

POLICIES, LAWS, AND REGULATIONS FOR REDD+ IMPLEMENTATION IN KENYA: A GAP ANALYSIS



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Indigenous Livelihoods Enhancement Partners
ILEPA
"Enhancing Indigenous Resiliency"





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List of Abbreviations

AFOLU	Agriculture, Forestry, and other Land Uses
ART	Architecture for REDD+ Transactions
BTR	Biennial Transparency Report
CA	Corresponding Adjustment
CBD	Convention on Biological Diversity
CCD	Climate Change Directorate
CDA	Community Development Agreement
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
EACC	Ethics and Anti-Corruption Commission
EF	Emissions Factor
EIA	Environmental Impact Assessment
ELC	Environment and Land Court
ER	Emission Reductions
ERPA	Emission Reductions Payment Agreement
FCMA	Forest Conservation and Management Act
FCPF	Forest Carbon Partnership Facility
FIP	Forest Investment Plan
FLEGT	Forest Law Enforcement, Governance & Trade
FLR	Forest Landscape Restoration
FREL	Forest Reference Emission Level
FRL	Forest Reference Level
GCF	Green Climate Fund
GHG	Greenhouse Gas
GRM	Grievance Redress Mechanism
ICAO	International Civil Aviation Organization
IP	Indigenous Peoples
IPCC	Intergovernmental Panel on Climate Change
ITMOs	Internationally Transferred Mitigation Outcomes
IUCN	International Union for Conservation of Nature
JCM	Joint Crediting Mechanisms
JNR	Jurisdictional and Nested REDD+
KFS	Kenya Forest Service

KNCHR	Kenya National Commission on Human Rights
NDC	Nationally Determined Contribution
NFMS	National Forest Monitoring System
NGO	Non-Governmental Organization
NGEC	National Gender Equality Commission
NLC	National Land Commission
NRCU	National REDD+ Coordination Unit
NYDF	New York Declaration on Forests
ODPP	Office of the Director of Public Prosecutions
PFM	Participatory Forest Management
PIN	Project Information Note
PLR	Policies, Laws and Regulations
RBP	Results-Based Payment
SDG	Sustainable Development Goals
REDD+	Reducing Emissions from Deforestation and Forest Degradation Plus the Sustainable Management of Forests, and the Conservation and Enhancement of Forest Carbon Stocks
SIS	Safeguard Information System
SLEEK	System for Land based Emission Estimation for Kenya
TREES	The REDD+ Environmental Excellence Standard
UN	United Nations
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNCCD	United Nations Convention to Combat Desertification
VCS	Verified Carbon Standard
WFR+	Warsaw Framework for REDD+

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EXECUTIVE SUMMARY

REDD+ implementation in Kenya has the potential to deliver promising results in addressing deforestation and forest degradation while promoting sustainable development. The country has made significant progress in establishing the necessary frameworks, policies, and institutional capacities to support REDD+ initiatives. Some of the policies developed include the National REDD+ Strategy, the Forest Reference Level, and the National Approach to Safeguards which form part of the Warsaw components for demonstrating REDD+ readiness.

Through its ongoing REDD+ projects, some of which are already selling carbon credits at the voluntary carbon markets, Kenya has demonstrated its commitment to reducing emissions from deforestation and forest degradation, conserving forests, and enhancing carbon stocks. Aiming to strengthen the implementation of REDD+ in Kenya, this study, which was undertaken between the months of December 2022 to September 2023, has analyzed Kenya's policy and legislative framework governing REDD+ and highlighted several key areas that require attention and action.

The report has identified that in the absence of a REDD+ specific policy and legislative framework, the country is relying on a multisectoral and multi-disciplinary framework. This framework encompasses policies and legislations from the environmental, forestry, land, climate change, and finance sectors. Due to its reliance on a disjointed multisectoral framework to govern REDD+, the country has faced some challenges in the implementation process. These challenges include significant gaps in the legislative framework such as overlaps in institutional mandates, conflicting provisions as different laws that provide differently on key REDD+ aspects such as benefit sharing and unclear enforcement and grievance redress mechanisms. The report highlights that moving forward, it is imperative for policymakers and all other key stakeholders involved in REDD+ to work together to enact the necessary legislative changes and strengthen regulatory frameworks in order to address the below emerging gaps and implement the proposed recommendations:

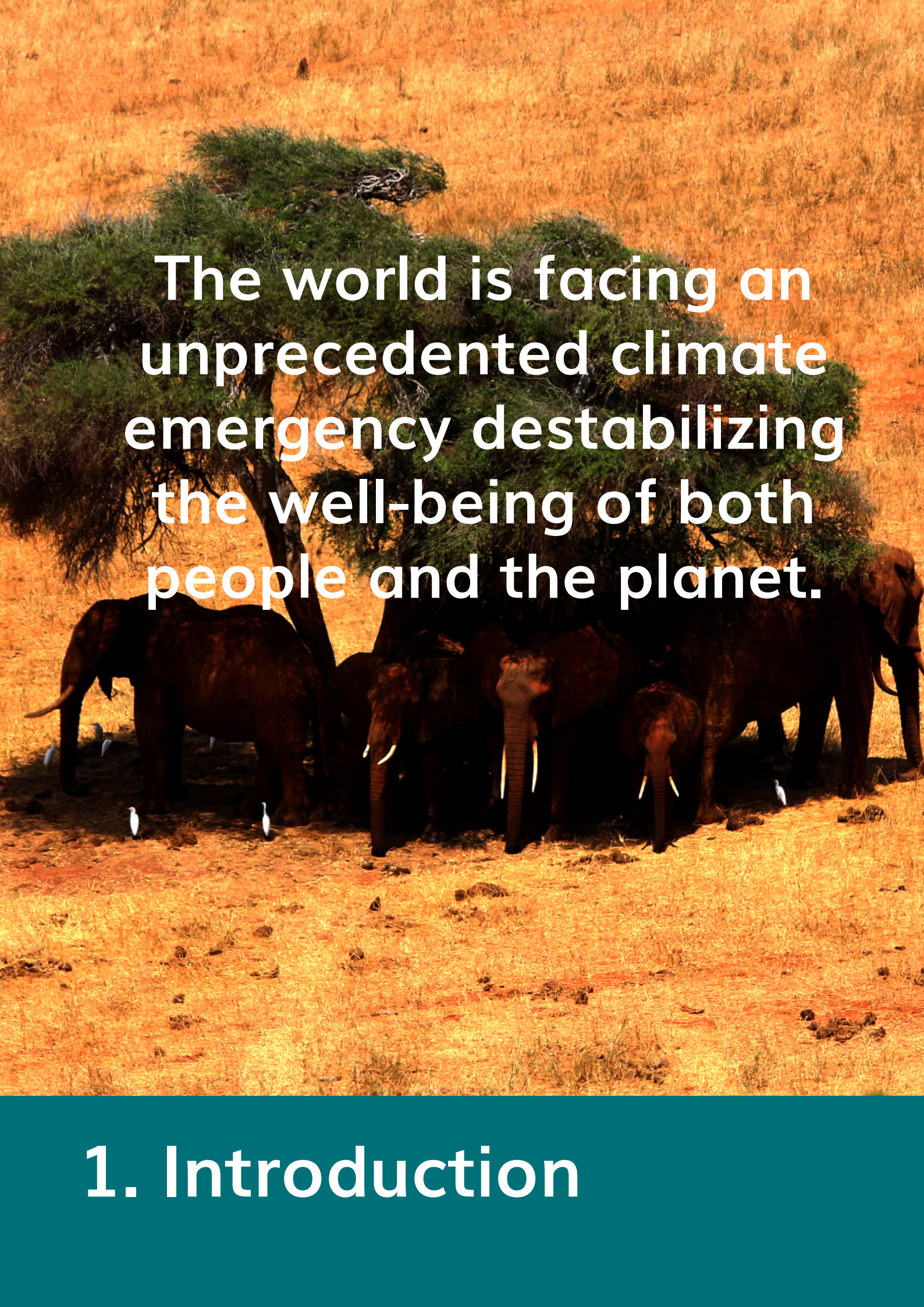
Thematic areas	Identified Thematic Gaps	Study's Recommendations
Application of International Law	<ul style="list-style-type: none"> • Inconsistent meeting of international reporting requirements under the UNFCCC and other Multilateral Environmental Agreements. • Lack of sufficient technical, financial and technological awareness which limits Kenya's ability to conduct monitoring reporting and verification, collect and report data, and ultimately engage in international negotiations. • Insufficient collaboration, knowledge exchange and cooperation amongst countries on REDD+. 	<ul style="list-style-type: none"> • Strengthened processes for meeting reporting obligations of the Multilateral Environmental Agreements the country has ratified so as to ensure regular and timely reporting on international commitments and obligations. • Increased participation of all critical stakeholders in the UNFCCC Conference of the Parties (COP) processes is necessary with awareness shared amongst these stakeholders on how to engage in pre-COP preparations, at the COP, and in post-COP processes. • Adoption and implementation of mechanisms and platforms that encourage and enhance the ability of countries to collaborate, cooperate and share knowledge on REDD+. This will provide avenues for the harmonization of policies and strategies across neighboring countries or jurisdictions facilitating the efficient distribution of resources and expertise.
Institutional Governance Architecture	<ul style="list-style-type: none"> • Lack of clear guidelines on the mandates of established institutions. • Delayed implementation of the institutional governance framework provided in the National REDD+ Strategy. • Limited participation in forest conservation by non-State key stakeholders. 	<ul style="list-style-type: none"> • Clarify the mandates of the different institutions with a role to play in the implementation of REDD+. This includes institutions such as National Gender and Equality Commission (NGEC), Kenya National Human Rights Commission (KNHRC), Ethics and Anti Corruption Commission (EACC), Kenya Revenue Authority (KRA), National Treasury, Ministry of Environment Climate Change and Forestry, and County Governments in order to enhance coordination and cooperation amongst them. • Fully establish the institutional framework envisaged by the National REDD+ Strategy. This necessitates the appointment of members to the National REDD+ supervisory board and the National REDD+ Steering Committee. It also requires increasing the capacity of the National REDD+ Coordination Unit (NRCU) within the Directorate of Forest Conservation and establishment of key Thematic Working groups. • Enhance effective participation of non-State key stakeholders in forest conservation efforts, including Community Forest Associations, Indigenous Peoples, Local Communities, and private sector entities as they all have a critical role to play in forest sector governance.

Thematic areas	Identified Thematic Gaps	Study's Recommendations
Forest, Land and Tree Tenure	<ul style="list-style-type: none"> Lengthy timelines for the development of laws and policies on forest management and conservation. NLC lacks a public land inventory database mapping all public lands in Kenya. Complexities and undue bureaucracy in the process of registering community land. 	<ul style="list-style-type: none"> Fast track pending policies and laws regarding forest management, such as the Draft National Forest Policy, amendments to the Forest Conservation and Management Act (FCMA), draft regulations under the FCMA and approve draft policies and guidelines such as the Free Prior and Informed Consent Guidelines to enable implementation of key provisions. Accelerate design and utilization of a country-wide Digital Public Land Inventory Database to enhance the National Land Commission's ability to manage land resources, facilitate seamless data sharing and real-time data transfer among counties. Simplify and harmonize the community land registration process to enable county governments and land registries to work seamlessly to enable communities to register their land.
Local Communities, Indigenous Peoples, Gender, and Inclusion	<ul style="list-style-type: none"> Insufficient study of the structural, behavioral, and cultural barriers that women and men face when participating in REDD+ activities. Inadequate domestication of international treaties and conventions on the protection and respect of Indigenous People's rights. Lack of full compliance with the 2/3 gender rule by both private and public institutions. 	<ul style="list-style-type: none"> Identify through research, the structural, behavioural, and traditional barriers that women and men face and addressing them during the implementation of REDD+. Domesticate the provisions of international treaties and conventions on the protection and respect of Indigenous Peoples rights through the development of an explicit policy and legislative framework. Implement REDD+ through a human rights-based approach that respects the rights of Indigenous Peoples to their territories ensuring their free prior and informed consent in any action to be taken on such land. Facilitation of Indigenous Peoples' participation in decision making in the design of payment schemes during the three REDD+ phases, thereby assuring that their points of view on forest use are incorporated. Enhance compliance by both public and private sectors with the minimum statute requirements of gender equality and inclusion

Thematic areas	Identified Thematic Gaps	Study's Recommendations
Carbon Rights	<ul style="list-style-type: none"> Lack of explicit law setting out who has the right to benefit from sequestered carbon and or reduced greenhouse gas emissions. Lack of clarity on the nature, ownership, and transfer of carbon credits. Lack of clarity on the modalities of the REDD+ Standards Assessment prescribed under the Climate Change Amendment Act, 2023. Lack of clear modalities on the efficient working of the National Carbon Registry and other sector registries established under the Climate Change Amendment Act, 2023. Knowledge gap at the county-level on carbon rights and land ownership and tenure. 	<ul style="list-style-type: none"> Set out clear legislative provisions on the ownership of carbon rights. Clarify the nature, ownership, and transfer of carbon credits in the Climate Change Amendment Act, 2023 and the Draft Climate Change (Carbon Markets) Regulations, 2023. Develop guidelines that set out the process and modalities of the REDD+ Safeguards Standards Assessment. Determine the modalities of the Carbon Registry established by the Climate Change Amendment Act, 2023 through the drafting of rules and regulations. Build capacity on carbon rights and land ownership and tenure across all counties, focusing on enhancing the knowledge of county governments local communities and project developers.
Benefit Sharing	<ul style="list-style-type: none"> The existence of multiple enacted and proposed benefit sharing legislative and regulatory frameworks creates disharmony in the forest sector. The Climate Change Amendment Act, 2023 introduces benefit sharing through an annual social contribution that shall be disbursed to communities through a negotiated community development agreement. It does not however clarify the modalities for developing and implementing the agreement. 	<ul style="list-style-type: none"> Eliminate overlap in the case of benefit sharing by clarifying which benefit sharing agreements and provisions apply to REDD+, as both the Natural Resources (Benefit Sharing) Bill establishes a requirement for benefit sharing agreements between forest project developers and counties for the benefit of Local Communities, and the Climate Change (Amendment) Act establishes the requirement for Community Development Agreements between project developers and Local Communities in land-based projects, creating two different regimes for benefit sharing in forest projects. Clarify through regulation, key modalities of operationalizing the community development agreement including the roles of the parties to the agreement, the mechanism of disbursing the annual social contribution to communities, the role of county governments in overseeing and monitoring the negotiation and the process of recording and registering the agreement in the National Carbon Registry.

Thematic areas	Identified Thematic Gaps	Study's Recommendations
Measurement, Reporting and Verification	<ul style="list-style-type: none"> Delayed enactment of the draft Climate Change (Monitoring, Reporting and Verification) Regulations 2022. Funding of Monitoring Reporting and Verification (MRV) remains a challenge. Lack of an FRL that will provide accurate baseline data in the forestry sector to incentivize the reduction of emissions from deforestation and forest degradation. 	<ul style="list-style-type: none"> Enact the Draft Climate Change (Monitoring Reporting and Verification) Regulations 2022 to clarify through regulation, the responsibilities of public and private sector entities on MRV. Support MRV through increased funding to meet costs for infrastructure development and the building of local technical capacity for maintaining the national MRV system to ensure high quality information and high integrity carbon credits from Kenya. Fast track the development of baselines that appropriately incentivize actions to reduce deforestation risk and ensure an appropriate MRV framework that ensures the integrity of abatement and alignment with UNFCCC requirements.
REDD+ Finance Management	<ul style="list-style-type: none"> Lack of clarity on the access and flow of finances in a nested REDD+ framework. Insufficient funds being directed towards REDD+ initiatives. Lack of REDD+ specific laws addressing the use and management of REDD+ funds. 	<ul style="list-style-type: none"> Enactment of policies and laws that make Kenya attractive for REDD+ investment such as the development of National REDD+ Nesting Regulations to enable accounting and reporting emission reductions (ERs) of REDD+ initiatives on multiple scales, and access to multiple sources of financing. Establishment of the Climate Change Fund as envisioned under Article 25 of the Climate Change Act and the Forest Conservation and Management Trust Fund under Section 27 of the Forest Conservation and Management Act to ensure capitalization of the Funds from various sources with portions earmarked for REDD+. Develop a specific benefit sharing framework for REDD+ that articulates how funds are managed and distributed to stakeholders.

Thematic areas	Identified Thematic Gaps	Study's Recommendations
Transparency, Accountability and Anti-Corruption	<ul style="list-style-type: none"> • Respondents who witness incidents of unethical conduct in public offices do not always know where to report and the nature of the report to make. • The Anti-corruption Guidelines for REDD+ in Kenya are yet to be approved and consequently adopted thereby delaying and or preventing implementation. • Ethics and Anti-Corruption Commission (EACC) is not listed as a commission under Chapter 15 of the Constitution and lacks prosecutorial powers. • Special magistrates established under the Anti-Corruption and Economic Crimes Act (ACECA) only act as a court of first instance and all their decisions are subject to appeals from the higher courts who have review and revision powers against them. 	<ul style="list-style-type: none"> • Conduct capacity building on reporting and handling of corruption cases to ensure that all citizens know where and how to make a corruption complaint especially in the forest, land and environment sectors. • Adoption of the Anti-corruption Guidelines for REDD+ in Kenya and ensure their implementation. • Enhance collaboration between the EACC and the Office of the Director of Public Prosecutions (ODPP). This can include the EACC lodging civil suits alongside the ODPP's criminal suits. • Sensitization and training of judges and magistrates on combating corruption in REDD+ and other nature based solutions projects to provide judicial officers with the tools for analyzing ethical issues in this sector.
Grievance Redress Mechanism	<ul style="list-style-type: none"> • Slow prosecution and low penalties for forest crimes and offences. • Limited Environment and Land Court (ELC) stations across the country, and —under-staffing of the few existing stations. • Grievance Redress Mechanism proposed for the SIS is different from that proposed in the strategy and the Climate Change Amendment Act, 2023. 	<ul style="list-style-type: none"> • Capacity building for prosecutors and judicial officers on environmental and forestry related offences and appropriate and legal penalties reflecting the gravity of offences. • Increase of ELC stations across the country, as there are currently 10 counties without an ELC station within them, thus making it difficult to access justice. • Harmonization of the various Grievance Redress Mechanisms established and sensitization of where the National REDD+ Strategy's Grievance Redress Mechanism established in the National REDD+ Strategy fits in with the provisions of the Climate Change Amendment Act, 2023.

A photograph of a savanna landscape. In the foreground, a herd of elephants is gathered under the shade of a large, dark green acacia tree. The elephants are dark brown and have long, curved tusks. Several white birds, possibly egrets, are standing on the dry, yellowish ground around the elephants. The background is a vast, open savanna with dry grass and a few scattered trees under a bright, hazy sky. The overall color palette is dominated by warm, earthy tones of orange, yellow, and brown, contrasted by the green of the tree and the white of the birds. A solid teal banner is at the bottom of the image.

The world is facing an
unprecedented climate
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1. Introduction

1.1 The Emergence of REDD+

The world is facing an unprecedented climate emergency destabilizing the well-being of both people and the planet. Human-induced climate change, including more frequent and intense extreme weather events, is causing widespread adverse impacts and related losses and damages to nature and people beyond natural climate variability.¹ Climate change is now recognized as leading to irreversible impacts in certain cases, where natural and human systems are pushed beyond their ability to adapt, and worse still, the adverse effects of climate change are disproportional across sectors and regions, with vulnerable people most affected.²

Forests as carbon sinks play a key role in the fight against climate change.³ They absorb carbon dioxide and store it in different repositories (carbon pools), which include trees (both living and dead), root systems, undergrowth, the forest floor, and soils. However, when they are cut down, burnt or otherwise destroyed, they release majority of the carbon they were holding into the atmosphere as carbon dioxide.⁴ According to the Intergovernmental Panel on Climate Change (IPCC), Agriculture, Forestry and other Land Uses (AFOLU) sector accounts, on average, for 13-21 per cent of the total global anthropogenic green house (GHG) emissions in the period between 2010-2019.⁵ Most notable, is the fact that 45 per cent of the aforementioned emissions were on account of deforestation and forest degradation.⁶

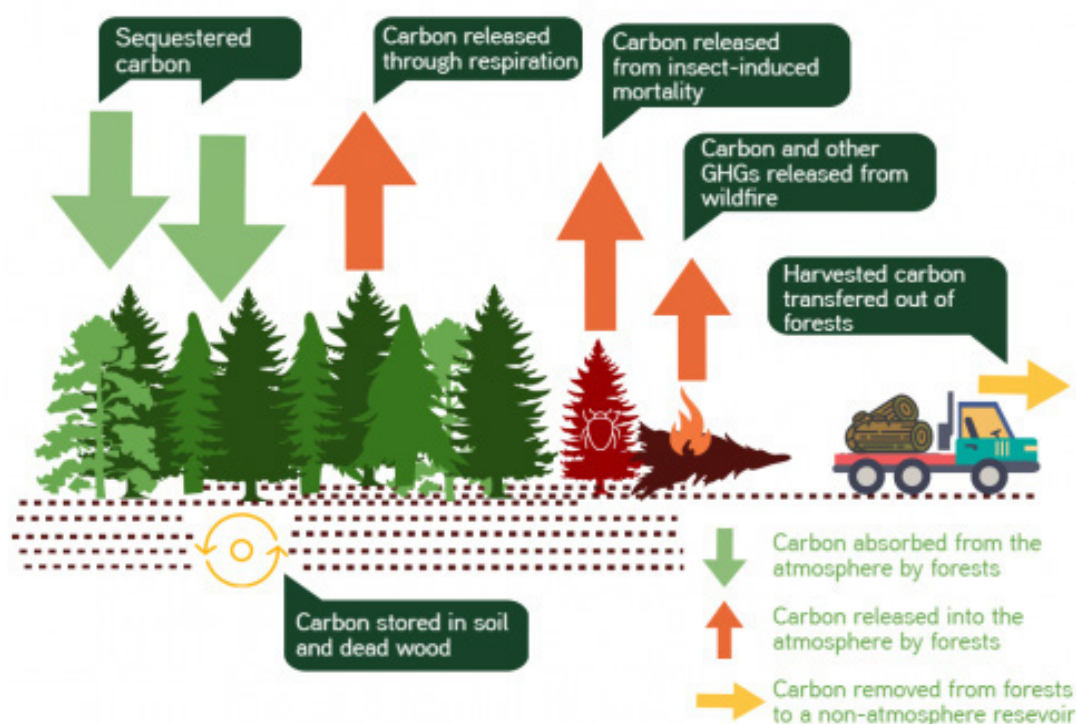


Figure 1: The role of forests in carbon sequestration.⁷

¹ H.-O. Pörtner et al, "IPCC, 2022: Summary for Policymakers", in H.-O. Pörtner et al (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (Cambridge University Press, 2022).

