the requirements of the enhanced transparency framework of the Paris Agreement (which requires countries to regularly measure and report on their emissions reductions, adaptation efforts and any support received for climate action) and the proposed Kenyan MRV + system</p>

National Framework	Description	Governance Gaps in Implementation	Recommendations to Address the Gaps
<p>Big Four Agenda (2018-2022)</p>	<p>The Government of Kenya's Big Four Agenda establishes priority areas for 2018 to 2022 of ensuring Food and Nutrition Security, Affordable Housing, Enhanced Manufacturing, and Universal Health Coverage. Sector plans and budgets are to be aligned to the Big Four Agenda.</p>	<p>The big four agenda were to be implemented in the MTP III (2018-2022), with the integrating the bid four agenda in its plans, However, The implementation of MTP III faced different challenges including;</p> <ul style="list-style-type: none"> • Slow uptake of programmes and projects for implementation through Public Private Partnership (PPP) • Recurrence of Drought which affected agricultural activities • Locust invasion which affected crop production • Flooding which destroyed infrastructure, crops and properties as well as claiming lives; • Lower than targeted revenue collections viz a vis high expenditure for MTP III programmes and projects; Covid-19 pandemic from early 2020 	<p>The government of Kenya should have contingency funds which could come in the budget supplements for such in eventualities.</p> <p>The National Government needs to continue with the implementation of Economic Recovery Strategies (ERS) in light of the negative effects brought about by the Covid-19 pandemic.</p> <p>Ministries, Departments and Agencies are required to:</p> <ul style="list-style-type: none"> • Put in place supporting mechanism including fast-tracking necessary legislations/policies identified in the draft Economic Recovery Strategy and MTP III • Strengthen monitoring and evaluation of programmes and projects to inform policy and planning

Materials For Further Reading

Climate Change Act, No. 11 of 2016

National Climate Change Action Plan (NCCAP 2018-2022)

The Constitution of Kenya 2010

EMCA (1999)

Updated Nationally Determined Contributions

National Climate Finance Policy (2018)

4. EXAMPLES OF INTERNATIONAL BEST STANDARDS AND PRACTICES IN THE ENVIRONMENTAL SECTOR AND LESSONS LEARNT.

Climate change framework legislation is an overarching, multisectoral regulatory tool that lays down general principles and defines the institutional framework for climate change policy and implementation. Such legislation typically sets national long-term Mitigation and adaptation objectives and establishes the institutions and processes needed to meet those objectives (World Bank 2015). Although having a comprehensive law that addresses both mitigation and adaptation has some benefits, some countries have addressed these two areas through separate legislations. Specific policy measures are usually defined in ancillary regulatory instruments such as sector-specific laws.

The need to help stakeholders design effective and comprehensive laws on Climate Change led the World Bank to develop a Reference Guide to Climate Change Framework Legislation for Countries. The guide is primarily aimed at institutions at the center of Climate Change governance including Ministries and State departments responsible for climate change. These Ministries play a leadership role in policy issues that require a whole-of- government response, such as climate change. The guide is also aimed at specialized climate change and environmental agencies that is crucial in sponsoring climate change legislation and policy. The guide will be useful to legislators as well as the civil society organizations that engage with government and the legislature in the design and implementation of climate change policy.






The guide can be used to stimulate discussion during the process of drafting climate change framework legislation. The guide does not present a model law since every country has its own environmental, economic, social, legal and institutional context that has to be considered in the design of any framework law. Framework legislation should avoid overlapping with existing legislation, creating ambiguity, notably in areas such as public finance, disaster risk management, and intergovernmental relations. Decision makers will need to consider whether a new framework law or revision of existing laws, or a combination of both, will be more effective in developing institutional mandates.




¹ Other relevant sources policy makers can refer to include the Law and Climate Change Toolkit, a global resource to develop legal frameworks for implementation of the Paris Agreement and nationally determined contributions (<https://climatelawtoolkit.org/>); the Model Law for implementing nationally determined contributions (<https://www.eli.org/climate-energy/eli-model-law-implementing-nationally-determined-contributions>); and the Climate Policy Database, with information on mitigation policies worldwide (<https://climatepolicydatabase.org/policies>).





The reference guide identifies 12 key elements of International best standards and practices for effective climate change framework legislation. The 12 Elements include;

1. Long-term strategies
2. Intermediate and Sectoral Targets
3. Risks and Vulnerability Assessments
4. Climate Change Strategies and Plans
5. Policy Instruments
6. Independent Expert Advise
7. Stakeholders Engagement
8. Subnational governments
9. Financing Implementation
10. Measurement, Reporting and Verification
11. Oversight
12. Coordination mechanism

The summary sheet below gives key considerations for each element and summarizes examples from selected countries. The text below explains the rationale for each element, lays out the design considerations, and provides country examples in boxes. The relevance of country examples in the context of their own countries should be considered. The key elements are interdependent and not sequential: the guide does not prescribe a specific process or order for addressing the elements.