² *Ibid*, IPCC 2022

³ Food and Agriculture Organization of the United Nations (FAO), *Global Forest Resources Assessment 2020: Main Report* (FAO 2020).

⁴ Bernier P., and Schoene, D., *Adapting forests and their management to climate change: an overview*. (Vol. 60, pp. 5-11). Rome, Italy (FAO, 2009).

⁵ International Panel on Climate Change (IPCC), *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, IPCC AR6 WGIII (IPCC 2022), at 8-9.

⁶ *Ibid*, IPCC 2022

⁷ Marina Melandis, *Forest Ecosystems, and the Carbon Cycle*, (Pacific Institute for Climate Solutions, 2017).

The global community has come together through the auspices of the United Nations Framework Convention on Climate Change (UNFCCC), to address global deforestation and forest degradation in recognition of the important role played by forests in combating climate change.⁸ The global response was initially under the banner of REDD (Reductions in Emissions from Deforestation in Developing Countries), which was a concept introduced by the Coalition of Rainforest Nations in a submission to the UNFCCC's 11th Conference of the Parties (COP 11) in 2005.⁹ The concept outlined an approach for the UNFCCC to support the use of international financing from industrialized countries to reduce carbon emissions from tropical deforestation.

In 2007 at COP 13, parties agreed to the Bali Action Plan aimed to address through long-term co-operative action geared towards an agreed outcome, *"policy approaches and positive incentives on issues relating to REDD in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries"*.¹⁰ This marked the enhancement of REDD to REDD+. Parties also set out approaches to stimulate action for reducing emissions from deforestation in developing countries including calling for demonstration projects to reduce GHG emissions from deforestation and forest degradation and encouraging parties to the UNFCCC and others to provide both financial and technical support for these efforts.¹¹

REDD+ was conceived as a voluntary, 'nationally-driven' mechanism for high-income countries (set out in Annex 1 of the UNFCCC) to pay low- and middle-income countries (non-Annex 1 Parties to the UNFCCC) for the reductions in forest emissions.¹² As currently conceptualized, REDD+ recognizes the carbon and non-carbon benefits of keeping trees standing, whilst addressing the land uses that drive deforestation and degradation and enables implementing countries to:¹³

- Preserve their globally important forests to help remove GHGs and mitigate climate change.
- Protect critical biodiversity; and
- Provide forest-dependent communities with new streams of benefits.

Recent estimates are that depending on how quickly mobilization efforts are undertaken, halting deforestation could cost-effectively avoid emitting 3.6 +/- 2 GtCO₂e per year between 2020 and 2050, with benefits not just for climate but also biodiversity, health, and long-term food security.¹⁴ All indications are that REDD+ implementation and financing is key to attaining these results.

⁸ IPCC, IPCC 2022: *Climate Change 2022: Mitigation of Climate Change*.

⁹ Tehan, M., et al, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD* (Cambridge University Press, 2017).

¹⁰ United Nations Framework Convention on Climate Change (UNFCCC), *Report of the Conference of Parties on its 13th Session, held in Bali from 3 to 15 December 2007*, Decision 1/CP.13, FCCC/CP/2007/6/Add.1 (UNFCCC 2007). In 2010 at COP 16, there was an "agreed outcome" in the form of the Cancún decision on REDD+ which was adopted to expand the role of forests in mitigating climate change to include conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks, as envisioned by the Bali Action Plan.

¹¹ United Nations Framework Convention on Climate Change (UNFCCC), *Report of the Conference of Parties on its 13th Session, held in Bali from 3 to 15 December 2007*, Decision 2/CP.13, FCCC/CP/2007/6/Add.1 (UNFCCC 2007)..

¹² John Parrotta et al, (eds.), *Forests, Climate, Biodiversity and People: Assessing a Decade of REDD+*, International Union of Forest Research Organizations (IUFRO) World Series Volume 40, (IUFRO, 2022).

¹³ *Forest Carbon Partnership Facility (FCPF), 2022 Annual Report* (FCPF, 2022).

¹⁴ FAO, *The State of the World's Forests 2022* (FAO, 2022).

1.1.1 REDD+ in the international climate change regime

REDD+ is recognized in the current international climate change regime which underscores the important role of forests in addressing climate change. It is reflected in Article 4 of the UNFCCC which commits parties to promote the sustainable management, conservation and enhancement of sinks and reservoirs of GHGs, including forests.¹⁵ Since 2007, the UNFCCC through successive COPs has established guidance, rules, and modalities to steer the implementation of REDD+. Significantly, COP 16 which was held in Cancun in 2010 adopted a series of decisions that recognized key facets for the success of REDD+ to include good governance and consideration of the role of women, Indigenous Peoples, and Local Communities; established social-economic & environmental safeguards; and maintained the integrity of forest related emissions reductions.¹⁶

As per the Cancun Agreement, State parties participating in REDD+ are required to develop: a national strategy; a robust and transparent national foresting monitoring system (NFMS) for the monitoring and reporting of REDD+ activities, including measurement, reporting and verification (MRV); a national (or sub-national) forest reference emission level and/or forest reference level (FRL) and a safeguards information system (SIS). COP 19, held in 2013 in Warsaw, adopted the Warsaw Framework for REDD+ (WFR+), which set out the principles, modalities, and guidance for the implementation of REDD+ under the UNFCCC. This set of decisions operationalizes REDD+ and includes guidance on; national forest monitoring systems (NFMS); technical assessment of reference levels; measurement, reporting and verification; safeguards; drivers of deforestation and forest degradation; finance and result-based payments; and institutional arrangements.



Figure 2: Elements of UNFCCC Warsaw Framework for REDD+.¹⁷

REDD+ is incorporated in the Paris Agreement, which aims to hold the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit temperature increase to 1.5 degrees Celsius.¹⁸ Article 5 of the Paris Agreement particularly signifies the importance of REDD+ as a core element of the global response to climate change, by calling on parties to conserve and enhance sinks and reservoirs of GHGs, including forests. It also encourages state parties to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the UNFCCC. Additionally,

¹⁵ Article 4, United Nations Framework Convention on Climate Change (UNFCCC, 1992).

¹⁶ Decision 1/CP.16 *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, (UNFCCC, 2010).

¹⁷ UN-REDD, *Eighth Consolidated Annual Progress Report of the UN-REDD Programme Fund*, 2016-Annual Report of the UN-REDD Programme Fund (UN-REDD 2016) Page 7.

¹⁸ Article 2, Paris Agreement, FCCC/CP/2015/10/Add.1 Decision 1/CP.21.

Article 6 of the Paris Agreement is relevant to REDD+, as it presents an opportunity for accessing finance through co-operative approaches.

REDD+ aspects are also recognized in climate-related international agreements such as the United Nations Convention to Combat Desertification (UNCCD) which requires national action programmes that include integrated and sustainable management of forests¹⁹ and national targets under the convention's land degradation neutrality programme;²⁰ and the Convention on Biological Diversity (CBD) under which state parties agreed to the historic Kunming-Montreal Global Biodiversity Framework at COP 15 in December 2022.²¹ The Framework's targets with a bearing on REDD+ include a target to reduce threats to biodiversity through restoration of at least 30 per cent of degraded ecosystems by 2030 (Target 2); and to minimize the impact of climate change on biodiversity and increase resilience through among others, nature-based solutions (Target 8).

Non-binding initiatives that are supportive of REDD+

- **Forests and Climate Leaders' Partnership launched at COP27** that will help deliver the commitments made during COP26 as highlighted below.
- **Glasgow Leaders' Declaration on Forests and Land Use (2021)** – Initiated at UNFCCC COP 26, this is a pledge of 145 countries (including Kenya) to working collectively to halt and reverse forest loss and land degradation by 2030, while delivering sustainable development and promoting an inclusive rural transformation.
- **Declaration on the UN Decade on Ecosystem Restoration (2021 – 2030)** - Pursuant to UN General Assembly resolution 73/284, the UN Decade on Ecosystem Restoration 2021-2030 aims to 'prevent, halt, and reverse the degradation of ecosystems worldwide including forest ecosystems.
- **United Nations Strategic Plan for Forests (2017–2030)** - Adopted by the UN Economic and Social Council and the UN General Assembly in 2017, the Strategic Plan features a set of six Global Forest Goals and 26 associated targets to be reached by 2030, including a target to increase forest area by 3 per cent worldwide by 2030.
- **United Nations Sustainable Development Goals (SDGs) (2015)** - The 2030 Agenda for Sustainable Development and its 17 SDGs was adopted by UN Member States in 2015. REDD+ is related to achieving SDG 15 on Life on Land, and SDG 13 on Climate Action, amongst others.
- **New York Declaration on Forests (NYDF) (2014)** - The NYDF was adopted as a political declaration calling for the end of natural forest loss and the restoration of 350 million hectares of degraded landscapes and forestlands by 2030.
- **Bonn Challenge on Forest Landscape Restoration (FLR) (2011)** - The Bonn Challenge is a global effort to bring 350 million hectares of deforested and degraded land into restoration by 2030. It was launched in 2011 by the Government of Germany and IUCN and has generated significant interest and mobilisation around forest restoration.
- **African Forest Landscape Restoration Initiative (AFR 100)** - The AFR 100 is a partnership of 33 African governments (including Kenya) as well as technical and financial partners, whose aim is to bring 100 million hectares of African Land into restoration by 2030. It aims to achieve this by restoring mangroves, grasslands, agro-forests and forests.

¹⁹ United Nations Convention to Combat Desertification, 33 I.L.M. 1328 (1994).

²⁰ UNCCD, The LDN Target Setting Programme. At <https://www2.unccd.int/actions/ldn-target-setting-programme>. Accessed 23 October 2022.

²¹ Convention on Biological Diversity, 31 ILM 818 (1992).

1.1.2 Accessing REDD+ Finance

REDD+ introduced the aspect of creating financial value in the natural carbon stored in forests,²² while promoting other co-benefits of reducing deforestation such as bio-diversity conservation, sustainable management of forests and the conservation of the already existing carbon stocks.²³ REDD+ initiatives typically incentivize and compensate developing countries for reducing their emissions from deforestation and forest degradation through results-based payments which is typically the final phase in REDD+'s three phased approach consisting of readiness, implementation, and payment for results as illustrated below:

- **Phase one** - developing national strategies or action plans, policies and measures, and other capacity building activities.
- **Phase two** - implementing national policies and measures, and national strategies or action plans.
- **Phase three** - receipt of results-based payments following the verification of emission reductions.²⁴

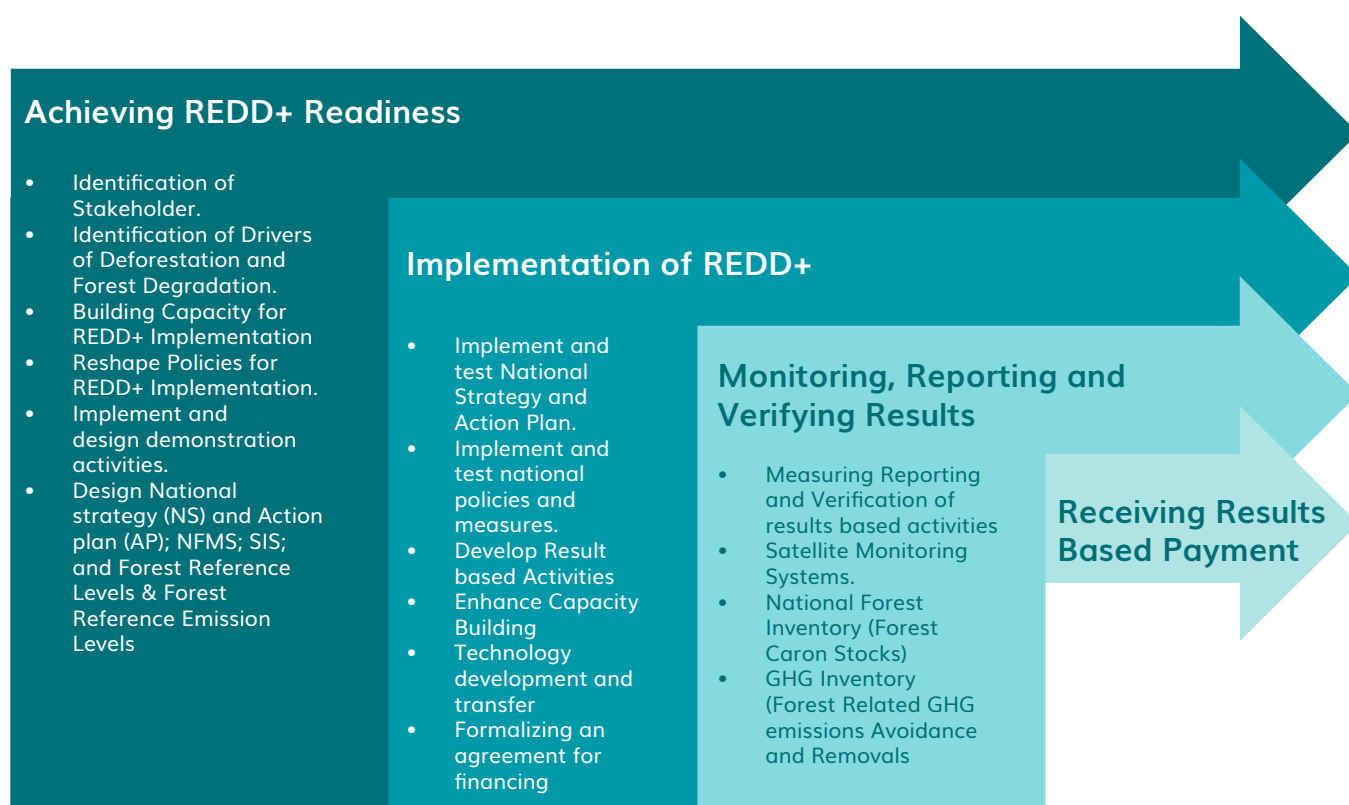


Figure 3: Redd+ in action (Adapted from²⁵)

²² United Nations Framework Convention for Climate Change (UNFCCC), *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action*. FCCC/CP/2005/MISC.1 (UNFCCC, 2005).

²³ Tehan, M., et al, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD* (Cambridge University Press, 2017) at 1.

²⁴ UN-REDD, *Eighth Consolidated Annual Progress Report of the UN-REDD Programme Fund*, 2016-Annual Report of the UN-REDD Programme Fund (UN-REDD 2016)

²⁵ Yawovi S Kouami K Moussa S et al, (2018) Tropical Forests in the Context of Climate Change: From Drivers, Policies to REDD+ Actions and Intensity Analysis – A Review, DOI: 10.20944/preprints201805.0198.v1; UN-REDD, *Climate Change, and the Role of Forests*, (REDD+ Academy, 2016); UN-REDD, *Drivers of deforestation and forest degradation (DDFD)*, (UNREDD,2016); UN-REDD, *Understanding REDD+ and the UNFCCC*, (UN-REDD, 2016).

REDD+ implementing countries must be prepared to receive results-based payments for conserving forests through REDD+ readiness activities.²⁶ This is accomplished by initially establishing a FREL or FRL that serves as a baseline for measuring and assessing the performance of REDD+ activities. The reference level also sets the basis for measuring the effectiveness of REDD+. Reference levels are reported as emitted tons of CO₂ per year from deforestation and forest degradation for a reference period. REDD+ readiness also involves implementing national policies, measures, and strategies, as well as conducting demonstration projects.²⁷

After achieving REDD+ readiness, the country, subnational entity, or locality may enter into a legally binding commitment (agreement) with a funder to finance REDD+ activities. An agreement typically contains provisions and terms for implementing REDD+ activities and for providing payments upon the completion of these activities. An agreement may also contain conditions for adhering to REDD+ safeguards, such as taking actions that are consistent with national forest plans and international agreements, among other conditions. REDD+ activities typically are implemented after agreements are made, although in some cases agreements may cover existing activities.

Post implementation, results are monitored, reported, and verified (MRV) before payments are given. Domestic agencies may monitor deforestation, reforestation, and forest degradation with satellite imagery and analyze the results. Forest data also helps scientists estimate the effects of REDD+ activities through indicators such as how many tons of carbon dioxide are removed annually. MRV protocols may also include measuring the effectiveness of REDD+ activities and verifying the distribution of payments and non-monetary benefits to stakeholders.

As of September 2020, 13 countries had reported results from national-level REDD+ activities, most of which aim to reduce emissions from deforestation.²⁸ These country-level programs reported to the UNFCCC emissions reductions from REDD+ totaling 9.03 billion tons of CO₂e; approximately 90% of this amount was reported from Brazil.²⁹

There are multiple initiatives that address deforestation through REDD+ and support countries in getting ready for REDD+, implementing REDD+ policies and measures and providing results-based payments both through market and non-market sources. These include funding bodies and mechanisms, as well as standard setting bodies. A summary of the initiatives facilitating REDD+ financing is highlighted in Table 1.

²⁶ United Nations Framework Convention for Climate Change (UNFCCC), *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action*. FCCC/CP/2005/MISC.1 (UNFCCC, 2005).

²⁷ *Ibid*, UNFCCC 2005

²⁸ FAO, *From reference levels to results reporting: REDD+ under the United National Framework Convention on Climate Change*, (FAO, 2020).

²⁹ *Ibid*, FAO 2022

Table 1: REDD+ funding initiatives and standards

INITIATIVE	DESCRIPTION
United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD Programme)	The UN-REDD Programme is a collaborative initiative of the Food and Agriculture Organization of the UN (FAO), the UN Development Programme (UNDP) and the UN Environment Programme (UNEP). Launched in 2008, the programme helps developing countries build capacity and implement a national level REDD+ program through comprehensive REDD+ readiness. UN-REDD is composed of two components (National/Country Programmes and Global Programme). UN-REDD has mobilized \$1 billion US in REDD+ financing since inception, including \$350 million US in results-based payments. ³⁰ UN-REDD countries have submitted more than 700 million tCO ₂ of forest emissions reductions to the UNFCCC and have adopted REDD+ policies at ministerial/cabinet level. ³¹ More than 30 countries have established participatory and socially inclusive REDD+ processes. ³²
Forest Carbon Partnership Facility (FCPF)	<p>Launched in 2008, the FCPF now works with 47 developing countries across Africa, Asia, and Latin America and the Caribbean, along with 17 donors that have made contributions and commitments totaling to \$1.3 billion.³³ The FCPF supports REDD+ efforts through two separate but complementary funds.</p> <ul style="list-style-type: none"> • The FCPF Readiness Fund helps countries set up the building blocks to implement REDD+. This includes designing national REDD+ strategies, developing reference emission levels, designing measurement, reporting, and verification systems and setting up national REDD+ management arrangements, including proper environmental and social safeguards. Current funding: \$400 million.³⁴ • The FCPF Carbon Fund pilots results-based payments to countries that have advanced through REDD+ readiness and implementation and have achieved verifiable emission reductions in their forest and broader land-use sectors. Current funding: \$900 million.³⁵ In October 2021, FCPF Carbon Fund issued to Mozambique, the world's first payment for independently verified jurisdictional REDD+ emission reductions.³⁶ There are more payments in the FCPF pipeline, and all 15 countries in the FCPF Carbon Fund are on track to receive their own payments for certified emission reductions through agreements that will unlock up to \$721 million in results-based payments for forest-related emission reductions.³⁷
World Bank's Forest Investment Program (FIP)	The Forest Investment Programme (FIP) was established by the World Bank in 2009 to support sustainable forest management and reforestation activities, in line with REDD+ objectives. There are currently 23 countries receiving FIP funds. FIP provides grants and concessional loans through multilateral development banks for countries to address drivers of deforestation and implement REDD+. Contributions to the FIP total USD 785 million. ³⁸ The contributors include Australia, Denmark, Japan, Norway, Spain, Sweden, United Kingdom and the United States. The World Bank Group, the African Development Bank, the Asian Development Bank, the European Development Bank, and the Inter-American Development Bank are the implementing agencies for FIP investments. ³⁹

³⁰ United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD Programme), *Impact Flyer: Forest Solutions to the Climate Emergency*, (UN-REDD2020).

³¹ *Ibid*, UN-REDD 2020.

³² *Ibid*, UN-REDD 2020.

³³ The Forest Carbon Partnership Facility (FCPF), *About the FCPF*, (FCCP, 2022).

³⁴ *Ibid*, FCPF 2022

³⁵ *Ibid*, FCPF 2022

³⁶ Forest Carbon Partnership Facility (FCPF), *2022 Annual Report*, (FCPF, 2022).

³⁷ *Ibid*, FCPF 2022

³⁸ International Bank for Reconstruction and Development, (The World Bank), *State and Trends of Carbon Pricing 2022*, (World Bank 2022).

³⁹ *Ibid*, World Bank 2022

The Green Climate Fund (GCF)	The GCF was established at COP 16 in Cancún and recognised as a financing mechanism for REDD+ results-based payments in 2014 at COP 19. In 2017, the GCF established a USD 500 million REDD+ pilot financing programme and by 2020, these funds were fully allocated due to countries' increased demand, with results-based payments approved for eight countries (Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Indonesia and Paraguay). GCF also mobilised USD 10 Billion in its first replenishment period (2020-2023) and is engaged in funding forest and land use projects.
The Global Environment Facility (GEF)	The GEF established in 1992 is a major source of funding for implementation of the world's multilateral environmental agreements. GEF has included in strategy for the replenishment period (GEF-8 – 2022–2026) a new integrated programme on "Landscape Restoration". ⁴⁰ Twenty-nine donor governments finalized \$5.33 billion in pledges for this period to meet nature and climate targets. ⁴¹
Lowering Emissions by Accelerating Forest finance (LEAF) Coalition	The LEAF Coalition has a goal to halt deforestation by financing large scale tropical forest protection. In 2021, the Coalition mobilized \$1bn in financing, kicking off the largest-ever public-private effort to protect tropical forests. ⁴² The initiative is being administered by Emergent Forest Finance Accelerator , a non-profit connector of companies that want to buy credits or otherwise finance high-quality tropical forest emissions reductions and the tropical forest jurisdictions that can generate these reductions. On 7 November 2022 during COP 27 The LEAF Coalition announced it has increased the total amount of financial commitments for the purchase of high-integrity emissions reductions credits to over USD \$1.5 billion . ⁴³
STANDARDS	DESCRIPTION
The Architecture for REDD+ Transactions (ART)	ART is a global initiative that seeks to incentivize governments to implement REDD+ and only credits at the jurisdictional level, to national governments and large subnational jurisdictions. ⁴⁴ ART has established a standard for measurement, monitoring, reporting and verification- The REDD+ Environmental Excellence Standard (TREES), and issues serialized credits, listed on ART's public registry, available to buyers on the global carbon market. TREES credits can be used by airlines for compliance with the International Civil Aviation Organization's (ICAO) global emission reduction program, Carbon Offsetting and Reduction Scheme for International Aviation CORSIA, as well as for use toward voluntary corporate climate commitments. ART has issued the world's first TREES credits to Guyana, issuing 33.47 million TREES credits to Guyana for the five-year period from 2016 to 2020. ⁴⁵

⁴⁰ Global Environment Facility (GEF), *Summary of Negotiations of the Eighth Replenishment of the GEF Trust Fund*, GEF/C.62/03 (GEF 2022).

⁴¹ *Ibid*, GEF 2022

⁴² Lowering Emissions by Accelerating Forest Finance Coalition (LEAF), *Press Release Statement: Leaf Coalition Commitments Top 1.5 billion*, (LEAF, 2022).

⁴³ *Ibid*, LEAF 2022

⁴⁴ The Architecture for REDD+ Transactions (ART), *Art Overview for Stake Holders*, (ART 2022).

⁴⁵ Forest Trends' Ecosystem Marketplace (EM), *The Art of Integrity: State of the Voluntary Carbon Market 2022: Quarter 3*, (EM, August 2022).

VERRA Programs	<p>Verra was founded in 2007 by environmental and business leaders to provide greater quality assurance in voluntary carbon markets through establishment of voluntary carbon markets programs. It has programs that have established the following standards with a bearing on REDD+:</p> <ol style="list-style-type: none"> 4. The Verified Carbon Standard (VCS) containing project-scale REDD+ methodologies. VCS projects are often co-developed under the VCS and the Climate, Community and Biodiversity Standard (CCBS) which verifies additional safeguards and non-carbon benefits.⁴⁶ 5. The Jurisdictional and Nested REDD+ (JNR) Framework which provides a comprehensive carbon accounting and crediting platform for governments to guide development of their REDD+ programs and help nest REDD+ projects and subnational jurisdictions within these programs.⁴⁷ In 2020, ICAO approved Verra's JNR standard as one of the two carbon offset standards eligible for airlines to purchase in meeting their climate goals.
Joint Crediting Mechanism (JCM)	<p>JCM was established in 2013 by the government of Japan to achieve Japan's emissions reduction target through the country's funding of low carbon projects implemented in partner countries. Rules, guidelines and methodologies are developed jointly with each participating country, and Japan has issued JCM Guidelines for Developing Proposed Methodology for Reducing 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-plus) methodologies for REDD-plus under the JCM.⁴⁸</p>

Whereas REDD+ aims at the implementation of activities by national governments to reduce human pressure on forests that result in GHG emissions at the national level, as an interim measure it also recognizes subnational implementation.⁴⁹ Further, though financing is typically from country to country through bilateral agreement for results payments, project-based REDD+ is also common and often carried out by a non-profit or for-profit project developer who sells credits directly to buyers often in the voluntary carbon market (VCM).⁵⁰ There has been soaring global demand for nature-based credits in the markets, with forestry and land use credits accounting for 61% of 2021's VCM transactions.⁵¹ Specifically on REDD+, 77 projects were registered under the VCS in 2020 and 185 million credits were issued.⁵² By the first half of 2021, the VCM had already posted a near-60% increase in value, and of this increase, 46% was attributed to the REDD+ projects located in 60 countries.⁵³

1.2 The role of policies, laws, and regulations in REDD+ implementation

Policies, laws and regulations (PLR) are important for the implementation of REDD+. Policies are understood to be the strategic, guiding or planning documents prepared by an institution

⁴⁶ Beatriz Granziera et al, *Eligibility Requirements for REDD+ Standards and Financing*, (The Nature Conservancy & Conservation International, 2021).

⁴⁷ *Ibid*, Nature Conservancy and Conservation International 2021

⁴⁸ JCM, *Joint Crediting Mechanism Guidelines for Developing Proposed Methodology for Reducing 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-plus)*.

⁴⁹ UNFCCC, What is REDD+? Available at <https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd>. What is REDD+?

⁵⁰ Beatriz Granziera et al, *Eligibility Requirements for REDD+ Standards and Financing*, (The Nature Conservancy & Conservation International, 2021).

⁵¹ Forest Trends' Ecosystem Marketplace (EM), *Voluntary Carbon Markets Top \$ 1 billion in 2021 with Newly Reported Trades: A special Ecosystem Market Place COP 26 Bulletin*, (EM, November 2022).

⁵² Forest Trends' Ecosystem Marketplace (EM), *The Art of Integrity: State of the Voluntary Carbon Market 2022: Quarter 3*, (EM, August 2022).

⁵³ *Ibid*, EM 2022

(typically, but not exclusively governmental) and that describe a vision and political direction to address a specific issue. Laws are the legally binding acts, enacted by a legislative body (for example parliament), which typically create rights and obligations that can be judicially enforced. Regulations are issued by an executive body (for example a Ministry) as legally binding instruments to apply the laws and to provide operational directives".⁵⁴

The importance of PLR is well recognized in the context of the Cancun Safeguards (seven social and environmental safeguards agreed on at COP16 in Cancun), which serve to define how precautions are to be applied when implementing REDD+ activities. Specifically, countries wishing to participate in REDD+ are requested by the UNFCCC to address and respect the safeguards throughout the implementation of REDD+ activities. Addressing safeguards means to put in place relevant PLRs and institutional arrangements that support REDD+ actions being implemented in line with the safeguards while respecting safeguards means to apply the safeguards in practice during the implementation of REDD+ actions leading to positive outcomes on the ground.⁵⁵

PLRs stretch wide, with relevance for the entire scope of REDD+ implementation and access to finance. This includes addressing questions on the ownership of carbon rights and the legal nature of carbon credits which depend on local law and differ from country to country.⁵⁶ They also address questions on access of REDD+ finance given that REDD+ implementers currently face a broad array of standards and financing options, some of which may be more appropriate to national or local circumstance than others.⁵⁷ An effective framework enabling PLRs for REDD+ countries is pivotal, as the success of REDD+ is hinged on national government efforts to protect forests and keep them permanently standing, a phenomenon most viable where national frameworks ensure fair and effective treatment of land ownership and use rights; benefit sharing; MRV; access to information; and public participation, amongst others.⁵⁸

Developing such a framework requires national conceptualization of REDD+ as part of the wider framework of governance of ecosystem services, and accounting for the intrinsic values of forests and their services. This also calls for the development of PLRs that not only create an enabling environment to ensure that REDD+ meets its objective to encourage developing countries to slow, halt and reverse forest loss and degradation; and increasing removal of GHGs from the earth's atmosphere through the conservation, management and expansion of forests, but goes beyond this to consider the place of the people most affected, thus striking a balance between equity, environmental effectiveness and cost-effectiveness.⁵⁹

PLRs are fundamental for the protection of Indigenous Peoples and Local Communities who have a significant role to play in the implementation of REDD+. Insufficient consideration of Indigenous Peoples and Local Communities in a country's PLR framework hinders the protection of those in vulnerable situations,⁶⁰ as unprotected they face among other things

⁵⁴ UN-REDD Framework for Supporting the Development of Country Approaches to Safeguards.

⁵⁵ UN-REDD/Myanmar Programme, *Policies, Laws and Regulations (PLRs) that can help to address the Cancun Safeguards for REDD+ in Myanmar: Summary by Safeguard*, (UN Environment World Conservation Monitoring Centre (UNEP-WCMC), 2019).

⁵⁶ Charlotte Streck, "Who Owns REDD+? Carbon Markets, Carbon Rights and Entitlements to REDD+ Finance".

⁵⁷ Beatriz Granziera et al, *Eligibility Requirements for REDD+ Standards and Financing*, (The Nature Conservancy & Conservation International, 2021).

⁵⁸ John Costenbader, *Legal Frameworks for REDD: Design and Implementation at the National Level*, IUCN Environmental Policy and Law Paper No. 77 (IUCN, 2009).

⁵⁹ Munuo, N., & Glazewski, J. "The Implementation of REDD+: Self-Governance Through the Lens of Reflexive Law", *Carbon & Climate Law Review*, Volume 12, Issue 2 (2018) pp. 124 - 131.

⁶⁰ Rosemary Lyster, *REDD+ Transparency, Participation and Resources Rights: The role of law*, (March 2011) Volume

discrimination, insecurity in land tenure and resources and exclusion.⁶¹ In some cases REDD+ projects have been linked to serious human rights violations, where Indigenous People have been coerced into handing over their land rights or subjected to forced evictions by governments and private investors trying to take advantage of the promise of REDD+ investments.⁶²

For REDD+ implementation to be successful, there is need for application of the international and national REDD+ framework and governance regime at the local level, in a way that protects the interests of those who are most vulnerable and ensures their empowerment and genuine participation.⁶³ As REDD+ covers sectors and issues already legislated on as part of a country's development process such as land tenure, forest governance and public finance management, these must be reviewed and where necessary reformed/amended for successful REDD+ implementation.⁶⁴ Reform should ensure the PLR framework is informed by the requirements of the COP decisions on REDD+ and also aligned to the country's unique national context and circumstances.

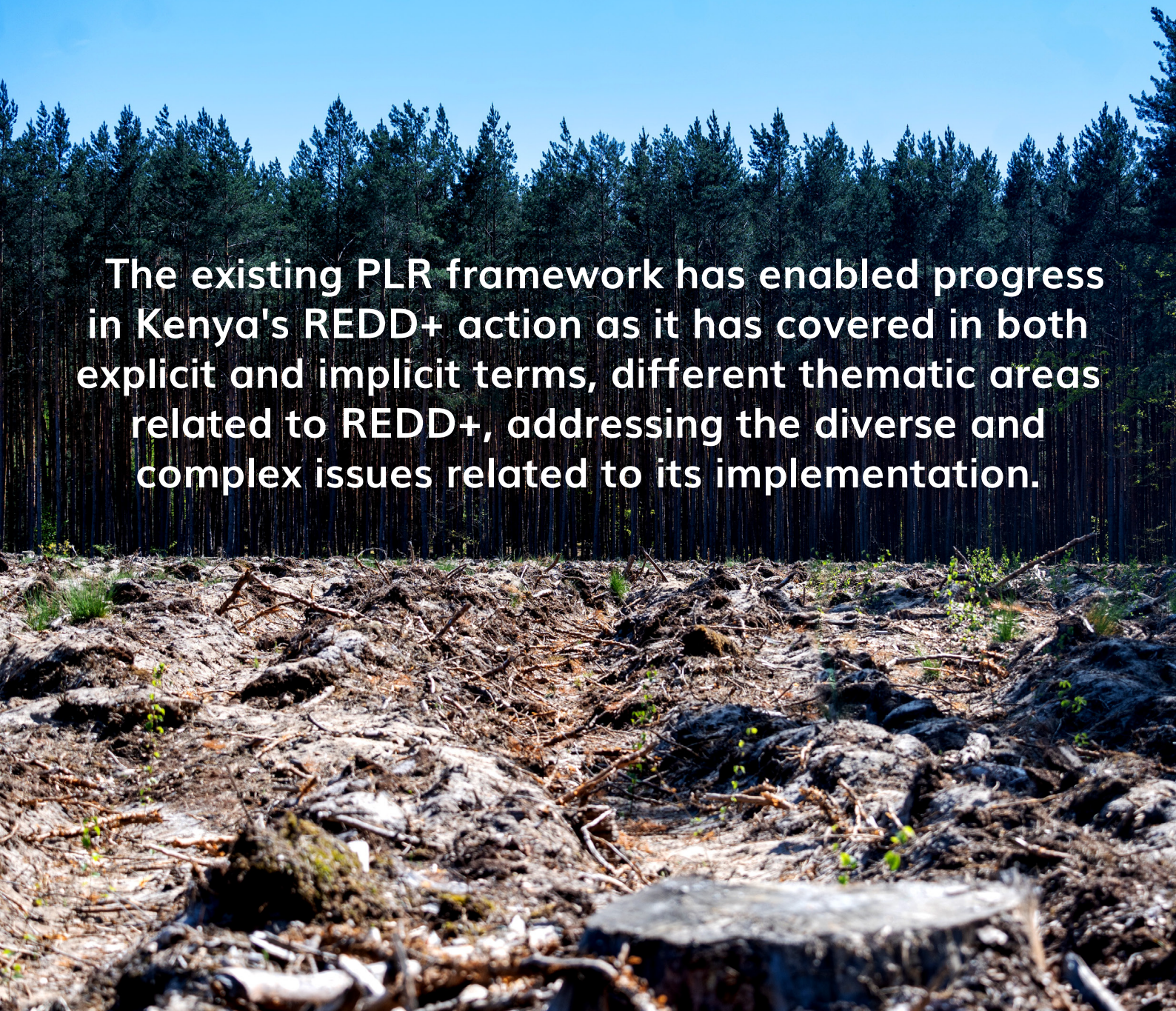
14 Issue 2 Environmental Science and Policy on Science Direct Page 118-125.

⁶¹ The International Work Group for Indigenous Affairs (IWGIA), *The Indigenous World 2022*, (IWGIA, 2022) Page 75.

⁶² Massarella K Schroeder H Brockhaus M, *Building Authority and Legitimacy in Transnational climate change governance: Evidence from the Governors' Climate and Forests Task Force* (September 2020) Volume 64 Issue 3 Global Environmental Change in Science Direct Page 4-6.

⁶³ Joanes O. Atela et al, Implementing REDD+ at the national level: Stakeholder engagement and policy coherences between REDD+ rules and Kenya's sectoral policies, *Forest Policy and Economics*, Vol 65, 2016, Pages 37-46.

⁶⁴ Nantogo M, All the glitters is not gold; Power and participation in processes and structures of implementing REDD+ in Kondo, Tanzania, (March 2019) Volume 100 Forest Policy and Economics in Science Direct Page 44-45.



The existing PLR framework has enabled progress in Kenya's REDD+ action as it has covered in both explicit and implicit terms, different thematic areas related to REDD+, addressing the diverse and complex issues related to its implementation.

2. REVIEW OF POLICIES, LAWS, AND REGULATIONS RELEVANT TO REDD + IN KENYA

2.1 REDD+ in Kenya

Kenya is well endowed with a diverse forest ecosystem comprising montane rainforests, savannah woodlands, dry forests, coastal forests, and mangrove forests distributed throughout the country as highlighted in Figure 4 below.⁶⁵

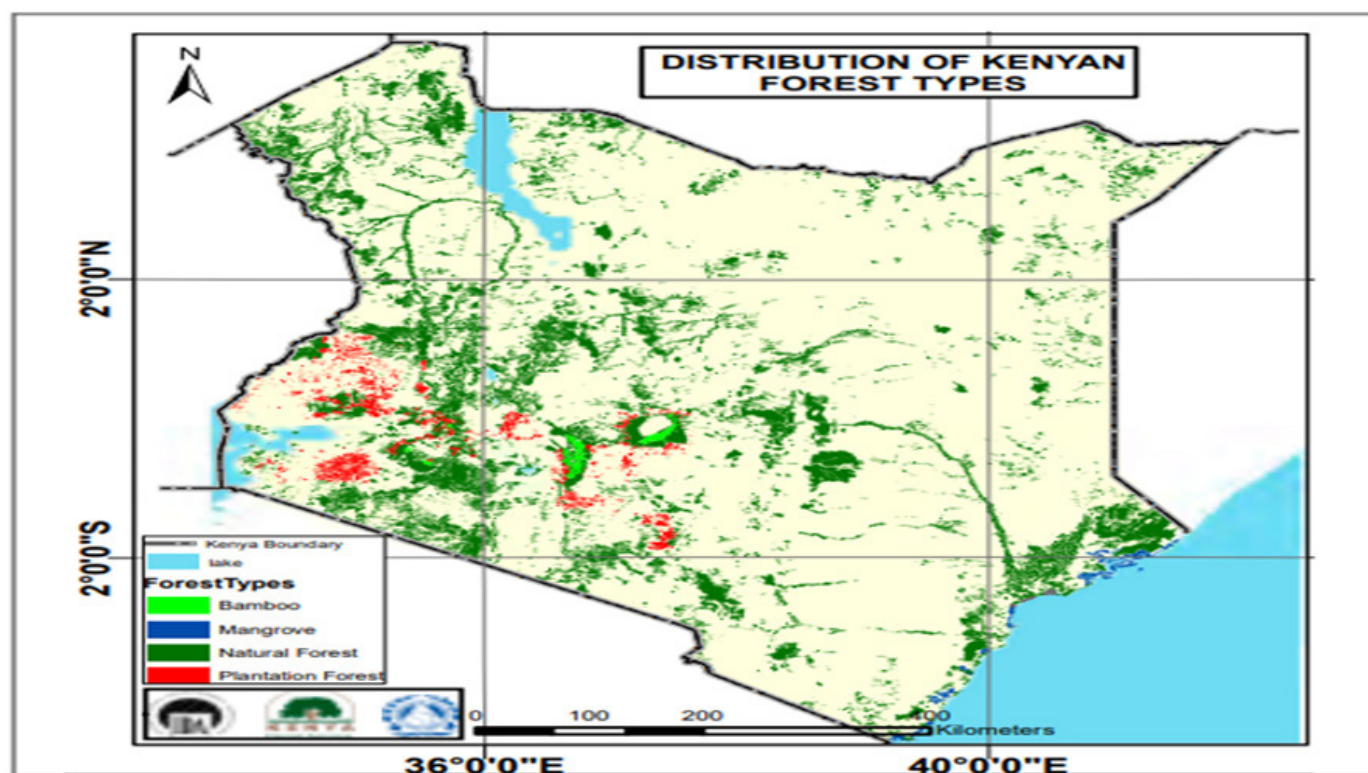


Figure 4: The distribution of Kenya's Forests⁶⁶

These forests play an important role in ecological as well as socio-economic development. Forests mitigate the risks of climate change, preserve biodiversity, maintain water catchment areas, produce goods and services essential to sourcing of livelihoods and food security.⁶⁷ Forests and trees play multiple functions in contributing to the livelihoods of communities, especially women and marginalized groups, in supplying food and rural energy.⁶⁸

However, these forests are threatened by agricultural expansion, infrastructural development, over-exploitation and unsustainable use of forest resources; population increase, and widespread youth unemployment which have led to increased pressure on forest resources.⁶⁹ In Kenya's arid and semi-arid lands for example, deforestation is largely driven by unsustainable forest use by communities, including logging for construction materials and fuelwood, overgrazing, land use change and grass fires, and is aggravated by population growth and the lack of alternative livelihoods.⁷⁰ Deforestation and land degradation threaten vital ecosystem services, and lead to conflict and the loss of biodiversity, especially in a context of increased droughts due to climate change and poor water management.

⁶⁵ Kenya Forest Service (KFS), Overview (KFS 2022).

⁶⁶ Government of Kenya (G.O.K), *Taskforce Report on Forest Resources Management and Logging Activities in Kenya*, Ministry of Environment and Forestry (MoEF, 2018).

⁶⁷ *Ibid*, MoEF 2018

⁶⁸ Kenya Forest Service (KFS), *National Forest Resources Assessment Report*, 2021 (KFS 2021).

⁶⁹ *Ibid*, KFS 2021

⁷⁰ Government of Kenya (GoK), *National REDD+ Strategy*, (Ministry of Environment and Forestry (MEF) December 2021 (MEF 2021) Page 5

Notwithstanding the pressure on forests, Kenya has made some progress in conserving its forest cover. In 2022, the country managed to increase its forest cover to 8.83 per cent from 5.9 per cent in 2018.⁷¹ In addition to forest cover growth, Kenya also made great strides in the expansion of its tree cover, which currently stands at 12.3 per cent against the constitutional target of 10 per cent.⁷² Of its 47 counties, 37 have a tree cover percentage greater than 10 per cent.⁷³ Although there has been growth regarding tree and forest cover, it is essential to note that Kenya's closed canopy forest cover currently stands at a low of about 2 per cent of the total land area, compared to the African average of 9.3 per cent and a world average of 21.4 per cent.⁷⁴

Whereas Kenya has made progress in conserving its forest cover, there remains a fundamental need for a thriving REDD+ programme in the country. Kenya is negatively affected by climate change calamities such as floods and droughts,⁷⁵ suffers significant biodiversity loss and has posted socio-economic losses post the Covid pandemic era. This calls for a redoubling of efforts in the reduction of emissions from deforestation and forest degradation coupled with the restoration of forests and protection of intact forests, given the plethora of benefits associated with these actions at all levels.