ELEMENT	QUESTIONS AND EXAMPLES
 <p>1 Long-Term Targets</p>	<p>Does the law enshrine Low Emission reduction targets for a specific time for Developing Countries and Does it enshrine emissions reduction target for 2050 for Developed Countries?</p> <p>Does the law specify objectives for adaptation?</p> <ul style="list-style-type: none"> • Kenya's revised NDC has an emission reduction target of 32% by 2030, the Implementation of the Updated NDC will be an important part of Kenya's process of transforming to a low emission society. • 2050 net zero targets are included in climate laws in Chile (draft law), Denmark, France, Germany, Norway, Sweden (2045), and the United Kingdom; and in executive acts in Costa Rica, Fiji, and the Marshall Islands.
 <p>2 Intermediate and Sectoral Targets</p>	<p>Does the law enshrine emissions reduction targets for 2030? Does the law include a mechanism for translating targets into action (for example, Budgetary allocations and sectoral targets)? Does the law provide a mechanism to periodically increase the level of ambition in emissions reductions (and at least contain a clause to prevent backsliding)?</p> <ul style="list-style-type: none"> • Mexico has legislated an emissions reduction target for 2030 that is 22 to 36 percent below business as usual, and Denmark has set a 70 percent reduction below 1990 levels by 2030. • A budgetary allocation approach of progressive intermediate targets set well in advance is used in legislation in Papua New Guinea, Kenya and the United Kingdom. • Framework laws in France, Germany, and Mexico establish specific sectoral targets.
 <p>3 Risk and Vulnerability Assessments</p>	<p>Does the law require climate risk and vulnerability assessments? Does the law require the publication of those assessments? Does the law require periodic updates of risk and vulnerability assessments in line with new evidence and science?</p> <ul style="list-style-type: none"> • The United Kingdom's law requires five-year risk assessments and adaptation plans, as well as provides for an independent evaluation of risk assessments and plans. • France has legislation on mandatory climate change-related reporting for asset owners and asset managers. • Kenya has also provided for vulnerability assessments in its NCCAP II
 <p>4 Climate Change Strategies and Plans</p>	<p>Does the law mandate the preparation of mitigation and adaptation strategies and plans? Does the law provide for integration of strategies and plans in existing national planning instruments, such as development plans, sectoral plans, and the annual budget process?</p> <ul style="list-style-type: none"> • Ireland's law requires preparation of a national mitigation plan to 2050, to be updated every five years, and based on national consultation. • Kenya's law mandates the cabinet secretary to formulate a National Climate Change Action Plan, to be updated every five years, with implementation review conducted every two years.
 <p>5 Policy Instruments</p>	<p>Does the law mandate the development of mitigation policy instruments (for example, carbon pricing, information, regulation, public spending, and fiscal actions)? Does the law mandate the development of adaptation policy instruments (for example, information, regulation, public spending, and fiscal actions)? Is it clear who is required to prepare each of the mitigation and adaptation policy instruments and by when?</p>

	<ul style="list-style-type: none"> • Mexico's law authorizes the government to introduce a carbon tax and emissions trading scheme. France's law includes a carbon tax and CO2 emission performance standards. • The United Kingdom's law focuses on the processes to determine and deliver policies (that is, carbon budgets) rather than prescribing specific policy instruments up-front. The government is mandated to outline the key policies in its report on the proposed actions to meet the carbon budget.
 <p>6 Independent Expert Advice</p>	<p>Does the law ensure that the government has access to independent expert advice? Does the expert advice cover both Mitigation and adaptation? Is expert advice required in processes of target setting, policy development, and evaluation? Is the government required to respond to the advice?</p> <ul style="list-style-type: none"> • Laws establish the United Kingdom's Climate Change Committee, Ireland's Advisory Council, Mexico's Consultative Council on Climate Change and the National Institute of Ecology and Climate Change, and France's Expert Committee for Energy Transition. Regulation creates Costa Rica's Scientific Council on Climate Change.
 <p>7 Coordination Mechanism</p>	<p>Does the law authorize a body to coordinate the government's response to climate change? Are both mitigation and adaptation covered? Does a senior authority lead the coordination body? Are subnational governments included?</p> <ul style="list-style-type: none"> • Colombia's framework law on climate change establishes an inter-sectoral Commission on Climate Change. • Kenya's law establishes a National Climate Change Council, chaired by the president. • Mexico's law designates an Inter-Ministerial Commission on Climate Change (CICC) as a coordination mechanism among federal ministries, while a Consultative Council on Climate Change provides for participation of state governments, associations of municipal governments, and representatives of the Mexican Congress. • Bulgaria's Climate Change Mitigation Act authorizes the minister of environment and water to lead coordination of climate action, with ministers in the cabinet serving as a coordination entity. • Papua New Guinea's Law established a Climate Change and Development Authority (CCDA) which is mandated to coordinate all climate change related matters in the country.
 <p>8 Stakeholder Engagement</p>	<p>Does the law create a mechanism for engagement with the private sector, civil society organizations and the public? Is there a clear mandate, objective, and structure, and is participation inclusive? Are both de-carbonization and adaptation covered? Does the law require public engagement on the formulation and implementation of key policies and plans, as well as the review of monitoring reports?</p> <ul style="list-style-type: none"> • Jamaica has established a domestic institutional arrangement with public participation and engagement with local communities and IPs, in a gender-responsive manner. • Laws establish the Citizens' Assembly on Climate Change in Ireland and Colombia's National Council for Climate Change. Costa Rica's Citizen Advisory Council and Citizen Consultative Council on Climate Change are created by decree. Peru's law provides for the participation of indigenous stakeholders. • Norway's Environmental Information Act, implementing the Aarhus Convention, establish public participation in decision making processes relevant for the environment. Consequently, the Climate Change Act was on a public hearing including all stakeholders.