REDD+ is also key to meeting the government's ambitious targets for the forestry sector. These include the ongoing programme to manage, conserve and expand forests sustainably towards attaining a minimum of 30 per cent tree cover nationally by 2032 and the National Tree Growing and Land Restoration Campaign in which the Government plans to restore 10.6 million hectares of degraded landscapes for improved biodiversity and climate change mitigation and adaptation and achieve land degradation neutrality by 2030, as a commitment to the UNCCD and in line with the countries' commitments under the Paris Agreement.⁷⁶ There has already been progress that has been made in the establishment of a REDD+ framework in Kenya. At a project level, private sector stakeholders have developed REDD+ projects as highlighted in Table 2 below:

Table 2: REDD+ projects in Kenya^{77 78}

Project Name	Project Proponent	Location	Size Hectare	Carbon Credits	Crediting Period	Project Type	Project Approach	Status
Kasigau Corridor REDD Project	Wildlife Works Carbon LLC	Taita-Taveta	30,169	150,859	2005 - 2034	VCS, CCB	Afforestation Reforestation Avoided Deforestation	Ongoing

⁷¹ Kenya Forest Service (KFS), *National Forest Resources Assessment Report*, 2021 (KFS 2021).

⁷² *Ibid*, KFS 2021

⁷³ *Ibid*, KFS 2021

⁷⁴ Government of Kenya (G.O.K), *Taskforce Report on Forest Resources Management and Logging Activities in Kenya*, Ministry of Environment and Forestry (MoEF, 2018).

⁷⁵ Government of Kenya (G.O.K), *Kenya's Nationally Determined Contributions*, Ministry of Environment and Forestry (MoEF, 2020).

⁷⁶ Abdulateef Ahmed, *Kenya to Launch National Tree Growing, Land Restoration Campaign*, News Central December 19, 2022. <https://newscentral.africa/kenya-to-launch-national-tree-growing-land-restoration-campaign/>.

⁷⁷ CIFOR, *International Database on REDD+ Projects and Programmes*, (CIFOR, 2022).

⁷⁸ REDD+ Impact, *REDD+ Projects Around the World: Kenya*, (REDD+ Impact, 2021).

Mikoko Pamoja REDD+ Project	Mikoko Pamoja Community Organization Association of Coastal Eco-System Services	Kwale	117	2500	2013 - 2023	Plan Vivo	Afforestation Reforestation Avoided Deforestation	Ongoing
The Chyulu Hills REDD+ Project (CHRP)	Chyulu Hills Conservation Trust, Kenya Forest Service, Kenya Wildlife Service and David Sheldrick Trust	Makueni Taita Taveta Kajiado	410, 553	1,100,943	2013 - 2043	VCS, CCB	Afforestation Reforestation Avoided Deforestation	Ongoing
Vanga Blue Carbon	The Association for Coastal Eco-System	Kwale	460	2637	2019 - 2029	VCS	Afforestation Reforestation Avoided Deforestation	Ongoing

The government of Kenya has been active in the development of the key REDD+ readiness instruments, beginning in 2008 with the preparation of a Readiness Plan Idea Note (R-PIN). As Kenya has been a partner country to the UN-REDD Programme and a participant of the FCPF readiness fund under the Kenya FCPF REDD+ Readiness Project which has funded the development key REDD+ readiness instruments in a participatory process that included broad stakeholder engagement and capacity building on REDD+:⁷⁹ The instruments developed include:⁸⁰

The National REDD+ Strategy

Kenya's National REDD+ Strategy, launched in December 2021, sets out the country's proposed approach for implementing the REDD+ programme. The Strategy highlights specific objectives of the programme, including increased forest and tree cover, enhanced productivity of forests, increased investments in forest deployment, protection of existing forest cover, integrated good governance in the forest sector, enhanced forest-based economic, social, and environmental benefits, and enhanced livelihoods of Indigenous People and Local Communities. The Strategy identifies drivers of deforestation, describes the PLRs supportive for the implementation of REDD+, proposes strategic options and highlights the MRV component for the implementation of REDD+. In addition to addressing the drivers of deforestation, as required by the Cancun Agreement, the Strategy also makes provisions on forest and land governance issues and safeguards.⁸¹

National Approach to Safeguards and a Safeguards Information System

In December 2021, Kenya also published its Country Approach to Safeguards.⁸² The National Approach to Safeguards provides an overall framework for Kenya's approach

⁷⁹ United Nations Development Programme (UNDP), *Kenya Forest Carbon Partnership Facility (REDD+ Readiness Project)*, (UNDP, 2021).

⁸⁰ The four elements/instruments are required under the Cancun Agreements for countries participating in REDD+ to access results-based payments.

⁸¹ Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF), 2021)

⁸² Government of Kenya, (G.O.K), *Kenya's National Approach to Safeguards and a Safeguards Information System for REDD+ Implementation*, Ministry of Environment and Forestry (MoEF, 2021).

to safeguards and aims to meet Kenya's national circumstances to ensure that REDD+ activities contribute to the objectives of the National REDD+ Strategy.⁸³ The Country Approach employed by Kenya retains the seven Cancun safeguards as the primary point of reference for all REDD+ actions in the country.⁸⁴

In order to ensure that obligations under Cancun safeguards, global and national safeguards are all respected and complied with, a set of indicators have been derived under each of the seven safeguards. In addition, definitions have been provided for each indicator, thus clarifying what is being assessed. Further guidance has been provided for stakeholders implementing REDD+ actions, who would like to report how they are addressing and respecting each of the safeguards and indicators. The guidance includes the kind of information required, and the manner of reporting to the SIS which is in the final stages of development. Kenya's SIS is designed to be mostly automated, and includes a grievance redress mechanism.⁸⁵

National Forest Monitoring System

Kenya has designed a NFMS and finalized documenting the MRV procedures of the GHG inventory process.⁸⁶ The NFMS is anchored in two major programmes, which generate Activity Data (AD) and Emission factors (EF) for GHG inventories in the forestry sector. These are: a national forest inventory programme which has developed data collection manuals and has a National Forest Inventory Design; and a National Land Cover Change Monitoring programme, based on the System for Land based Emission Estimation for Kenya (SLEEK) model, which has generated land cover change information for the period 1990-2018. The NFMS was developed with the support of Japan-funded Capacity Development Project for Sustainable Forest Management in the Republic of Kenya (CADEP) and the FCPF project supported stakeholder's consultation and technical review through a technical working group. After consultation with relevant stakeholders, the country has opted to rework its NFMS to ensure that it separately accounts for mangroves and coastal forests which have different carbon sequestration from terrestrial forests.

Forest Reference Level

Kenya submitted a FRL to the UNFCCC in 2020, based on historical analysis of emissions arising from the forest sector between 2002-2018. The FRL projected an emission trend based on the historical trend equivalent to 52,204,059 tCO₂/year under the Business-as-Usual scenario.⁸⁷ The FRL emission trend is however bound to change upon the review of the FRL. The FRL identifies and defines REDD+ activities such as reducing emissions from deforestation; reducing emissions from forest degradation; enhancement of forest carbon stocks through afforestation/reforestation and forest canopy improvement; and sustainable management of forests. Having submitted its FRL to the UNFCCC and received a technical assessment report, Kenya's reporting for REDD+ and results-based payments to the UNFCCC is to be provided in a REDD+ Technical Annex to the Biennial Update Report (BUR) and the information contained in the technical annex will be analyzed by the Technical Team of Experts under the UNFCCC International Consultation and Analysis (ICA) process.⁸⁸

⁸³ *Ibid*, MoEF 2021

⁸⁴ *Ibid*, MoEF 2021

⁸⁵ *Ibid*, MoEF 2021

⁸⁶ Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF), (2021).

⁸⁷ *Ibid*, MoEF 2021

⁸⁸ Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF), (2021);
FAO, *From reference levels to results reporting: REDD+ under the United Nations Framework Convention on Climate*

2.2 Gap Analysis of Kenya's REDD+ Policies, Laws, and Regulations

Kenya has largely concluded its REDD+ readiness activities and is now on track to attaining REDD+ implementation and consequently accessing results-based payments. Currently, various parallel processes for accessing results-based payments exist globally, including project and jurisdictional approaches that often operate under a nascent national framework.⁸⁹ Kenya has had projects ongoing within the country as early as 2011 when one of its projects became the first verified REDD+ project in the world,⁹⁰ to now when the country is in the process of exploring options for nesting of projects within the national framework,⁹¹ under what can still be described as a nascent policy and legal regime for REDD+.

This nascency is attributable to the generality of the legal, policy and regulatory framework which for a long-time has dealt more broadly with wide-ranging issues on natural resource management and sustainable development as pertains to land, forests, physical planning, and environmental protection, without much specificity on REDD+ concerns. However, in more recent times as REDD+ readiness intensifies and climate change concerns continue to gain more ground, PLRs that are more geared to REDD+ implementation are being developed as exemplified by draft bills and regulations on MRV, carbon markets, benefit sharing, amongst others.

Nonetheless the existing framework enables REDD+ action, as it has covered both in explicit and implicit terms different thematic areas related to REDD+ implementation. For example, so far, the PLR reviews on REDD+ in Kenya demonstrate that the country already has a legal, policy and regulatory framework relevant to REDD+ implementation. These analyses include a review and gap analysis of Kenya's PLR framework for safeguards carried out in the process developing Kenya's Country Approach to Safeguards and SIS, which sought to determine the extent to which the existing framework.⁹² The policy, legal and regulatory framework relevant to REDD+ actions is also set out in the National REDD+ Strategy.⁹³ Whereas there exist these documented reviews of Kenya's REDD+ PLRs, there is need for a review that encapsulates a gap analysis of the entirety of REDD+ from a thematic focus, addressing the variety of economic, environmental and social questions related to its implementation and access to finance, as Kenya gears up to this phase of REDD+.⁹⁴

These thematic areas are interconnected and the PLRs related to them sometimes overlap, and include questions surrounding the international law on REDD+ and how this is applied in the country, REDD+ institutional governance architecture, forest, land and tree tenure, Indigenous Peoples rights, gender and inclusion, carbon rights, benefit sharing, MRV, REDD+ finance management, transparency, accountability and anti-corruption, as well as grievance redress mechanisms, as discussed in the following section of this report.

Change, (FAO, 2020).

⁸⁹ Danae Maniatis et al, Toward REDD+ Implementation, *Annu. Rev. Environ. Resour.* 2019. 44:373–98.

⁹⁰ VERRA, *Kenya Project is First to Issue Redd Credits Verified to a Major Global Third-Party Standard*, (Verra, 2011), <https://verra.org/press/kenya-project-issues-first-redd-credits-under-vcs/> (Wildlife Works Kasigau Corridor REDD+ Project).

⁹¹ Government of Kenya, (G.O.K), *Kenya's National Approach to Safeguards and a Safeguards Information System for REDD+ Implementation*, Ministry of Environment and Forestry (MoEF, 2021).

⁹² Government of Kenya, (G.O.K), *Kenya's National Approach to Safeguards and a Safeguards Information System for REDD+ Implementation*, Ministry of Environment and Forestry (MoEF, 2021).

⁹³ Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF, 2021).

⁹⁴ Previous studies that have attempted to do this include Baker & McKenzie and the Cambridge Centre for Climate Change Mitigation Research (University of Cambridge), *Creating an Enabling Legal Framework for Redd+ Investments in Kenya*, (Ministry of the Environment of Sweden, 2014)

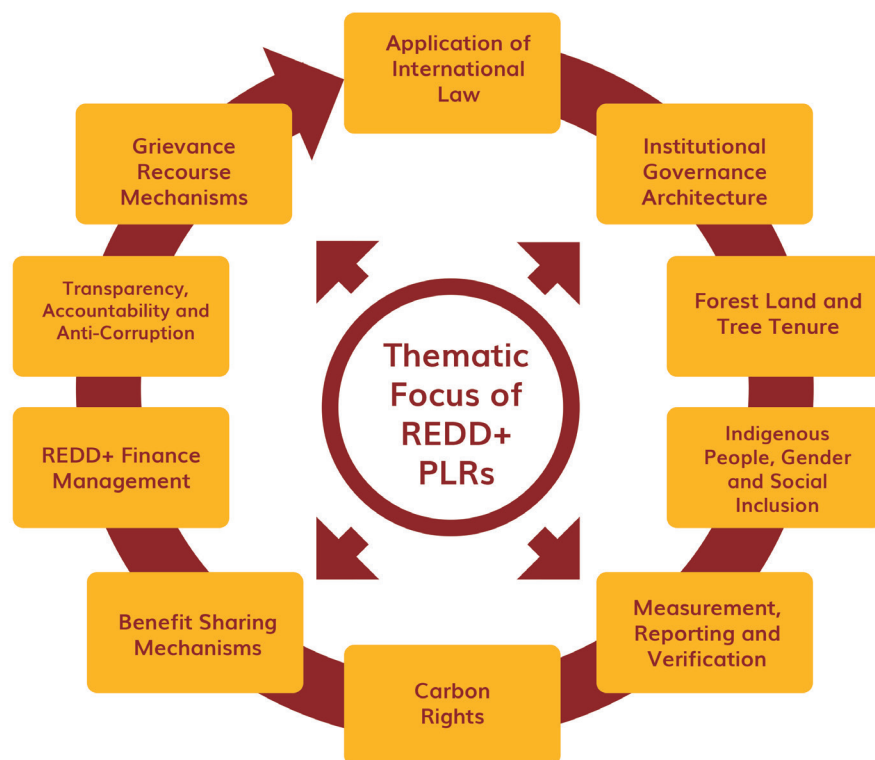


Figure 5: The thematic focus of REDD+ PLR under review

2.2.1 Application of international law

REDD+ is an international framework relying on international law to operate. The current international legal framework for REDD+ comprises conventions such as the UNFCCC, the Paris Agreement, and various COP decisions such as the Bali Action Plan, Cancun agreements, Doha agreements and the Warsaw REDD+ Framework, which establish guidance, rules and modalities that steer the implementation of REDD+. There also exists other conventions with a bearing on REDD+ by virtue of relating to sectors and issues linked to REDD+ such as those on ecosystem and biodiversity management for example the UNCCD and the CBD and other international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) related to the protection of Indigenous Peoples and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) related to the protection of women's rights, amongst others.

Kenya has supportive PLRs that enable the application of this international legal framework related to REDD+. With regards to policies, the National Policy on Climate Finance provides a legal and institutional framework to guide and promote climate finance flows. The Policy is guided by international treaties and obligations and is important for REDD+ as it sets the framework to enable the country access funds from bilateral and multilateral sources.⁹⁵ The National Climate Change Action Plan (2018-2022), sets out Kenya's priority climate actions which are based on the six mitigation sectors set out by the IPCC,⁹⁶ and recognizes that just like its predecessor the NCCAP 2013-2017, it is a mechanism geared towards the achievement of Kenya's international obligations under the UNFCCC.⁹⁷ Likewise, Kenya's National REDD+ Strategy meets international requirements, and is a response to the Cancun agreements which called for all countries to create a National Strategy or Action Plan in Readiness for REDD+ implementation.⁹⁸ Lastly, Kenya's Nationally Determined Contributions

⁹⁵ Government of Kenya, National Policy on Climate Finance, 2018.

⁹⁶ Government of Kenya, National Climate Change Action Plan 2018 - 2022.

⁹⁷ *Ibid*, NCCAP (2018-2022).

⁹⁸ National REDD+ Strategy 2021.

(NDC) explicitly highlights REDD+ as one of the strategies to be applied to achieve the NDC commitments.⁹⁹

Kenya's laws are also instrumental in advancing REDD+ in the country, starting with the Constitution of Kenya 2010 (Constitution), the supreme law, which guides the application of international law in the country.¹⁰⁰ Article 2(5) of the Constitution provides that "*the general rules of international law shall form part of the law of Kenya*", and Article 2(6) provides that "*any treaty or convention ratified by Kenya shall form part of the law of Kenya.*" By virtue of the above provisions, general rules of international law and treaties or conventions relevant to REDD+ ratified by Kenya form part of Kenya's laws. In addition to the Constitution, the Treaty Making and Ratification Act, 2012 is relevant as it gives effect to Article 2(6) of the Constitution by providing for the procedure for the making and ratification treaties and conventions relevant to REDD+ in Kenya. The ratification status of key REDD+ related conventions is highlighted in Table 3 below.

Table 3: Kenya's ratification status of conventions and treaties related to REDD+

Treaty	Significance for REDD+	Ratification Status
United Nations Framework Convention on Climate Change (UNFCCC)	Significant in the context of REDD+ because it provides the overarching framework for international collaboration, negotiations, and the development of strategies to address climate change, including REDD+.	Ratified on 30th August 1994
Kyoto Protocol to the United Nations Framework Convention on Climate Change	Is an international agreement that committed developed countries, and countries in transition to market economics, to reduce their overall GHG emissions through mechanisms such as REDD+. The Kyoto Protocol's second commitment period came to an end on 31st December 2020.	Ratified on 25th February 2005
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. Article 5 of the agreement calls for the conservation and enhancement of GHG' sinks and reservoirs including trees.	Ratified on 26th December 2016
United Nations Convention on Biological Diversity (UNCBD)	Aims at conserving biological diversity and the sustainable use of its components. Biological diversity is defined to include terrestrial ecosystems including forests. State Parties must undertake all necessary actions to conserve existing biodiversity.	Ratified on 24th October 1994
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biodiversity	Aims at sharing the benefits arising from the utilization of bio-diverse genetic resources which include forests in a fair and equitable way. It also covers traditional knowledge associated with genetic resources that are covered by the CBD and the benefits arising.	Ratified 7th April 2014

⁹⁹ Government of Kenya, Nationally Determined Contributions, 2020, (G.O.K, 2020).

¹⁰⁰ Oduor M., The status of international law in Kenya. (Africa Nazarene University Law Journal, 2014) Volume 2.

United Nations Convention to Combat Desertification (UNCCD)	Aims at addressing the effects of desertification particularly in Africa. Calls upon State Parties to ensure integrated and sustainable management of natural resources including forests.	Ratified on 25th June 1997
The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	Calls for the inclusion and protection of women's rights and forms the foundation for a gender inclusive and considerate REDD+. REDD+ has a potential to either positively or negatively affect women's roles and status in relation to property ownership and management.	Ratified on 9th March 1984
United Nations Convention Against Corruption	Aims to address corruption globally through a comprehensive approach Enables the management of REDD+ funds in an accountable and transparent manner.	Ratified on 9th December 2003

Kenya's legal framework contains sectoral laws such as the Forest Conservation and Management Act, 2016 (FCMA) which further cement the domestication of international laws.¹⁰¹ The FMCA, which provides the framework for the management and conservation of forests in the country, requires its provisions to be carried out in accordance with any treaties, conventions or international agreements concerning forests or forest resources as provided for under the Constitution.¹⁰² The FCMA also requires the Cabinet Secretary to make regulations and give directions on ensuring compliance with international instruments, conventions and agreements ratified by Kenya.¹⁰³

The Environmental Management and Co-ordination Act, 1999 (EMCA), provides the framework for overseeing and coordinating environmental matters in Kenya, including the implementation of environmental policies.¹⁰⁴ With respect to international law, EMCA guides the government on legislative and other measures necessary for the implementation of relevant international conventions, treaties, and agreements in the field of the environment.¹⁰⁵ EMCA also advises the government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up on the implementation of such agreements where Kenya is a party. EMCA highlights that the National Environmental Management Authority (NEMA) is also responsible for identifying appropriate measures necessary for the national implementation of treaties, conventions and agreements and keeping a register all environmental treaties and conventions to which Kenya is a party.¹⁰⁶

In addition to the FCMA and EMCA, the Climate Change Act, 2016 is a critical law for REDD+, as the national law domesticating Kenya's international climate change obligations and providing a comprehensive framework on climate action.¹⁰⁷ The Climate Change Act sets out a comprehensive governance structure which coordinate and reports on climate change

¹⁰¹ Section 2 of Forest Management and Conservation Act (FCMA), No. 34 of 2016.

¹⁰² *Ibid*, S73.

¹⁰³ *Ibid*, S73 (2).

¹⁰⁴ Section 9 of Environment and Management and Conservation Act, No. 8 of 1999 (EMCA).

¹⁰⁵ *Ibid*, S9 (2)

¹⁰⁶ *Ibid*, S124

¹⁰⁷ Section 2 of the Climate Change Act, No. 11 of 2016.

plans and actions in the country.¹⁰⁸ The Climate Change Act tasks its various bodies with varied duties and functions including coordinating adherence to the country's international obligations including associated reporting requirements.¹⁰⁹

Further, the Climate Change Act requires the Cabinet Secretary in charge of matters related to climate change to be informed by among other things international law and policy relating to climate change in the formulation of the NCCAP which guides the mainstreaming of climate change into sector functions.¹¹⁰ Additionally, the Cabinet Secretary in consultation with the Cabinet Secretary responsible for foreign affairs has a responsibility to coordinate negotiations on climate change related affairs,¹¹¹ and has a duty to report biannually to Parliament on the status of implementation of international obligations to respond to climate change.¹¹²

As demonstrated in Table 3 above Kenya has ratified a majority of the relevant conventions relevant or applicable to REDD+. There is still scope for the ratification of pending treaties such as the Indigenous and Tribal Peoples Convention (ILO 169), as well as adoption and domestication of international guidelines on the rule of law, for example for the Forest Law Enforcement, Governance & Trade (FLEGT) programme.¹¹³

Furthermore, Kenya needs to ensure that it meets its international obligations under the treaties it has already signed and ratified. It is noted that after submitting the 2nd National Communication to the UNFCCC in 2015, Kenya has not developed a BUR as required under the Paris Agreement and guided by COP decisions in the subsequent years.¹¹⁴ The implementation of REDD+ requires a functional and fully compliant international climate change reporting process that allows timely reporting of progress from REDD+ implementation.¹¹⁵ As such, Kenya needs to work towards preparing requisite reports including the Biennial Transparency Report by 31st December 2024, as required under the Paris Agreement's Enhanced Transparency Framework.

The FMCA requires the Cabinet Secretary to make regulations and give directions on ensuring compliance with international instruments, conventions and agreements ratified by Kenya.¹¹⁶ However, the Cabinet Secretary has not made requisite regulations for all key issues related to REDD+, that would enhance compliance with international instruments, conventions and agreements ratified by Kenya. These include regulations on governing the modalities of REDD+ finance management, nesting, and monitoring, reporting and verification.

2.2.2 Institutional governance architecture

Developing countries participating in REDD+ activities are required to have a national REDD+ institutional architecture comprising structures that define the capacities and responsibilities of the different actors involved and the rules for their interactions. This architecture is tasked with the overall responsibility and coordination, channeling international funding, MRV, and

¹⁰⁸ *Ibid*, S9.

¹⁰⁹ *Ibid*, S9(8)(e)

¹¹⁰ *Ibid*, S13 (5) (f)

¹¹¹ *Ibid*, S8 (2) (b)

¹¹² *Ibid*, S8 (2) (e)

¹¹³ Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF),

¹¹⁴ See Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF), 2021). Submitting a BUR is vested in the Directorate of Climate Change in the MoEF, which is also responsible for compiling GHG inventories including those from the forest sector.

¹¹⁵ Government of Kenya, (G.O.K), *Kenya's National REDD+ Strategy*, Ministry of Environment and Forestry (MoEF), 2021)

¹¹⁶ Section 73 (2) of Forest Management and Conservation Act (FMCA), 2016.

safeguards.¹¹⁷ Kenya does not have one specific institution established with explicit role and responsibilities on REDD+ implementation. Instead, there are several institutions with mandates relevant to the implementation of REDD+ in the country.

The Ministry of Environment, Climate Change and Forestry (MoECCF) is the principal ministry mandated to undertake, among others, forestry development policy and management, development of re-forestation modalities, protection, and conservation of natural environment.¹¹⁸ The MoECCF is an important ministry for REDD+ implementation because it is committed to facilitating enabling policies, legal and regulatory reforms for promoting sustainability of the environment and forest resources while mitigating the effects of climate change.¹¹⁹ The MoECCF also oversees the overall coordination of REDD+ as well as climate change, and has, through the Cabinet Secretary, developed the REDD+ Readiness elements including the National REDD+ Strategy, SIS, NFMS, and FRL.

The National Treasury is the lead institution that facilitates the implementation of the National Policy on Climate Finance and is set out as the custodian of climate finance (which includes REDD+ finance), in Kenya.¹²⁰ The National Treasury is also the Designated National Authority (DNA) to the GCF responsible for developing and implementing procedures to review projects and programmes proposals, including REDD+ activities, for the GCF.¹²¹ The National Treasury, through its representatives, is also one of the key stakeholders forming the taskforce on anti-corruption for REDD+ which was formulated with the objectives of advancing stakeholder dialogue on the interface between REDD+ and anti-corruption efforts, provide guidance on anti-corruption and transparency measures to government and stakeholders and to implement joint actions.¹²²

The Kenya Forest Service (KFS), established under FCMA, is responsible for the management and conservation of forests. KFS is mandated with functions relevant to the implementation of REDD+ activities in Kenya including establishing and implementing benefit sharing arrangements, promoting public participation of relevant stakeholders, maintaining an information system database of forests in the country, preparing a Forest Status Report,¹²³ and a Resource Assessment Report for the Cabinet Secretary once in every two years, among others.¹²⁴ In line with the Warsaw Framework for REDD+ which calls for transparency, coordination as well as centralization of REDD+ activities in developing countries, and invites Parties to establish a "focal point".¹²⁵ Kenya has a REDD+ focal point, appointed from the Ministry of Environment, Climate Change, and Forestry, who serves as liaison with the UNFCCC and bodies under the Convention, on coordination of support, and may also be nominated to receive and obtain results-based payments.¹²⁶

The National Environment Management Authority, which is a body established under EMCA, also plays an important role in the implementation of REDD+.¹²⁷ It is empowered, in consultation with the relevant lead agencies, to develop and implement regulations and measures for

¹¹⁷ Angelsen A, editor, *Realising REDD+: National strategy and policy options*. (Center for International Forestry Research, 2009) page 57-58 available at https://www.cifor.org/publications/pdf_files/Books/BAngelsen0902.pdf.

¹¹⁸ Executive Order No. 1 of 2023.

¹¹⁹ Ministry of Environment, Overview available at http://www.environment.go.ke/?page_id=6250.

¹²⁰ National Policy on Climate Finance.

¹²¹ *Ibid*, National Treasury 2018

¹²² Monzani, B., *Kenya's Task Force on Anti-Corruption for Redd+ -Assessment Report* (Transparency International, 2017).

¹²³ Section 8 (a), Forest Management and Conservation Act (FMCA), No. 34 of 2016.

¹²⁴ *Ibid*, S8 (b)

¹²⁵ Decision 10/CP.19.

¹²⁶ UN-REDD Programme, *UN-REDD Programme Partners Focal Points- updated as of 14th July 2022*, (UN-REDD 2022)

¹²⁷ Section 7, Environmental Management and Co-ordination Act (EMCA), No. 8 of 1999.

the sustainable use of forests.¹²⁸ The authority also ensures that harvesting plantations and woodlots do not damage the environment by ensuring that Environmental Impact Assessments (EIA) for forest harvesting and afforestation projects are undertaken and approving/licensing the continuation of projects and or programmes.¹²⁹ It is the Designated National Entity (DNA) for the Clean Development Mechanism (CDM) and an Implementing Entity to the GCF.¹³⁰

The National Climate Change Council (NCCC) and the CCD established under the Climate Change Act also play major roles in REDD+ implementation. The NCCC is tasked with mainstreaming climate change functions by the national and county governments; approving and overseeing the implementation of the National Climate Change Action Plan, and providing guidance on the review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act.¹³¹ However there have been several delays in establishing the NCCC, with Parliament rejecting the nomination of one of the candidates stating that the candidate failed to demonstrate knowledge on climate change matters,¹³² and in other instances the Courts barred the nominees from being gazetted or holding the office until the case challenging their nomination was determined.¹³³

The CCD on the other hand is the focal point to the UNFCCC and provides operational co-ordination on all climate change matters, including REDD+. The CCD also coordinates the MRV of low-carbon development strategies and establishes and manages a national registry for climate mitigation actions. These functions of the CCD will help with the MRV elements of REDD+ activities as required under the Warsaw Framework. It is important to note that the FCMA establishes the Forest Conservation and Management Trust Fund. This creates an overlap in functions and uncertainty on which fund would be most appropriate for REDD+. It is also worth noting that those funds are yet to be operationalised.

To achieve an equitable and efficient REDD+ programme, it is fundamental that the institutional architecture also includes civil society organizations which play an important role in REDD+ governance by advocating for the rights of indigenous peoples and Local Communities, and by providing technical assistance and support to communities working on REDD+ projects. Private sector, which includes companies project developers and investors, also play a critical role in REDD+ governance by providing financial support for REDD+ projects and by promoting sustainable forest management practices. Indigenous Peoples and Local Communities are often the most affected by deforestation, and their traditional knowledge and practices are very essential for the successful implementation of REDD+ projects, as such they must be involved in the decision-making process around REDD+ activities in their territories.

As is evident from the different entities enumerated above, there exist different entities all mandated to play a role in ensuring seamless implementation of REDD+ in Kenya. The challenge however is that there is in certain instances an overlap of functions amongst institutions. For example, when it comes to forests, the Kenya Forest Service is mandated to issue permits, licenses, and agreements by the FCMA, the same role of issuing permits and licenses is issued to NEMA by the EMCA. Further, the mandate as pertains to REDD+ is not explicit, but implicit in certain cases. As such for example, there is lack of clarity on which of

¹²⁸ *Ibid*, S7 (c).

¹²⁹ Page 51, National REDD+ Strategy 2021.

¹³⁰ *Ibid*, page 51

¹³¹ Section 25 of the Climate Change Act, No. 11 of 2016.

¹³² Mito W, [Parliament Rejects Ruto's Nominee to Climate Change Council](https://kenyans.co.ke/parliament-rejects-ruto-s-nominee-to-climate-change-council), [Kenyans.co.ke: Parliament Rejects Ruto's Nominee to Climate Change Council](https://kenyans.co.ke/parliament-rejects-ruto-s-nominee-to-climate-change-council) - [Kenyans.co.ke](https://kenyans.co.ke/parliament-rejects-ruto-s-nominee-to-climate-change-council)

¹³³ Kimani B, [Court Blocks 4 Ruto Appointees from Assuming Office](https://kenyans.co.ke/court-blocks-4-ruto-appointees-from-assuming-office), [Kenyans.co.ke: Court Blocks 4 Ruto Appointees from Assuming Office](https://kenyans.co.ke/court-blocks-4-ruto-appointees-from-assuming-office) - [Kenyans.co.ke](https://kenyans.co.ke/court-blocks-4-ruto-appointees-from-assuming-office)

the entities would take the lead in providing authorizations and approvals, especially in the context of Article 6 and its relation to REDD+, although it is being developed, the article is not yet in place in Kenya.¹³⁴

There is a need for cooperation and coordination amongst the different government agencies listed above. Poor co-ordination amongst these agencies is one of the challenges facing the forest sector.¹³⁵ The National REDD+ Strategy recognizes this challenge and outlines inadequate coordination between institutions charged with the management of forest resources as one of the barriers underpinning deforestation and forest degradation.¹³⁶ In order to enhance coordination, the National REDD+ Strategy proposes the Directorate for Forest Conservation within the MoECCF to be responsible for REDD+ coordination.

The Strategy also proposes a National REDD+ Supervisory Board, chaired by the Cabinet Secretary responsible for Forestry to provide the platform for policy coordination and harmonization among the targeted sectors.¹³⁷ The Board is to comprise of representatives from; all ministries with climate change related issues on their respective mandates; Council of Governors; Independent Commissions (Kenya National Commission on Human Rights, National Land Commission, National Gender and Equality Commission, Ethics and Anti-Corruption Commission); Representatives of the Indigenous Peoples (IPs), Private Sector and Civil Society. These representatives are strategically picked to ensure coordination amongst all groups with a stake in REDD+.¹³⁸

Additionally, the National REDD+ Strategy proposes the formulation of a National Steering Committee to take on responsibility for guiding the implementation of the REDD+ programme. Members of the Committee are to include representatives from ministries in charge of climate change, Energy, Planning, Finance and Agriculture; the Chief Officers of KFS, Kenya Forestry Research Institute (KEFRI) and NEMA among other Government agencies; and the Council of Governors.¹³⁹ Lastly, the strategy proposes for the role of secretariat which will be performed by the National REDD+ Coordination Unit (NRCU) within the Directorate of Forest Conservation.¹⁴⁰ Part of its mandate will be to convene meetings with the Thematic Working Groups.¹⁴¹ It also calls for the formation of technical working groups such as the Policy and National REDD+ Strategy Implementation Working Group; the SIS, Communication and Stakeholder engagement working group and the Forest Monitoring MRV working group.¹⁴²

¹³⁴ Article 6 of the Paris Agreement.

¹³⁵ Kenya Association of Manufacturers(KAM), *Report on the Sustainable Forestry Business Sector, June 2021*, (KAM,2021) Pg 12 available at <https://kam.co.ke/wp-content/uploads/2021/11/Report-on-the-Sustainable-Forestry-Business-Sector-June-2021-2.pdf>.

¹³⁶ Page 22 of the National REDD+ Strategy.

¹³⁷ *Ibid*, page 22

¹³⁸ *Ibid*, page 85

¹³⁹ *Ibid*, page 85

¹⁴⁰ *Ibid*, page 85

¹⁴¹ *Ibid*, page 85

¹⁴² *Ibid*, page 85

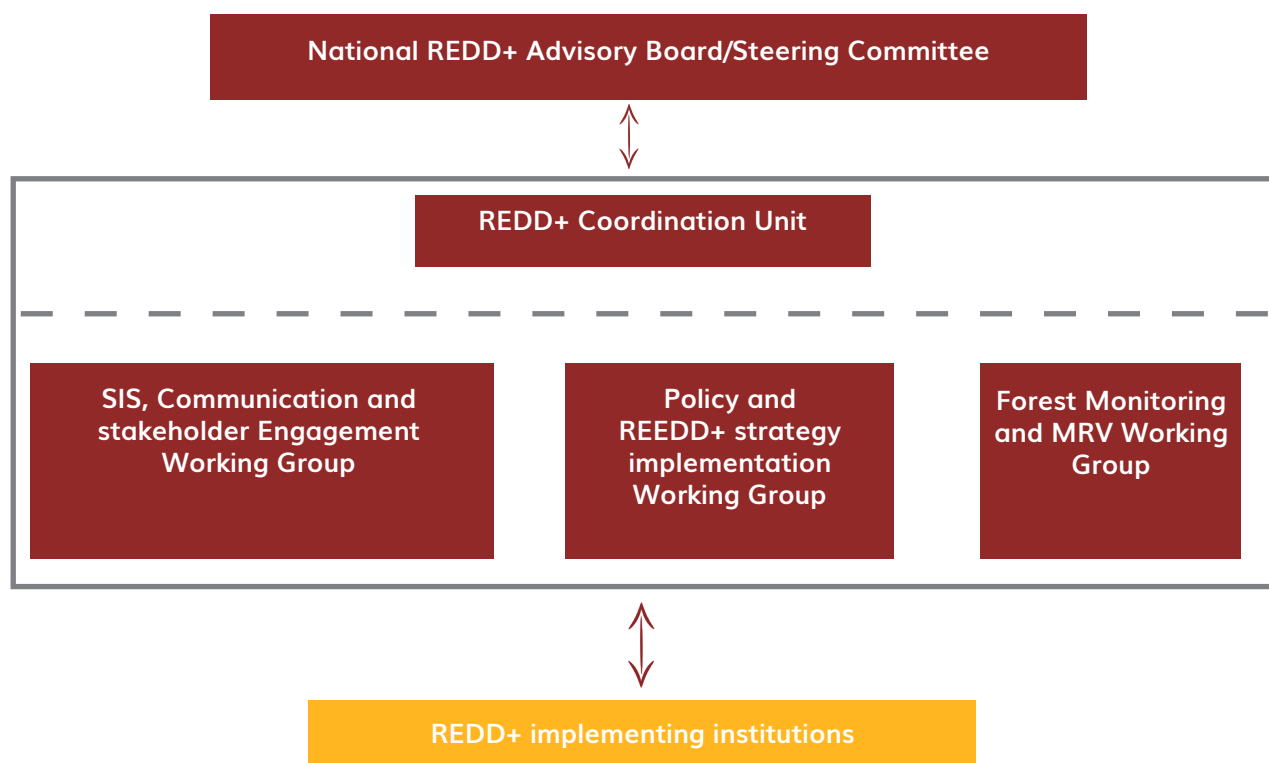


Figure 6: Proposed institutional arrangement for REDD+ under the National REDD+ Strategy¹⁴³

2.2.3 Forest, Land, and Tree Tenure

Tenure describes how people gain access to land, forests and other natural resources and refers to the set of laws and institutions that determine the rights to access and use of the resources.¹⁴⁴ It is important to clearly define and secure tenure rights for land, trees and forests in order to successfully implement REDD+ activities. Developing countries are required, when developing national strategies and action plans, to address among other things land tenure issues.¹⁴⁵ Clear definition of forest, land and tree tenure enables clarity on ownership and user rights including carbon rights and benefit sharing arrangements. Identifying and recognizing legitimate tenure rights is an essential element for REDD+ implementation and sustainable management of forests since those with tenure rights have a stronger interest to maintain the resource.¹⁴⁶

Kenya has a PLR framework that defines and secures land, forest and tree tenure as highlighted below.

Land Tenure

Land tenure is the set of rules, authorities, institutions, and norms that governs the way people in a particular jurisdiction relate to land. Land tenure mostly determines who can use what resources, for how long and under what conditions in term of responsibilities and constraints.¹⁴⁷ Kenya's National Land Policy defines land tenure as terms and conditions under which rights to land are acquired, retained, used, disposed, or transmitted.¹⁴⁸

¹⁴³ *Ibid*, page 85

¹⁴⁴ UN-REDD, *UN_REDD supporting work on Tenure and REDD+*, (UN_REDD, 2021)..

¹⁴⁵ UNFCCC, *Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, FCCC/CP/2010/7Add.1 (UNFCCC 2010) Para 72.

¹⁴⁶ UN-REDD, *UN_REDD supporting work on Tenure and REDD+*, (UN_REDD, 2021); Food and Agriculture Organization of the United States (FAO), *The role of FAO in land tenure reform to support REDD+ implementation*, (FAO, 2017)

¹⁴⁷ UN-Habitat, *Secure Land Rights for All* (2008) 47.

¹⁴⁸ Government of Kenya, *National Land Policy 2009*, (G.O.K, 2009).

In Kenya, land tenure plays a significant role in the social, economic, and political progress and development. The country has three major tenure systems including freehold, leasehold, and customary tenure. The Land Act defines freehold tenure as the *unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs*.¹⁴⁹ The Land Registration Act provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land.¹⁵⁰ Freehold tenure is the most secure form of right to land with rights and restrictions well defined.¹⁵¹ Rights are only restricted through compulsory acquisition in the public interest and based on fair compensation.

Leasehold tenure issues land rights to those possessing a lease arrangement. The Land Registration Act provides that the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease. From this definition, it becomes clear that the nature of leasehold interests varies in terms of time, the extent of rights one has under the lease and the terms within the lease instrument. Although leases can exist for prolonged periods of time, the Kenyan Constitution places a 99-year cap on the length of time that non-citizens can hold land under leasehold tenures.¹⁵² It is important to note that the Constitution does not prohibit ownership of land by foreigners but restricts their ownership of Kenyan land to leasehold tenures of not more than 99 years.¹⁵³

The Community Land Act describes community tenure system as unwritten land ownership practices in communities where land is owned or controlled by a family, clan, or designated community leader on behalf of the community. It is from this tenure that community land rights emanate. The Land Act recognizes customary land rights in as far as they are consistent with the Constitution.¹⁵⁴ All tenure systems under the Land Act are equally recognized and the land rights arising from the tenure system equally enforced. The Act also provides that there shall be non-discrimination in the ownership and access to land under all the recognized tenure systems.¹⁵⁵

The Constitution, Land Act and Land Registration Act recognize three types of land ownership models: public, private and community land. Public land is established in Article 62 of the Constitution, and ownership is vested in and held by either the county or national government who hold the land in trust. A key challenge arising in public land is the fact that the NLC lacks a public inventory on public land thus leading to inconsistencies in the process of leasing public land.¹⁵⁶ There is therefore need to accelerate the design and utilization of a country wide Digital Public Land Inventory Database that will enhance the NLC's capacity to manage land resources, facilitate seamless data sharing amongst the counties, and transparently allocate and renew leases.

Under private land there exists the right to absolute enjoyment, exclusivity and disposal of the property. Rights to land may be subject to compulsory acquisition. However, the

¹⁴⁹ Section 2 Land Act, No. 6 of 2012.

¹⁵⁰ Section 24(a) Land Registration Act, No. 3 of 2012.

¹⁵¹ UN Habitat, *Land tenure security in selected countries: Synthesis Report* (UN Habitat, 2014) Page 6

¹⁵² Article 65 Constitution of Kenya, 2010.

¹⁵³ *Ibid*, Article 65

¹⁵⁴ Section 5 (1) (b) Land Act, No.6 of 2012.

¹⁵⁵ *Ibid*, Section 5 (2)

¹⁵⁶ Ethics and Anti-Corruption Commission, Report of Activities and Financial Statement for the Financial year 2018/2019, (EACC 2019) available at: <http://www.eacc.go.ke/wp-content/uploads/2018/07/EACC-Annual-Report2018-2019.pdf>.

Constitution provides for just compensation to be undertaken during expropriation.¹⁵⁷ Private land is also subject to some restrictions and responsibilities especially on the environment control and building codes regulation.¹⁵⁸

Community land is recognized by the Community Land Act which sets out the modalities of owning and registering community land rights. Community land registration in Kenya faces significant challenges, largely due to ambiguities in defining and securing community property rights. Communities also face losses during the registration process, as the law empowers governments to reserve portions of communal lands for infrastructure or other public uses, often without adequate consultation or compensation, and these challenges collectively threaten the realization of secure tenure for communities, undermining their ability to protect, use, and benefit from their lands.¹⁵⁹

Historical land injustices in Kenya pose a significant threat to community land ownership, undermining efforts to secure tenure and equitable access to land resources. The National REDD+ Strategy recognizes that historical land injustices in Kenya, particularly the systemic irregularities in community land allocation and tenure security, may pose significant challenges to the successful implementation of REDD+ initiatives.¹⁶⁰ In response, the Strategy mandates the NLC in collaboration with the Ministry of Lands and County Governments to resolve the historical land injustice claims by IPLCs over lands currently held as public forests but classified as community land in the Constitution.¹⁶¹ These injustices, marked by the illegal allocation of public land to individuals and corporations through land grabbing, have resulted in approximately 200,000 irregular land titles.¹⁶² The Ndung'u Land Commission, established in 2003, documented these injustices and proposed remedies to the NLC, including title revocation for undeveloped illegally allocated land and compensation-based retention for developed land.¹⁶³ However, ambiguities in valuing public versus private interests have hindered the effective resolution of these injustices.

Insecure, contested, and unjust land and forest tenure significantly undermines efforts to protect, sustainably manage, and restore ecosystems that are vital to achieving climate, conservation, and SDGs.¹⁶⁴ This lack of tenure security erodes community ownership and control over forest resources, which are critical for the success of REDD+ initiatives. Without clear and secure land rights, communities cannot establish the legal basis to claim benefits from REDD+ projects, diminishing their motivation to actively participate in conservation efforts.