 <p>9 Subnational Government</p>	<p>Does the law require subnational governments to set targets, prepare plans, and report on implementation? Does the framework law provide the means and incentives to mitigate and adapt?</p> <ul style="list-style-type: none"> Mexico's law mandates states and municipalities to develop local mitigation and adaptation programs. Colombia's law requires regional, municipal, and district authorities to incorporate climate change management into their development and land management plans. Kenya's Climate Change Act requires county governments to mainstream climate change into their 5-year CIDPs. Moreover, each county is required to designate a member of the County Executive Committee to coordinate climate change affairs and annually report on implementation to the County Assembly and the National Climate Change Directorate.
 <p>10 Financing Implementation</p>	<p>Does the law require the national government to address climate change risks and policy objectives in the preparation of its public financial management instruments? Does the law require the publication of information on public finances and climate?</p> <ul style="list-style-type: none"> Laws in France, Germany, and Sweden connect the climate policy cycle with the annual budget process. Bangladesh's, Kenya's, and Mexico's laws establish climate change funds for attracting and channeling public, private, national, and international finance.
 <p>11 Measurement, Reporting and Verification</p>	<p>Does the law define the information to be collected, empower government collection, and require periodic reporting and assessment of progress and public access to the information?</p> <ul style="list-style-type: none"> Mexico's law mandates the development of a registry, methodologies, and the system for monitoring, reporting, and verification of emissions, and provides for an annual national report on climate change. Mexico's law also mandates evaluation of the national climate policy at least every two years. Vietnam, entails the ETF to monitor and evaluate the activities and results from the implementation of the updated NDC, including: (i) Establishing MRV systems for mitigation actions at the national and sectoral levels; (ii) Establishing M&E systems for climate change adaptation actions at the national, local and project levels; (iii) Monitoring and evaluating the mobilization of resources for climate change response at the national level; developing budget reports on climate change response and green growth which could be used as the inputs for global stock take to develop monitoring systems for technology transfer and capacity building. Kenya has developed an Integrated MRV system that will capture both mitigation and adaptation actions and these indicators will be used to track adaptation progress. This Integrated MRV system will be linked with the already existing monitoring systems include the National Integrated Monitoring System (NIMES) and County Integrated Monitoring and System
 <p>12 Oversight</p>	<p>Does the law provide for parliamentary oversight of executive actions (and inactions) on climate, and is the executive required to table progress reports in the parliament? Does oversight and accountability include both mitigation and adaptation? Are there provisions for regular independent assessments of progress on implementation of the law?</p> <ul style="list-style-type: none"> Colombia's law requires the president to present to Congress a consolidated report on the country's progress in complying with its Nationally Determined Contribution (NDC) under the Paris Agreement a year before the report is due to the UN Framework Convention on Climate Change (UNFCCC). The United Kingdom's law requires the secretary of state to report to Parliament annually on emissions, including a response to the independent scientific advisory body's assessment on the status of implementation and further progress needed. Kenya's Law requires that all State and Non-State climate change actors to report on all climate change activities they have done each year. These annual reports which are presented through the implementation status of the NCCAP provides a platform to track progress of the NAP 2015-2030 and NDC 2015-2030. These annual reports will advise Kenya's national reports as well as form part of their international reporting obligations under the transparency article of the Paris agreement. These reports will be complemented by the climate finance tracking done by the National Treasury.