Forest Tenure

Forest tenure refers to who owns, uses, manages, and makes decisions on forest land and forest resources including control over the benefits and transfer of the forest rights.¹⁶⁵

¹⁵⁷ Article 40 Constitution of Kenya, 2010.

¹⁵⁸ Kameri-Mbote, *Kenya Land Governance Assessment Report*, World Bank Group (2016).

¹⁵⁹ Alden Lizzy, *The Community Land Act in Kenya: Opportunities and Challenges for Communities*, (MDPI, 2018).

¹⁶⁰ Government of Kenya, *National REDD+ Strategy*, (GoK, 2021).

¹⁶¹ *Ibid*, (GoK, 2021).

¹⁶² Kieyah J, *Ndung'u Report in Land Grabbing in Kenya: Legal and Economic Analysis*, (Kenya Institute for Public Policy Research and Analysis, 2010).

¹⁶³ *Ibid*, (Kenya Institute for Public Policy Research and Analysis, 2010).

¹⁶⁴ Rights and Resources Initiative, *Community Land Rights in Kenya: A Summary of 2020 Analyses*, (Rights and Resources Initiative, 2021).

¹⁶⁵ UN-REDD, *UN-REDD supporting work on Tenure and REDD+*, (UN-REDD, 2021) available at <https://www.un-redd.org/sites/default/files/2021-10/tenure-E-web.pdf>.

The FCMA is the primary legislation dealing with management and conservation of forests. It provides a comprehensive framework on forest tenure by providing classes of forests. These include public, private and community forests. Public forests are defined to include public forests categorized under Article 62(1) of the Constitution and forests on land between the high and low water marks which are placed under the management of KFS.¹⁶⁶

Community forests include forests that are on lands lawfully registered in the name of a group representative; forests on land lawfully transferred to a specific community; forests on land declared to be a community land by an act of parliament; forests on land lawfully held, managed or used by specific communities as community forests; forests on ancestral lands and lands traditionally occupied by hunter gatherer communities; and forests lawfully held as trust land by the county governments, but not public lands held in trust.¹⁶⁷

Private forests include forests on registered land held on either a freehold or leasehold basis; forests on land owned privately by an individual, institution, body corporate for commercial or non-commercial purposes and forests on any other land declared as private land under an Act of Parliament.¹⁶⁸ In addition to clarifying on the ownership of forests, the FCMA calls for participatory forest management (PFM), where the specific authority managing a forest invites local communities to participate in forest management and conservation activities with responsibilities outlined in a participatory agreement or participatory forest management plan.¹⁶⁹ Communities can participate in the conservation and management of public forests by forming a community forest association (CFA) and registering the same with KFS.

The Forest (Participation in Sustainable Forest Management) Rules, 2009 operationalize the FCMA's requirement for PFM in public forests by allowing the participation of the private sector and communities in their management.¹⁷⁰ The rules allow for private sector to participate through permits, concessions, joint management agreements, licenses, and contracts.¹⁷¹ KFS grants the permits once satisfied that the proposed utilization is sustainable, however the rules fail to clarify on the modalities that are relied on to determine the sustainability of the utilization.¹⁷²

The draft Forest (Community Participation in Sustainable Forest Management) Rules, 2020 call for community participation in the management, protection, and conservation of public forests. However, the draft rules leave other types of forests, particularly community forests and make no mention of the involvement of county governments in the management of forests.¹⁷³ According to Schedule 4 of the Constitution, county governments are mandated to implement specific national government policies on natural resources and environmental conservation, including forests, soil, and water conservation.

Counties also have constitutional managing authority over the lands and forests they hold in trust either for the residents of the county or the communities that are yet to

¹⁶⁶ Section 30 and 33 of FMCA, 2016.

¹⁶⁷ Section 30, of FCMA, 2016.

¹⁶⁸ *Ibid*, Section 30.

¹⁶⁹ Section 47, FCMA, 2016.

¹⁷⁰ Rule 2, Forest (Participation in Sustainable Forest Management) Rules, 2009.

¹⁷¹ *Ibid*, Part II.

¹⁷² *Ibid*, Rule II.

¹⁷³ East African Wildlife Society, EAWLS helps develop community forest management rules, October 2020.

register their lands. They therefore cannot be left out of the draft rules and ought to be included. Additionally, the rules mandate KFS to facilitate the formation of CFAs which is a preserve of communities according to the provisions of the FCMA¹⁷⁴. There is need to harmonize the rules with the FCMA and to ensure that KFS does not take over roles that were originally allocated to communities and CFAs. As the rules are currently in draft form, there is still scope for their review and amendment prior to adoption.

Tree Tenure

Tree tenure consists of a bundle of rights over trees and their produce which may be held by different people at different times.¹⁷⁵ These rights include the right to own or inherit trees, the right to plant trees, the right to use trees and tree products, the right to dispose of trees and the right to exclude others from the use of trees and tree products.

Rights over trees and their produce may be transferred contractually and they may also be controlled by executive order. For example, although an individual owns the trees in his private land, the Cabinet Secretary has the powers to declare tree, species, or family of trees to be protected in the whole country or in specific areas, hence, the person would be prohibited from felling, damaging, trading in, exporting, or removing any such trees so declared. It is important to note that this provision limits the rights of ownership of private trees.¹⁷⁶ Further, the County Government has the mandate to cause estate developers in their jurisdictions to make provisions for at least five per cent of the total land area of any housing estate intended to be developed to form a green zone.¹⁷⁷ The County Department responsible for forestry may prescribe the species of trees to be planted in these green zones.

2.2.4 Gender, Local Communities, and Indigenous Peoples

Gender equality and empowerment are catalysts to achieving sustainable development, thus making them equally crucial to REDD+ success.¹⁷⁸ Gender mainstreaming is one of the ways that governments can ensure gender inclusion and sensitivity in the REDD+ sector. This inclusion will serve to ensure that all forest stakeholders can access, control, and derive equitable benefits from forest related policies and interventions. However, within the forestry context, explicit socio-economic, political, and cultural barriers have excluded and marginalized both men and women's voices in decision-making processes.

In Kenya, the policy and legislative framework on gender inclusion into REDD+ is guided by various national and international instruments aimed at promoting gender equality, sustainable development, and environmental conservation. The country has made significant strides both nationally and internationally in integrating gender considerations into its REDD+ frameworks, recognizing the importance of ensuring women's participation and benefit-sharing in forest conservation and climate change mitigation efforts.

Internationally, Kenya is a signatory to various international agreements and conventions that underscore the importance of gender mainstreaming in environmental conservation and climate change initiatives. These include the UNFCCC and its associated mechanisms such

¹⁷⁴ East African Wildlife Society, EAWLS helps develop community forest management rules, October 2020.

¹⁷⁵ Stella Maris O, *The Status of Tenure Security in Kenya: Land Tenure Systems and Land Economics*, (Technische Universität München, 2019)

¹⁷⁶ Section 40 Forest Conservation and Management Act, No. 34 of 2016.

¹⁷⁷ Section 37, Forest Conservation and Management Act, 2016.

¹⁷⁸ Inter-American Development Bank (IDB), *Gender, Forests and Climate Change*, (IDB 2021), page 4.

as the Cancun Safeguards, which emphasize the need for gender-responsive approaches in implementing REDD+ activities.

Table 4: Cancun Safeguards' provisions on Indigenous Peoples, gender and social inclusion

Paragraph	Provisions on Indigenous Peoples, gender, and inclusion
Pre-amble	".... recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability."
7	"...gender equality and the effective participation of women and Indigenous Peoples are important for effective action on all aspects of climate change."
12	"...enhanced action on adaptation to be undertaken in accordance with the Convention, should follow a country-driven, gender-sensitive, participatory, and fully transparent approach, taking into consideration vulnerable groups, communities, and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional and indigenous knowledge, with a view to integrating adaptation into relevant social, economic and environmental policies and actions."
72	"...requests governments of developing countries to address, among other things, gender considerations in the development and implementation of national REDD+ strategies or action plans."
130	"...capacity-building support to developing country Parties should be enhanced with a view to strengthening endogenous capacities at the subnational, national or regional levels, as appropriate, taking into account gender aspects, to contribute to the achievement of the full, effective and sustained implementation of the Convention."

Kenya has committed to achieving the SDGs, including Goal 5 on gender equality and Goal 13 on climate action. Kenya is also guided by the UN-REDD's guidance note which highlights the importance and benefits of gender sensitive REDD+ projects.¹⁷⁹ The guidance note emphasizes on the importance of capturing the knowledge and experiences of all forest users, most especially women, promoting equitable benefit sharing from REDD+ investments, and supporting a human rights-based approach to development.¹⁸⁰ The note highlights five key steps as being essential for implementing gender inclusive REDD+ initiatives and includes: establishing a gender baseline; mobilizing gender expertise and building relevant partnerships; ensuring the effective participation of both women and men in project design, planning and implementation; ensuring gender sensitive REDD+ governance, benefit sharing and monitoring framework; and consistently monitoring and reporting on gender mainstreaming.¹⁸¹

The alignment of national policies, legislations and regulations with these global commitments reinforces Kenya's efforts to integrate gender considerations into REDD+. From a policy perspective, the country's Draft National Climate Change Action Plan (NCCAP) 2023-2027 provides a comprehensive policy framework for addressing climate change issues, including the integration of gender considerations into climate action.¹⁸² The NCCAP emphasizes the need to promote gender-responsive approaches in climate change adaptation and

¹⁷⁹ United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD), Guidance Note on Gender Sensitive REDD+, (UN-REDD, 2013)

¹⁸⁰ *Ibid*, (UN-REDD, 2013) Page 3.

¹⁸¹ *Ibid*, (UN-REDD, 2013) Page 38-47.

¹⁸² Government of Kenya, (G.o.K) Draft National Climate Change Action Plan 2023-2027, Ministry of Environment, Climate Change and Forestry, (MOECCF, 2023).

mitigation strategies, including REDD+ initiatives.¹⁸³ The Action Plan recognizes that women are vulnerable to climate change and environmental impacts as the primary caregivers of the society, and states that equality can only be achieved when affirmative actions and strategies are put in place in all sectors in accordance with the Constitution.¹⁸⁴

Kenya's National Policy on Gender and Development provides a strategic framework for mainstreaming gender considerations across all sectors, including environmental conservation and natural resource management.¹⁸⁵ The policy recognizes that access to and control over environmental resources is gender biased, with men being the main actors in the possession of renewable and non-renewable natural resources amongst them forests.¹⁸⁶ It suggests that in order to achieve equality in the management of forest resources women must be adequately represented in decision making processes; involved in capacity building and training sessions; and consulted for input with regard to environmental and natural resources management.¹⁸⁷ The policy also mandates for the collection of gender-disaggregated data on natural resource management.¹⁸⁸

The Constitution of Kenya guarantees that all persons have the right to a clean and healthy environment¹⁸⁹ and property.¹⁹⁰ The Constitution also mandates equal rights for men and women and prohibits discrimination based on gender. This constitutional provision forms the basis for promoting gender equality in all aspects of governance, including environmental policies and programs. Several commissions are established by the Constitution in attempt to enhance gender equity and inclusion, amongst them the National Gender and Equality Commission (NGEC) which has made great strides in ensuring gender inclusion in REDD+. In discharging its mandate NGEC spearheaded a gender assessment on forest-dependent communities in forest protection, conservation, and management in eight counties.¹⁹¹ The assessment, whose findings are that women have been pushed to the sidelines in REDD+ projects, aimed to inform Kenya's REDD+ readiness process so as to ensure the integration of the principles of gender equality and inclusion in the implementation phase.¹⁹²

NGEC also found that the participation of women in REDD+ project activities is more widespread at the local than at the national and international levels. By extension, women at the grassroots level are less represented in national bodies and often unaware of their rights at the international and national levels. Having their voices muted at these levels, eventually leaves them unprotected at the local level. Kenya's Constitution provides the basis upon which women can be adequately represented in leadership as it contains a provision requiring that not more than two thirds of the members to elective and or appointive bodies shall be of the same gender.¹⁹³

However, NGEC reports that the Constitutional imperative on gender inclusion is yet to be fully implemented.¹⁹⁴ There is also still a high lack of compliance by both public and

¹⁸³ *Ibid*, MoECCF 2023

¹⁸⁴ Government of Kenya, (G.o.K) National Policy on Gender and Development, Ministry of Public Service, Youth and Gender, 2019.

¹⁸⁵ *Ibid*, GoK 2019

¹⁸⁶ *Ibid*, GoK 2019

¹⁸⁷ *Ibid*, GoK 2019

¹⁸⁸ *Ibid*, GoK 2019

¹⁸⁹ Article 42, Constitution of Kenya, 2010.

¹⁹⁰ *Ibid*, Article 40

¹⁹¹ National Gender and Equality Commission, *Annual Report 2019-2020*, (NGEC2020), 10.

¹⁹² *Ibid*, Page 10.

¹⁹³ Article 27(8), Constitution of Kenya, 2010.

¹⁹⁴ National Gender and Equality Commission, *Annual Report 2020 – 2021*, (NGEC 2021), 12.

private sectors with the minimum statute requirements of gender equality and inclusion.¹⁹⁵ In collaboration with UNDP and other stakeholders, NGECE facilitated the development of Gender and Indigenous Peoples Action plans to ensure integration of the principles of equality and inclusion in the implementation of REDD+ in Kenya. Unfortunately, NGECE has been unable to achieve most of its targets due to inadequate funding which reduced its visibility, reach to most vulnerable populations, and frequency in national reporting.¹⁹⁶

FCMA emphasizes community participation in forest management and recognizes the role of all community members in sustainable forest resource utilization. The Act also promotes their inclusion in decision-making processes related to forest conservation and affirms their rights to access and benefit from forest resources.¹⁹⁷ These provisions are replicated in the Wildlife Conservation and Management Act.¹⁹⁸ EMCA ensures inclusion by calling for public participation and mandating all project proponents to seek the views of persons who may be affected by the project that they are undertaking.¹⁹⁹

Despite these policy and legislative measures, challenges persist in fully realizing gender inclusion in REDD+ initiatives in Kenya. These challenges include limited access to the ownership of land and forest resources for women, unequal participation in decision-making processes, and inadequate representation of women in leadership roles within community-based forest management structures. Furthermore, although there exists international safeguards and national laws calling for gender inclusion and mainstreaming, the difficulty seems to arise in the implementation of these specific strategies due to insufficient study on the structural, behavioral, and traditional barriers that women and men face when implementing REDD+ activities. Barriers affecting women, include but are not limited to, limited infrastructure, unequal access to opportunities, financial scarcity, poverty traps, absence of gender representation in decision making forums and limited land tenure.²⁰⁰

Nonetheless, there are also opportunities for enhancing gender inclusion in REDD+ through capacity building, awareness-raising, and targeted interventions that empower all genders to actively engage in sustainable practices for management of forests. Strengthening partnerships between government agencies, civil society organizations, and Local Communities can also contribute to advancing gender equality within the context of REDD+ implementation. To ensure that national REDD+ systems and programmes are inclusive and resilient, specific attention must be paid to the specific roles, requirements and contributions of women and men at every stage of policy and programme development, from design through implementation and evaluation.²⁰¹

Equality, inclusion, and protection of marginalized groups are guiding principles recognized in the Kenyan Constitution. Indigenous Peoples are recognized as part of marginalized communities who the government is obligated to protect and address their rights.²⁰² The Constitution has various provisions such as the bill of rights, affirmative action programmes and protection of the vulnerable and marginalized, that ensure that the interests of Indigenous

¹⁹⁵ *Ibid*, Page 12.

¹⁹⁶ National Gender and Equality Commission, *Annual Report 2020-2021*, (NGEC 2022), 35.

¹⁹⁷ Articles 32 and 48 Forest Conservation and Management Act, 2016.

¹⁹⁸ United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD), *Guidance Note on Gender Sensitive REDD+*, (UN-REDD, 2013).

¹⁹⁹ Article 17, Environment Management and Coordination Act, 1999.

²⁰⁰ Global Gender and Climate Alliance (GGCA), *Gender and Climate Change: Gender in REDD+ Policy Brief*, (GGCA 2016) page 5.

²⁰¹ United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD), *The Business Case for Mainstreaming Gender in REDD+*, (UN-REDD, 2011) Page 5.

²⁰² Article 21(3) of the Constitution, 2010.

Peoples are taken care of. Involvement of local communities in the projects developed under REDD+ further broadens the SDGs including poverty reduction, robust ecosystems and biodiversity conservation, access to and sustainable use of natural resources, improved livelihoods, indigenous rights, gender equality, technology transfer and adaptability to changing climate conditions.

UN-REDD developed and deployed a guidance note to advance social inclusion and equity in REDD+ endeavours, with a focus on the rights of Indigenous Peoples.²⁰³ Some of the guidelines in the note focus on stakeholder engagement, free, prior, and informed consent and grievance management among others.²⁰⁴ The protection and participation of indigenous communities is among the safeguards provided for under the Cancun Agreements. These safeguards call for the accordance of respect towards the knowledge and rights of Indigenous Peoples and members of the Local Communities as well as the full and effective participation of all relevant stakeholders.²⁰⁵

Indigenous Peoples' Rights in REDD+: What is needed

- Legal recognition, protection and implementation of the collective rights of Indigenous Peoples over their lands, territories and resources.
- Recognition, protection and promotion of the traditional sustainable livelihoods including shifting cultivation and customary forest management systems of Indigenous Peoples.
- Recognition and respect of Indigenous Peoples' customary laws, traditional knowledge and forest governance systems including their own system of collective decision making.
- Appropriate and equitable representation of Indigenous People, including Indigenous women, in the decision-making bodies and processes of REDD+.
- Equitable benefit sharing mechanism and agreements with explicit collective consent of Indigenous Peoples and Local Communities.
- Accessible and effective grievance mechanisms at the local and national levels.

Figure 7: Ways of protecting and promoting the rights of Indigenous Peoples in REDD+ projects²⁰⁶

Indigenous Peoples in Kenya comprise of hunter-gatherers such as the Endorois, Yaaku, Sengwer, Maasai and Ogiek.²⁰⁷ They face among other things discrimination, insecurity in

²⁰³ United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD), *Guidance Note on Gender Sensitive REDD+*, (UN-REDD, 2013) Page 38.

²⁰⁴ *Ibid*, Page 39.

²⁰⁵ United Nations Framework Convention on Climate Change (UNFCCC), *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, (UNFCCC, 2010) Decision 1/CP.16 Para 71.

²⁰⁶ The International Work Group for Indigenous Affairs (IWGIA), *Indigenous Women in REDD+: Making their Voices Heard*, (IWGIA, 2014) Page 3.

²⁰⁷ Drylands Learning and Capacity Building Initiative, Indigenous Peoples and Local Communities (IPLCs) of Kenya, available at Indigenous Peoples and Local Communities (IPLCs) of Kenya - Drylands Learning and Capacity Building Initiative last accessed on 24th April 2025.

both land and resource tenure and insufficiency of resources as well as exclusion.²⁰⁸ Kenya has neither signed nor ratified the Indigenous and Tribal Peoples Convention. It also was among the countries that abstained from the vote when the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007.

The country has also not made any reference to Indigenous People in its Constitution. As such Indigenous Peoples and other communities are lumped up within the broadly defined marginalized community umbrella. This broad inclusion is ineffective to protect them, and the United Nations Permanent Forum on Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples have issued a joint statement urging all entities to refrain from conflating, associating, combining, or equating Indigenous Peoples with non-indigenous entities, such as "minorities", "vulnerable groups", or "local communities" in their work.²⁰⁹

2.2.5 Carbon rights

Carbon rights refer to the property rights to sequester and store carbon, contained in land, trees, soil, etc. and the right to benefits that arise from the transfer of these property rights, for example through emissions trading schemes.²¹⁰ Property rights in the REDD+ context can be subdivided into three broad categories: use rights, control rights and authoritative rights.²¹¹ Where land and forest tenure are unclear and there are multiple stakeholders involved, decisions regarding the ownership of the carbon rights emanating from the project reduction between the different stakeholders might not be straightforward.

Although there currently does not exist a definition of carbon rights in Kenya, the current PLR framework can sufficiently provide a basis for determining carbon rights in REDD+ projects. The Constitution, defines property as any vested or contingent right to, or interest in or arising from land, or permanent fixtures on, or improvements to, land.²¹² Where land includes the surface of the earth, the subsurface rock and natural resources completely contained on or under the surface.²¹³ This definition is further expounded on by the Land Act and the Land Registration Act which include unexhausted improvements, fixtures on the land, trees, crops and growing produce. In addition, the Constitution included forests in its definition of natural resources.²¹⁴ From the above, sequestered forest carbon can be read as falling within the Constitution's definition of both property and natural resources and therefore the existing regulatory regimes on land and forests would apply to its management.

Carbon rights may therefore be held on public, private, community land in line with Kenya's constitutional land holding structure.²¹⁵ With regard to projects on community land, the carbon rights would belong to the community as whole. In unregistered community land however, the carbon rights would be held in trust by the county government as they hold such land in trust on behalf of the community.²¹⁶ Carbon rights arising from carbon projects

²⁰⁸ The International Work Group for Indigenous Affairs (IWGIA), *The Indigenous World 2022*, (IWGIA, 2022) Page 75.

²⁰⁹ United Nations Human Rights Special Procedures: Special Rapporteurs, Independent Experts and Working Groups, *Statement by the United Nations Expert Mechanism on the Rights of Indigenous Peoples, Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples*, Geneva July 2023

²¹⁰ Sophie C et al, *A legal Perspective of Carbon Rights and Benefit Sharing under REDD+: A Conceptual Framework and Examples from Cambodia and Kenya*, (Carbon and Climate Law Review Volume 9 Issue No. 2) 2015 page 4.

²¹¹ *Ibid*, Page 4.

²¹² Article 260, Constitution of Kenya 2010.

²¹³ *Ibid*, Article 260.

²¹⁴ *Ibid*, Article 260.

²¹⁵ *Ibid*, Article 260.

²¹⁶ Article 5 Community Land Act, No. 27 of 2016.

implemented on private land are owned by proprietor of the land²¹⁷ while in the case of public land the carbon rights may be held by either by the county or national government in trust for the people resident in the county or the people of Kenya respectively.²¹⁸

This position is further supported by the FCMA which defines public forests to include those classified as such under the Constitution²¹⁹ and private forests as forests on registered land held under either freehold or leasehold tenure or forests owned privately by an individual, institution or body corporate.²²⁰ Community forests are defined as forests on land which has been lawfully registered in the name of group representatives or transferred to a specific community or lawfully held, managed and used by specific communities or land declared to be community land by an Act of Parliament.²²¹ Carbon rights are transferable contractually, and the holder of the land whether public, private or community may transfer the rights to a third party provided that the legal requirements for such a transfer are met. Where landholding is unclear due to contested ownership, corruption or historical land injustices, it affects the determination and recognition of ownership of carbon rights which necessitates Kenya addressing these land tenure issues and challenges.

Kenya's laws also need to clearly define the ownership of carbon rights and conditions for the creation, ownership and transfer of carbon credits as the current understanding of ownership is imputed from an interpretation of existing laws. The Climate Change (Amendment) Act 2023 which introduces carbon market provisions into Kenya's climate change laws for the first time, does not define carbon rights but attempts to make some provision on approvals and authorizations of carbon credits through introducing an element of tracking in law. It sets out a requirement for a National Carbon Registry to be established as a system for tracking carbon credits generated and sold at the national level and from projects. The Act empowers the Cabinet Secretary to authorize the establishment of the REDD+ Registry and other sector registries to feed into the National Carbon Registry.²²² The Act provides that the Cabinet Secretary shall appoint the DNA for market mechanisms, who is the entity or organization granted the responsibility to authorize and approve implementation of carbon projects in Kenya.

The DNA shall maintain the National Carbon Registry which will include among others; registers on the carbon credits projects and programmes implemented to reduce GHG emissions in Kenya; the reduced emissions from deforestation and forest degradation carbon; authorisations granted for the participation in any initiative, project or programme under the Act, the carbon budget, and the GHG reduction units. It is important that as Kenya develops its registry and the necessary rules and regulations to enable its efficient working, the country also clarifies the legal nature of carbon rights and their ownership.

The Act highlights that, authorization of carbon projects will be mandatory. It introduces the offences of unauthorised trade in carbon credit and knowingly selling carbon credits to unauthorized entities; which attract a fine not exceeding five hundred million shillings or an imprisonment of a period not exceeding ten years or to both. The appointment of a DNA is pending as well as the development of rules to the authorizations and approvals for entities participating in carbon markets, and for operationalization of the carbon registry, and these are needed to enable certainty in the market.

²¹⁷ Article 62, Constitution of Kenya, 2010.

²¹⁸ *Ibid*, Article 64.

²¹⁹ Section 30 Forest Conservation and Management Act No 34 of 2016.

²²⁰ *Ibid*, Section 30.

²²¹ *Ibid*, Section 30.

²²² Section 7, Climate Change Act 2016.

2.2.6 Benefit sharing

Benefit-sharing is "the intentional transfer of monetary and non-monetary incentives (goods, services or other benefits) to stakeholders for the generation of environmental results (such as GHG emission reductions) funded by revenues derived from those results".²²³ The concept refers to the set of institutional means, structures and instruments aimed at enabling the distribution of benefits from REDD+ programmes among stakeholders.²²⁴ It also refers to distribution of financial and non-financial benefits that emanate from the reduction of GHGs from deforestation and forest degradation.

Community benefit sharing ensures fair compensation thereby instilling an incentive for the sustainable management, use and conservation of forests. Benefit sharing approaches in carbon projects and REDD+ programs vary as there does not currently exist a uniform REDD+ specific PLR regulating this area. Some programs use direct payment systems, in which the financial benefits are distributed directly to the communities or organizations involved in the program. Other programs use an indirect approach, such as investing in community development projects (school, churches, hospitals, and dispensaries) or supporting local business initiatives (beadwork stations for women or seedling stations for the youth) which provide long-term benefits to the community. Benefit sharing agreements between stakeholders, such as private sector, local communities, government and non-profit organizations, setting out the equitable distribution of benefits related to the commercialization of forest carbon have been in use by different REDD+ projects in Kenya.²²⁵

Below is a table elaborating on the benefit sharing mechanisms adopted by two REDD+ projects in Kenya.

Table 10: Kenya's REDD+ projects' benefit sharing arrangements.

Project Name	Project Proponent	Project Level Benefit Sharing Mechanism
Kasigau Corridor	<ul style="list-style-type: none"> Wildlife Works Carbon LLC (WWC) 	WWC manages the carbon assets on behalf of the community members. The current benefit sharing formula entails giving a 1/3 of the total revenue to the ranch shareholders. From the remaining 2/3 WWC will deduct all costs and if there is any revenue remaining this shall be shared 50/50 between the broader community and wildlife works.

²²³ Sophie C, A Legal Perspective of Carbon Rights and Benefit Sharing under REDD+: A Conceptual Framework and Examples from Cambodia and Kenya, (Carbon and Climate Review Volume 9 Issue No. 2) 2015 page 14.

²²⁴ Sophie C, The Elements of Benefit sharing for REDD+ in Kenya: A Legal Perspective, (Carbon and Climate Review Volume 9 Issue No. 4) 2015 page 6.

²²⁵ Doug B et al, Using Carbon and Wildlife Credits to Protect the Kasigau Corridor in Kenya, (Union of Concerned Scientists 2014) page 5.

Chyulu Hills	<ul style="list-style-type: none"> • Maasai Wilderness Conservation Trust 	<p>The Chyulu Carbon project is a multi-partner initiative involving Kenya Forest Service; Kenya Wildlife Service; Mbirikani group ranch; Kuku A group ranch; Kuku Group ranch; Rombo group ranch; Maasai Wilderness Conservation Trust (MWCT); Big Life Foundation and David Sheldrick Wildlife Trust. The project currently has 3,000,000 carbon credits that were arrived at upon careful review and certification by Verified Carbon Standard (VERRA).²²⁶ The revenue allocation model involves the deduction of transaction and project office costs which include: VER registration, marketing and sales costs, pre-verification funding and project office costs. A portion is then allocated towards strategic investments which include the fire management plan, Kamba community engagement, endowment fund creation and capitalization and the holistic livestock management plan. A discretionary funding via the project's grant mechanism is allocated to trustee organizations to support conservation and community development activities as outlined in the PDD. These allocations are based on strategic priorities and financial needs and are flexible to allow for adaptive response to changing priorities, threats and circumstances.</p>
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Kenya policy and legal framework is yet to establish a REDD+ specific benefit sharing mechanism. However, the current policy and legal regime contains provisions for general benefit sharing, that can be applied to REDD+. From a policy perspective, the National Land Policy recognizes benefit sharing as a way of integrating the economic, social, and environmental imperatives of natural resources. This integration is grounded on ensuring that the nature of natural resources as well as the needs and contributions of stakeholders are considered before any benefit sharing agreement is reached. The Forest Policy also contains policy guidance emphasizing the importance of equitable benefit-sharing in the forest sector, stating that the government should "develop and implement an equitable benefit sharing scheme in the forests sector." Kenya has also set out the importance of benefitsharing in its National REDD+ Strategy which recommends that the county and national government work towards the development and implementation of a benefit sharing mechanism in the forest sector.

The Constitution places obligation on the State to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources.²²⁷ This obligation is further extended to ensuring equitable sharing of accruing benefits from natural resources and ensuring that any utilization of the environment and all natural resources is for the benefit of the Kenyan people. The State is also mandated to ensure public participation in decision making.

The FCMA, contains provisions pertaining to Joint Management Agreements (JMA).²²⁸ These are defined as authorizations where KFS or County Department responsible for forestry enter into partnerships with another or other stakeholders for the joint management of a forested area. JMAs specify the contributions, rights and obligations of each party towards the forest and the equitable sharing of all risks, costs and benefits accruing.²²⁹ With respect to private entity benefit-sharing, the FCMA obligates investors to share benefits with Local Communities via infrastructure, education, employment and social amenities,²³⁰ subject to Article 66 of the Constitution which deals with State regulations regarding uses of property

²²⁶ Conservation International and Everland, Chyulu Hills REDD+ Project Impact Report Q3-Q4 2022, (Conservation International 2022).

²²⁷ Article 69 (1) (a), Constitution of Kenya 2010.

²²⁸ Section 55, Forest Conservation and Management Act No. 34 of 2016.

²²⁹ *Ibid*, Section 2.

²³⁰ *Ibid*, Section 53.

and Parliament enacting laws to ensure Local Communities benefit from investment.

The FCMA empowers the Cabinet Secretary and the KFS Board to formulate guidelines on incentives and benefit-sharing and sets out one of the functions of the KFS to include establishing and implementing benefit-sharing arrangements.²³¹ At the subnational level, the County Government Act provides that county governments are corporate bodies with perpetual succession.²³² In this regard, they can enter into agreements with persons, institutions and/or entities for purposes of implementing specific national government policies on natural resources and environmental conservation such as forestry, soil and water conservation.

The Climate Change Amendment Act, 2023 requires carbon projects to specify the anticipated environmental, economic, and social benefits of the project. The Amendment Act further defines environmental benefits to include removal of GHG from the atmosphere and avoidance of emission of GHG in order to meet Kenya's international obligations; incentives promoting offset projects; increase of carbon abatement in a manner that is consistent with protection of Kenya's natural environment; improved resilience to the effects of climate change; achievement of Kenya's GHG emissions targets. The Act establishes a community development agreement that must be signed before any project starts, and states that the agreement should provide for sharing of benefits from carbon markets and carbon credits amongst the project proponents and the impacted communities.²³³

Gaps within the Amendment Act include the fact that it does not clarify on the modalities of the registration and recording of community development agreements. The Act also remains silent on how the national and county governments shall work together despite stating that they are to monitor the negotiation and implementation of the community development agreement. There is therefore need for regulations to operationalize the salient provisions of the Act, to enable clarity on how carbon projects, will be developed and implemented in the country for the benefit of local communities.

Kenya has developed the Natural Resources (Benefit Sharing) Bill, 2022 (Bill) which seeks to establish a system of benefit sharing in natural resource exploitation between resource exploiters, the national government, county governments and Local Communities. Unfortunately, the Bill has some contradictions and inconsistencies, which may occasion a challenge in not only its passing but also its application in forestry programmes such as REDD+. For instance, due to the nature of its provisions, the Bill is not well suited to forestry and REDD+ initiatives. Its definition of a benefit sharing agreement is limited to affected entities and counties.²³⁴

The Bill requires every organization or person involved in the exploitation of a natural resource, such as forests, to enter into a benefit sharing agreement with the relevant county, setting out the manner in which revenue accruing from the natural resources will be shared.²³⁵ This should be done before the exploitation of the resource in the affected county, and the agreement should include monetary and non-monetary benefits.²³⁶ Exploitation is defined broadly to include the use of a natural resource for commercial benefit, and this could be understood to include commercial benefit from REDD+ activities. The Bill does not prescribe a specific percentage of revenue accruing to the entity as mandatory for sharing

²³¹ *Ibid*, Section 70.

²³² Section 6(1), County Government Act No. 17 of 2012.

²³³ Section 23E, Climate Change Act, 2016.

²³⁴ Section 2, Natural Resources (Benefit Sharing) Bill, 2022.

²³⁵ *Ibid*, Section 9.

²³⁶ *Ibid*, Section 9 (2).

in the agreement, and as such this is subject to the negotiation of the parties. It is however important to note that the agreement will require the approval of the county assembly prior to execution.²³⁷

As the Amendment Act calls for the implementation of a community development agreement that is to be deposited at the National Carbon Registry, whereas the Bill calls for a benefit sharing agreement to be approved by the county assembly and be deposited at the senate, there is potential for conflicting requirements and a burdensome regulatory regime being placed on forestry sector carbon projects, should the Bill be passed as currently drafted.

2.2.7 Measurement, Reporting and Verification

The arrangements for national reporting have evolved throughout the history of the UNFCCC and Kyoto Protocol into a more comprehensive MRV framework. Article 12 of the UNFCCC imposes an obligation on all Parties, in accordance with Article 4, paragraph 4, to communicate to the COP information relevant to the implementation of the Convention.²³⁸ The reporting provisions contained in the UNFCCC were further enhanced through the Bali Action Plan adopted at COP 13 in 2007 which introduced the principle of MRV for both developed and developing country Parties in the context of enhancing action at the international and national level to mitigate climate change.²³⁹ The Warsaw Framework specifically mentions the need for guidance on methodologies for developing national FRELs and/or FRLs. The agreements also call for a robust and transparent national system for forest monitoring and reporting. For countries such as Kenya which has a devolved system, reference levels can be developed at the subnational level as an interim measure.

A cornerstone of any national REDD+ scheme is a reliable, credible system of measuring, reporting, and verifying changes in forest carbon stocks. However, the funding of MRV remains a challenge. The more information quality increases, the higher the required costs and capacity for the MRV system.²⁴⁰ This leads to countries making trade-offs between cost and accuracy. Financing of REDD+ MRV activities has been a key issue in the negotiations. Mobilizing sources from various initiatives, programs and projects is important in building a robust, rigorous and transparent national inventory. Without credible and accurate MRV, there can be no REDD+ credits. Further, as costs of MRV form part of the overall operational and administrative costs involved in generating a REDD+ credit, they have a direct implication on benefit sharing.

Kenya developed a NFMS for collecting Activity Data (AD) and Emission Factor (EF) with support from the Japan-funded CADEP under the Ministry of Environment and Forestry and Kenya Forest Service.²⁴¹ The NFMS provides information on Kenya's forest cover area and its change area for AD, forest carbon stocks from inventory measurements for each land cover type for emission factor EF and anthropogenic forest related GHG emissions by sources and removals by sinks (calculated from AD and EF).²⁴² Forest Carbon Stock for EF in the LULUCF sector were calculated using IPCC Guidelines used for units of carbon (CO₂eq) to express EF for deforestation, forest degradation, enhancement of forest carbon stocks and sustainable

²³⁷ *Ibid*, Section 12.

²³⁸ Florence B, *Strengthening Measurement, Reporting and Verification for REDD+* (International Institute for Sustainable Development 2011) Page 5.

²³⁹ *Ibid*, Page 5.

²⁴⁰ *Ibid*, Page 21.

²⁴¹ *Ibid*, Page 21.

²⁴² United Nations Development Fund (Kenya), *Forest Carbon Partnership Facility REDD+ Readiness Project Final Report*, (UNDP 2022) Page 21.

management of forests for REDD+ reporting.²⁴³ This allowed the estimation of the amount of biomass and carbon stock in the forest. This process has had to undergo a review since, Kenya requires a system that recognizes the sequestration capacity and carbon stock differences between different types of forests such as mangroves, coastal forests and terrestrial forests. The NFMS has been designed to be flexible, so it can allow for improvement and build upon existing systems, as appropriate. The system reflects the phased approach of REDD+ implementation and enables the assessment of different types of forests in the country according to national definitions, including natural forest.²⁴⁴

PLRs that provide on MRV include the Climate Smart Agriculture Strategy which calls for the development of MRV Systems in the agricultural sector which includes agro-forestry.²⁴⁵ Additionally, the CCD is mandated to identify low carbon development strategies and coordinate related MRV in collaboration with other agencies at the national and county government levels.²⁴⁶ The draft Climate Change Act (MRV) Regulations apply to the MRV of GHG emissions, mitigation actions, adaptation actions, climate change enablers including climate finance, capacity building and technology and transfer. They mandate the Cabinet Secretary under article 5(7), to establish and manage a national registry. The draft regulations also establish a national GHG inventory responsible for estimating anthropogenic emissions by sources and removals of sinks of GHG. The draft regulations focus on the MRV of mitigation actions as below;

- a. Assessment of greenhouse emissions, assessment of the impact on the SDGs.
- b. Analysis of the effects of policies, projects and actions; monitoring the implementation of policies, projects and actions.
- c. Assessing progress towards Kenya's mitigation goals as outlined in the Nationally Determined Contributions
- d. Assessing the co-benefits between any of the above.

These regulations are yet to be passed and subsequently implemented, leaving a gap in the provision of clarity on the legal requirements for MRV in the country.

2.2.8 REDD+ Finance Management

REDD+ is financed from various sources. This includes financing from voluntary carbon markets where REDD+ projects sale carbon credits, to financing from donations and grants from bilateral development agencies and multilateral international institutions such as UN-REDD, FCPF, GCF, LEAF and World Bank's Forest Investment Programme.²⁴⁷ REDD+ funding mechanisms provide support for the different phases of REDD+ implementation.

REDD+ financing models require transparency especially on how the funds flow down from the funding bodies to all the entities and stakeholders participating in REDD+. This is especially important in nested frameworks where subnational and project level activities are integrated within a national or jurisdictional REDD+ program.²⁴⁸ A clear framework is

²⁴³ *Ibid*, Page 21.

²⁴⁴ Government of Kenya, The Kenya National Forest Monitoring System (2024).

²⁴⁵ Climate Smart Agriculture Strategy.

²⁴⁶ Section 9(8)(d)(1), Climate Change Act, 2016.

²⁴⁷ Sophie C., *Creating an Enabling Legal Framework for REDD+ Investments in Kenya*, (Baker & McKenzie, Cambridge Center for Climate Change Mitigation Research 2014).

²⁴⁸ Tessa B, *Carbon Markets, and nesting systems: Kenya and Cambodia share experiences*, United Nations Development

fundamental as it allows a country or jurisdiction to assess the landscape of potential funding sources, determine which types of finance are available for it according to its nesting model, decide which financing conditions it can realistically achieve and within which time frames depending on its national circumstances, and channel the most suitable sources and types of finance to support its national, subnational and project level REDD+ activities.²⁴⁹

Once a country has determined how climate and carbon finance can support its implementation of REDD+, and which types of financing it wishes to seek, it can consider how to optimize access to such finance.²⁵⁰ This can only be achieved through a clear finance policy and legislative framework. For example, when developing its national REDD+ nesting Framework, Kenya needs to ensure that it includes provisions on the management of its REDD+ finance across all levels, in order to have a clear and systematic approach that will not only enhance the country's access to multiple sources of financing but also bring clarity on how the funds and benefits are utilized.²⁵¹ Such clarity creates financial safeguards on each financing level thus arresting any REDD+ financing risks such as embezzlement, mismanagement, and corruption across the nested framework.

Kenya lacks a REDD+ specific finance management PLR framework, however the country has a well-developed national public finance management PLR framework that may serve as foundation for the REDD+ finance framework. REDD+ finances are managed as either revenue channelled through the National Treasury or as appropriations in aid channelled through the respective ministry.²⁵² Key policies with a bearing on REDD+ include the National Policy on Climate Finance which aims to guide and promote climate finance flows²⁵³ (both from the public and private sectors), tracking of climate finance, engagement with county governments and the equitable benefit sharing from climate change interventions in the country. Additionally, the National Environment Policy provides for the mobilization of financial resources to support forest conservation and also calls for the provision of adequate resources for forest management and conservation in the annual Government budgetary allocation.²⁵⁴

With regard to laws on finance management, Kenya's Constitution calls for all revenue to be managed and regulated under the consolidated fund.²⁵⁵ These funds can only be withdrawn through an Appropriation Act.²⁵⁶ However, in certain circumstances, Parliament approves funds to be allocated to a ministry in-charge of a particular project.²⁵⁷ The funds as well as the arising benefits and burdens of all resource exploitation and public borrowing must be used sustainably²⁵⁸ and must be shared equitably amongst the national and county governments.²⁵⁹ The Constitution sets up the Commission on Revenue Allocation to ensure fiscal responsibility²⁶⁰ by making recommendations

Program, Climate and Forests, January 21st, 2023.

²⁴⁹ Charlotte S et al, Nesting of REDD+ Initiatives: Manual for Policy Makers, (World Bank, 2021).

²⁵⁰ *Ibid*, World Bank 2021.

²⁵¹ United Nations Framework Convention for Climate Change (UNFCCC), *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action*. FCCC/CP/2005/MISC.1 (UNFCCC, 2005).

²⁵² Government of Kenya (G.o.K), *National Climate Change Action Plan 2018-2022, Finance: Annex B- Development Partner Climate Change Activities*, Ministry of Environment and Forestry (MoEF) 2018.

²⁵³ Government of Kenya (G.o.K) National Policy on Climate Finance, National Treasury, 2016.

²⁵⁴ Government of Kenya (G.o.K) *National Environment Policy* Ministry of Environment and Natural Resources, 2012.

²⁵⁵ Article 206, Constitution of Kenya 2010.

²⁵⁶ *Ibid*, Article 206 (2)(a).

²⁵⁷ *Ibid*, Article 206 (2)(c).

²⁵⁸ *Ibid*, Article 201 (c).

²⁵⁹ *Ibid*, Article 202 (1).