How Legislation In Kenya can be Improved to Comply with International Best Standards

Besides the above 12 key elements of International best standards and practices for effective climate change framework legislations and from the Analysis of different Environment and Climate Change Policies in Kenya, the following have been considered as international best standards /best practices for consideration while developing policies and Laws;

- **Identify Priorities:** It is important to undertake a cross-sectoral capacity assessment early in the policy development process. This is of great value to identify gaps and priority needs to focus resources in the short, medium and long-term, this will also be crucial in ensuring that there are no conflicts with the existing laws and policies by avoiding contradictory statements which might undermine another law or policy.
- **Working at multiple levels:** Working at both the National and County level in Kenya, whether supporting training and consultations or translating National policies into local action through is essential since it has been observed that it increases the reach and impact of different policies and Laws. Thus, Public participation is crucial in ensuring that views from all stakeholders including the most vulnerable (women, children, the elderly, people with Disability etc) are considered.
- **Government relations:** Inter-ministerial Committees are important while formulating laws and policies, this will increase influence and support for the process. Besides, contributions from different ministries will enrich the new policies and laws and this will increase synergies across ministries.
- **Financial sustainability:** To ensure long term financial resources for Environment and Climate Change coordination and support, It is important that the government provides resource mobilization training, as well as seeking funding through the Green Climate Fund (GCF), Adaptation Funds etc. Besides, the National Treasury needs to put in place its finance mobilization strategy to ensure that there is sufficient budget allocations for the Policies and Laws.
- **Decision making:** The Project Steering Committee or different working groups, should be able to make decisions as they come. This team could be crucial when emergencies or important issues arise that require quick resolutions.
- **Technical expertise:** Development of new policies and laws need to draw on pools of technical expertise to offer capacity building on issues identified. This will ensure that the laws and policies have quantifiable indicators that can be measured, and realistic budgets attached to them depending on economic analysis of the different priorities/actions provided for in the Laws/Policies.
- **Private sector engagement:** There is need to increase private sector engagement in Environment and Climate Change planning and implementation, not just through information exchange but through more substantive involvement (e.g. Public Private Partnerships, private sector adaptation investments etc).
- **Public awareness:** In Kenya, Public Participation is a provision within the Constitution of Kenya (2010) and the Devolved government Act of (201) Thus, the importance of mainstreaming awareness and public understanding of climate change issues is key.

5. CONCLUSIONS

Climate Change is a sustainable national development issue in Kenya. A coherent and coordinated regulatory framework must therefore guide the national, county and local level responses to the impacts of climate change. The absence of internal coherence in laws and policies has resulted in duplicity and overlap in execution of institutional mandates, with a sub-optimal outcome for Kenya.

The various sectoral laws, policies and institutional mandates that define roles and functions required for climate change response should therefore be harmonized in order to enhance coordination and mainstream climate change into their functions.

- ⇒ The changes to the Constitution of Kenya 2010, which introduced National and County levels of government, indicate a need to **promptly ensure internal coherence and proper coordination of functions**. This should be done in a manner that is complementary and respects the philosophy that specific sectoral functions should be undertaken by the most suitable sector or level of government.
- ⇒ **Devolution is central** to inclusive governance mechanisms, including **public participation** through awareness, consultation and access to information. Climate change governance should internalize progressive approaches, such as mainstreaming gender equity and accounting for the role of youth and persons with special needs. Governance approaches should avail opportunities for all Kenyan people to participate in decision making and become agents for design and implementation of climate change responses.
The environment and climate change sector that shape Kenya's economic landscape face different challenges that may compromise implementation and tier sustainability. The challenges are primarily due to **status governance accorded to the sector**. The country has over the years, instituted many legal and institutional arrangements for strengthening environment and Climate Change governance. These efforts have yielded some remarkable contributions to addressing Environment and Climate Change issues in Kenya.
- ⇒ However, the situation of the Implementation of the laws and policies remain a concern. If the country is to realize effective and efficient Environment and Climate Change governance situation analysis is critical to capture lapses and identify areas of investments.
- ⇒ **Effective and efficient governance** offers the best opportunity for realizing national environment Climate Change aspirations in line with national, regional, and global agendas. The key to supporting effective and efficient governance lies in qualitative research data. Therefore, continuous research for supporting various aspects of environment and Climate Change governance is critical.
- ⇒ More so, environment and Climate Change governance requires the **involvement of stakeholders** in this regard. Modalities for stakeholders' active participation for implementations requires devising and mainstreaming in the environment and Climate Change governance, Already there has been a public validation of the Public participation regulations of the Climate Change Act of 2016.
Besides, the COVID-19 pandemic has exposed the vulnerability of communities in the face of a pandemic as well as climate-related shocks. This is especially so for the most vulnerable groups such as women, children, youth and people with disabilities. Past Analysis shows that the cost of inaction on climate change would be more disastrous in the long-term compared to the current impact of the pandemic. As such, climate change must be integrated in the overall post-Covid recovery.

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