²⁶⁰ *Ibid*, Article 216(3) (c).

regarding the equitable sharing of funds between the national government and the county governments as well as between the county governments themselves.²⁶¹

In its quest to ensure openness and accountability in the management of public finances,²⁶² the Constitution tasks the Controller of Budget with ensuring the implementation of the national and county governments' budgets by authorising withdrawals from public funds under Articles 204, 206 and 207.²⁶³ The office of the auditor general then audits both the national and county governments usage of public finances and its report confirms whether public money has been applied lawfully and effectively.²⁶⁴

The Public Finance Management Act, defines key elements such as development partner (definition may include bilateral and multilateral donors), grants, public money, grant recipient, receivers and collectors of National Government Revenue and National Treasury.²⁶⁵ It defines public money as all money that comes into possession of, or is distributed by, a national government entity; money raised by a private body by virtue of a statutory authority; money held by national government entities in trust for third parties; and any money that can generate liabilities for the Government.²⁶⁶

The National Treasury administers public funds through formulation, implementation and monitoring of micro-economic policies involving expenditure and revenue, as well as other relevant economic and financial policies.²⁶⁷ In addition, it designs and prescribes an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution.²⁶⁸ The Act also provides for the development of regulations on grant administration which shall be approved by Parliament.²⁶⁹

The FCMA, provides guidance on financial management by creating the Forest Board which manages, controls, and administers the assets and finances of the KFS.²⁷⁰ The FCMA establishes the Forest Conservation and Management Trust Fund, which holds significant potential as a financial channel for REDD+ initiatives in Kenya, given its focus on supporting sustainable forest management and community-driven conservation efforts. Its mandate is to nurture and promote best practices in forest conservation and development, and it is designed to support a range of activities critical to REDD+, including community forestry programs, reforestation and afforestation initiatives, forestry extension services, vocational training, and payment for ecosystem services programs.²⁷¹

The diverse sources of funding for the Trust Fund are required to further enhance its capacity to support REDD+ financing. These include appropriations by Parliament, levies on forest and land use, investment income, contributions from the KFS, and external funding such as grants, donations, and endowments. By directing resources into targeted conservation efforts and providing financial incentives for ecosystem stewardship, the Fund aligns closely

²⁶¹ *Ibid*, Article 216 (2).

²⁶² *Ibid*, Article 201 (a).

²⁶³ *Ibid*, Article 228,.

²⁶⁴ *Ibid*, Article 229 (6).

²⁶⁵ Section 2, Public Finance Management Act, No. 18 of 2012.

²⁶⁶ Section 11, Public Finance Management Act, No. 18 of 2012.

²⁶⁷ *Ibid*, Section 12 (a) and (b).

²⁶⁸ *Ibid*, Section 12 (e) and (f).

²⁶⁹ *Ibid*, Section 48.

²⁷⁰ Section 6-8, Forest Act, No. 7 of 2005.

²⁷¹ Section 27, Forest Conservation and Management Act, 2016.

with the objectives of REDD+. ²⁷² The Trust Fund is however not yet set up and operational as envisioned under the FCMA.

The Climate Change Act establishes the Climate Change Fund which is envisioned to be a financing mechanism for priority climate change actions and interventions approved by the NCCC. ²⁷³ The fund shall be vested in the National Treasury and shall be applied to finance through grants and loans the implementation of climate change adaptation and mitigation actions. ²⁷⁴ As REDD+ activities fall under climate mitigation actions there is potential for this fund to be applied and used to further REDD+ goals. ²⁷⁵ The Act provides that the fund shall be administered by the NCCC and shall set out other procedures and requirements for effective and transparent administration including tracking and accounting for climate change finance and monitoring and evaluation procedures through regulations which shall be subjected to public participation and approval by the National Assembly. ²⁷⁶ These regulations have as yet not been enacted. As such, though the climate change and forestry legal frameworks each establish funds that could finance REDD+ activities in the country, this potential remains unrealized due to delays in the establishment of the funds.

County Governments have also developed county climate change funds and relevant regulations to anchor and operationalize the funds. Developed at the county level, these regulations facilitate prioritization of climate activities at county level, and resources mobilization and accounting. ²⁷⁷ These regulations are county specific and enable each of the counties to mobilize REDD+ finances. ²⁷⁸ There is however need to support the building of robust capacity at county and local-level to scale up county funds in order to improve climate resilience and raise awareness on the critical role REDD+ can play in this regard.

2.2.9 Transparency, accountability, and anti-corruption

Since REDD+'s inception, corruption has been viewed as a potential impediment to the achievement of its goals. ²⁷⁹ Corruption undermines the credibility and effectiveness of REDD+ projects and results in the misallocation of resources and non-achievement of intended emissions reductions and co-benefits. Specific corruption risks include preponderance for land grabbing and interference with tenure rights, fraud in monitoring, evaluation and reporting, and elite capture of REDD+ projects/programmes and revenues. ²⁸⁰

Kenya's "Corruption Risk Assessment for REDD+ report highlights that corruption and the lack of transparency and accountability in the forest governance system are largely responsible for the massive deforestation and forest degradation that the county has experienced in the post-independence period. ²⁸¹ In Kenya, bribery is the most prominent form of corruption

²⁷² Section 28, Forest Conservation and Management Act, 2016.

²⁷³ Section 25, Climate Change Act, 2016.

²⁷⁴ *Ibid*, Section 25.

²⁷⁵ *Ibid*, Section 25.

²⁷⁶ *Ibid*, Section 25.

²⁷⁷ Government of Kenya (G.o.K), *National REDD+ Strategy*, Ministry of Environment and Forestry, 2021.

²⁷⁸ Sophie C, *The elements of Benefit Sharing for REDD+ in Kenya: A Legal Perspective*, Volume 4 Carbon and Climate Review Journal 2015.

²⁷⁹ David W, *Will REDD+ Safeguards Mitigate Corruption? Qualitative Evidence from Southeast Asia*, The Journal of Development Studies, 55:10, 2129-2144.

²⁸⁰ André S, *Corruption and REDD+: Identifying Risks Amid Complexity*, U4 Brief May 2012 No 2.

²⁸¹ Ethics and Anti-Corruption Commission (EACC), *National Ethics and Corruption Survey, 2021*, EACC Research Report No. 13 of May 2022.

and unethical conduct witnessed in public offices,²⁸² and those who witnessed unethical practices in government offices stood at 45.9 percent with only 3.4 percent reporting to relevant authorities for remedial intervention.²⁸³ Over a quarter (27.1%) of the respondents who witnessed an incident of unethical conduct in a public office did not know where to report.²⁸⁴ Experiences with corruption and unethical conduct are also experienced in the context of REDD+, for example escalating irregularities in the allocation of public forests by the central government and by county authorities, have caused a significant reduction in the forested areas that these government entities hold in trust.²⁸⁵

Kenya has a strong anti-corruption drive and has over time put in place anti-corruption initiatives dating back to independence, including enactment of laws and regulations to fight corruption.²⁸⁶ As such, transparency, accountability, and anti-corruption are critical components in the effective management of REDD+ initiatives. From a policy perspective, the Anti-Corruption Guidelines for REDD+ in Kenya set out a framework for all implementing partners including REDD+ stakeholders and County Governments to customize the guidelines and strengthen their internal policies to realize implementation of a corruption free REDD+ Programmes/projects.

The existing legal frameworks surrounding anti-corruption could support Kenya's REDD+ implementation, noting that the application of these laws to Kenya's REDD+ strategies needs to be further explored. For example, specific REDD+ interventions might be governed by a selection of the laws, but the effectiveness of these individual regimes would need to be considered in more detail before concluding whether they were fit for purpose. Kenyans, state officers, state organs and public officers, are all bound by the national values which include good governance, integrity, transparency, and accountability.²⁸⁷ These national values are further backed up by the Constitutional provisions on leadership and integrity,²⁸⁸ which are the basis of the Leadership and Integrity Act, and Chapter 15 which provides for the national commissions.²⁸⁹

With respect to transparency, accountability and anti-corruption, the Constitution establishes the EACC. It however does not list the EACC as a commission under Chapter 15 which introduces a legal dilemma on whether the commission has the same powers as the other Constitutional Commissions. This lack of clarity weakens the anti-corruption framework thus leaving the task of clarifying EACC's mandate to the Ethics and Anti-Corruption Act. This is not the only challenge that the EACC faces. As is, the commission lacks prosecutorial powers and is limited by the Anti-Corruption and Economic Crimes Act (ACECA), to only conducting investigations. After investigations have been conducted, the file is then forwarded to the Office of the Director of Public Prosecutions (ODPP) who then determines whether to proceed with the matter or not.

The ACECA, provides for an investigative, preventive, and punitive anti-corruption mechanism. It creates a variety of categories offences including economic crimes and establishes special compensation and recovery methods for benefits that were improperly gained.²⁹⁰ Informed by the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption, the Act provides steps towards the forfeiture of unexplained wealth.²⁹¹ The Act has also created special magistrates under the

²⁸² *Ibid*, EACC 2022.

²⁸³ *Ibid*, EACC 2022.

²⁸⁴ *Ibid*, EACC 2022.

²⁸⁵ Government of Kenya, Anti-Corruption Guide Lines for REDD+ in Kenya, (GoK, 2021).

²⁸⁶ Rose Ngugi et al, *Efficacy of Anti-Corruption Institutional Structure in Kenya*, KIPPRA Policy Brief No. 02/2022-2023.

²⁸⁷ Article 10 Constitution of Kenya, 2010.

²⁸⁸ *Ibid*, Chapter 6.

²⁸⁹ *Ibid*, Chapter 15.

²⁹⁰ Articles 2 and 45 Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

²⁹¹ *Ibid*, Section 55.

judiciary who would specifically deal with corruption. However, the challenge here is the fact that these magistrates only act as a court of first instance and all their decisions are subject to appeals from the higher courts who have review and revisionary powers against them.

The Public Officer Ethics Act promotes integrity among public officers by mandating the declaration of assets, income, and liabilities every two years. Complementing this, the Proceeds of Crime and Anti-Money Laundering Act establishes money laundering as an offence and outlines measures to combat it. Both Acts seek to prevent the concealment of illicit funds within legitimate businesses by enabling the identification, tracing, freezing, seizure, and confiscation of proceeds from corrupt activities, thereby deterring corruption. Similarly, the Bribery Act prescribes offences for those who engage in bribery, while the Public Finance Management Act ensures the prudent management of public funds by the National and County governments, with oversight from Parliament and County Assemblies.

The Public Procurement and Disposal Act establishes the Public Procurement Administrative Review Board and the Public Procurement Oversight Board. These bodies work together to combat corruption through ensuring compliance with law. The absence of a regulatory mechanism for procurement and disposal allows for the un-procedural and irregular acquirement of government service and goods contracts which counts as corruption as it opens the door to unfavourable practices such as nepotism and bribery. The Government has also established the Integrated Financial Management Information System (IFMIS), which interlinks planning, budgeting, expenditure management and control, accounting, audit, and reporting. Existing studies however show that there is need for effective implementation of legal instruments as the existing ones, such as the Bribery Act and the Leadership and Integrity Act are considered ineffective.²⁹²

Despite Kenya's robust anti-corruption legal framework and the implementation of numerous measures to enhance transparency and accountability, significant gaps persist in addressing corruption within the context of REDD+. These gaps include unclear timelines and mandates, such as the lack of clarity on whether the EACC possesses the same authority as other constitutional commissions, and its inability to prosecute cases directly, which limits its effectiveness. REDD+ implementation is further hampered by entrenched corruption risks, including land grabbing, interference with tenure rights, and fraud in monitoring and reporting. Although Kenya has frameworks like the Anti-Corruption Guidelines for REDD+ and the IFMIS, their implementation has been insufficient, with irregularities in forest allocations still ongoing at both the national and subnational levels. Public trust in the system is evidenced by the low reporting of unethical conduct, driven by confusion over reporting mechanisms and skepticism about remedial action, all of which may pose a threat towards the achievement of REDD+ goals.

2.2.10 Grievance Redress Mechanisms

GRM are systems or processes that allow individuals or communities to raise concerns or complaints about REDD+ activities and to seek resolution or compensation for any harms that they may have experienced as a result of those activities. GRMs ensure transparency, accountability, and inclusiveness in REDD+ projects and activities by providing individuals and communities with a meaningful opportunity to have their concerns addressed. This enables REDD+ implemented in a way that is responsive to the needs and interests of local communities and in a manner that respects their rights. Effective grievance redress mechanisms also help to build trust and confidence in the REDD+ process and to promote sustainable, inclusive, and equitable development outcomes.

²⁹² Rose Ngugi et al, Efficacy of Anti-Corruption Institutional Structure in Kenya, KIPPRA Policy Brief No. 02/2022-2023

The existing dispute resolution mechanisms in Kenya could be used to address grievances related to REDD+ implementation (for example, conflicts regarding land use or benefit sharing) in a manner accessible to all stakeholders, including vulnerable groups. In Kenya, judicial authority is derived from the people and vests in the courts and tribunals established within the Constitution.²⁹³ Guided by the principles of justice the Constitution mandates Parliament to establish the Environment and Land Court which has an equal ranking to the High Court of Kenya.²⁹⁴

The Court has original and appellate jurisdiction over disputes relating to the environment and land. These including climate issues, tenure, natural resources under which forests and trees fall under, public, private and community land as well as any arising enforceable rights over them.²⁹⁵ There is need to increase the number of courts to cover all counties, as there are currently 37 stations thus leaving about 10 counties without an ELC within them.²⁹⁶ Judicial officers need to be sensitized on forest related crimes and corruption, the urgent need to prosecute cases related to forest conservation and imposition of appropriate penalties that reflect the gravity of forest crimes.²⁹⁷ For example, penalties prescribed by the courts are in some cases low and do not outweigh the economic gain one would receive from committing a forest crime tree therefore failing to deter forest-related crimes.²⁹⁸

National tribunals relevant to REDD+ include the National Environment Tribunal which is established to receive, hear, and determine appeals arising from decisions of NEMA, such as on the issuance of Environmental Impact Assessments licenses.²⁹⁹ Other disputes in respect of forest conservation, management, utilization, or conservation are in the first instance be referred to the lowest possible structure under the devolved system of government, and where issues remain un-resolved the matter is to be referred to the National Environment Tribunal.³⁰⁰ The tribunal however lacks penal jurisdiction and is also challenged by a large backlog of cases, attributed to financial and capacity constraints.³⁰¹

Communities are encouraged to also consider the use of alternative dispute resolution mechanisms including but not limited to, mediation, arbitration, negotiation, and traditional dispute resolution mechanisms.³⁰² Additionally, national commissions such as the KNCHR, NGEC, EACC and NLC all have grievance redress mechanisms. The commissions have the right to initiate investigations either on their own initiative or on the basis of complaints made and make recommendations on appropriate redress: NLC land injustices,³⁰³ NGEC on violations of the principles of equality, equity, and freedom from discriminations, KNCHR on alleged human rights violations and abuses³⁰⁴ and EACC on acts of corruption, bribery, economic crimes or violation of codes of ethics.³⁰⁵

²⁹³ Article 162 Constitution of Kenya, 2010.

²⁹⁴ *Ibid*, Article 162 (2).

²⁹⁵ Section 13 Environment and Land Court Act, No. 19 of 2011.

²⁹⁶ Judiciary of Kenya, Environment and Land Court: History and Background of the Court, Environment and Land Court – The Judiciary accessed on 25th April 2025 Environment and Land Court – The Judiciary A post on The Judiciary provided by: <https://judiciary.go.ke>

²⁹⁷ Stakeholder Interview, 10th January 2023.

²⁹⁸ Personal Communication, 10th January 2023.

²⁹⁹ Section 125 Environment Management and Co-ordination Act, No. 8 of 1999.

³⁰⁰ Section 70 Forest Conservation and Management Act No. 34 of 2016

³⁰¹ Muigua, K., "National Environment Tribunal, Sustainable Development and Access to Justice in Kenya," Available at: <http://kmco.co.ke/wp-content/uploads/2020/03/National-Environment-Tribunal-Sustainable-Development-and-Access-to-Justice-in-Kenya-1.pdf>.

³⁰² Section 39 Community Land Act No. 27 of 2016.

³⁰³ Section 5 (e) National Land Commission Act No.5 of 2012.

³⁰⁴ Section 8 (f) National Gender and Equality Commission Act No.15 of 2011.

³⁰⁵ Section 11 Ethics and Anti-Corruption Commission Act No. 22 of 2011.

The Commission on Administrative Justice, investigates complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector; makes inquiries into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service; and works with the KNHCR to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration.³⁰⁶ The KNHCR is mandated to work in cooperation with the Ombudsman and NGEK in discharging its functions however, there are instances of overlap in functions and differing approaches to resolving issues.³⁰⁷

NEMA has also come up with a draft grievance mechanism for its National Implementation Entity (NIE) operations in its quest to implement the National Climate Change Adaptation Programme (NCCAP). The NIE's GRM provides a channel for dispute resolution during the implementation of programmes and serves to complement the existing legal channels. The GRM is multi-level beginning at the community-level where there shall be appointed community leaders who shall work hand in hand with the Chiefs to solve disputes. The second level of redress is the county-level where a grievance handling committee shall be appointed and trained to handle complaints. The committee shall work under the supervision of the County Director of Environment (CDE). The third and final level is the national level where a grievance handling committee shall be appointed and trained to handle complaints under the supervision of the Grievance Handling Officer. All officers shall be obligated to do a quarterly report of registered complaints and submit such reports to the NIE Secretariat.

Kenya has developed grievance redress mechanisms in its National REDD+ Strategy where it calls for the establishment of a National REDD+ Feedback and Grievance Redress Mechanism (FGRM).³⁰⁸ This mechanism is aimed to ensure that any concerns raised by stakeholders are addressed, though it is yet to be established. The mandate of the FGRM is to receive and address any concerns, complaints, notices of emerging conflicts alleging actual or potential harm to be suffered arising from the project.³⁰⁹ In addition, it will also assist in the resolution of grievances between and among stakeholders as well as the various government ministries, agencies, and commissions in the context of the project.³¹⁰ It shall also, conduct itself at all times in a flexible, collaborative, and transparent manner aimed at problem solving and consensus building.³¹¹ Communication of the FGRM's response should be done within 14-21 days; and in a language that the complainant easily understands with provision for follow-up questions and clarifications where necessary. The strategy's timeline for communicating the FGRM's response, within 14-21 days, is ambiguous, as it does not clarify whether this period begins from the date the complaint is lodged or after the review process. Clear rules on the operationalization of the FGRM should be developed to ensure a well-defined starting point of this timeline is set out to avoid confusion and ensure consistency in grievance handling. The process for the FGRM is highlighted below.

³⁰⁶ Section 8 Commission on Administrative Justice Act No. 23 of 2011.

³⁰⁷ Stakeholder Interview held on 10th January 2023.

³⁰⁸ Government of Kenya, (G.O.K), Kenya's National REDD+ Strategy, Ministry of Environment and Forestry (MoEF), 2021)

³⁰⁹ *Ibid*, MoEF 2021.

³¹⁰ *Ibid*, MoEF 2021.

³¹¹ *Ibid*, MoEF 2021.

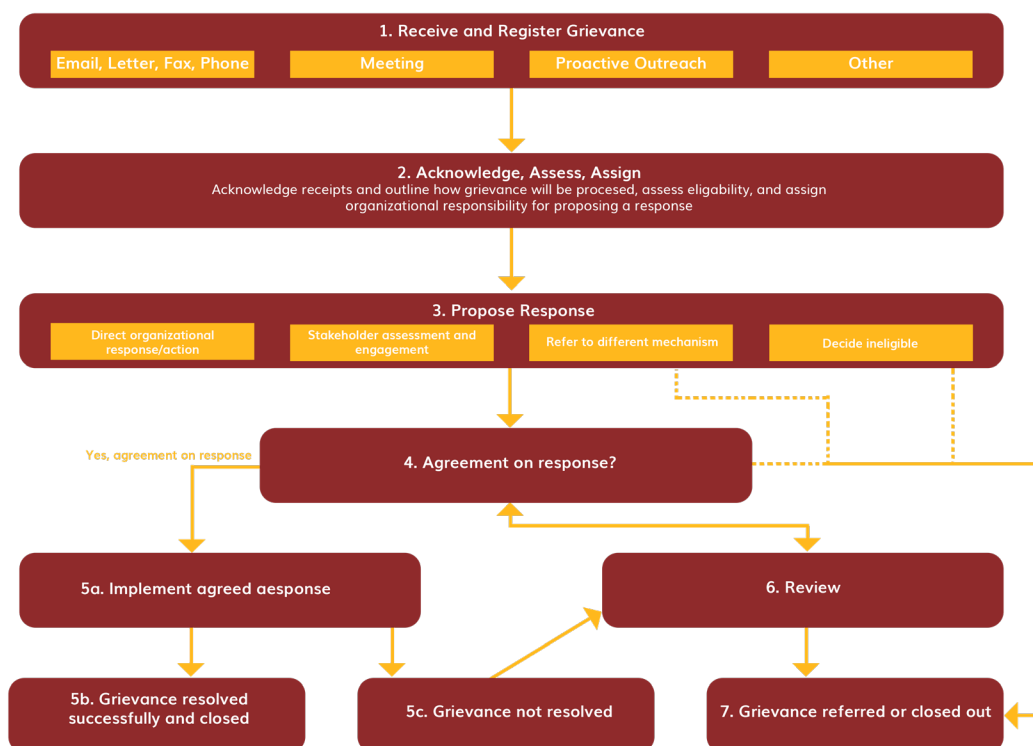


Figure 8: Grievance redress mechanisms set out under the REDD+ Strategy.

The Climate Change Amendment Act, 2023 also provides a grievance mechanism for land-based projects which includes REDD+. The Amendment Act's GRM highlights that any dispute arising under a land-based project shall be subjected to the dispute resolution mechanism set out in the Community Development Agreement in the first instance and be resolved within thirty days from the date that the dispute is lodged. Where the dispute is not resolved within thirty days from the date of the disputes lodging, the dispute shall be referred to the National Environmental Tribunal, from which appeals lie to the Environment and Land Court. There is need for alignment of the GRM process for REDD+, as it is currently covered in both law (the Amendment Act), and policy (the National REDD+ Strategy), with divergent provisions and processes applicable to the resolution of grievances that arise in the implementation of REDD+.



The successful implementation of
REDD+ in Kenya requires a multi-faceted
approach.

3 Recommendations

The implementation of REDD+ in Kenya has shown promising results in addressing deforestation and forest degradation while promoting sustainable development. The country has made significant progress in establishing the necessary frameworks, policies, and institutional capacities to support REDD+ Initiatives. Through its ongoing REDD+ projects and partnerships, Kenya has demonstrated its commitment to reducing emissions from deforestation and forest degradation, conserving forests, and enhancing carbon stocks.

Aiming to strengthen the implementation of an equitable REDD+ programme in Kenya, this gap analysis report has analyzed Kenya's PLR framework governing REDD+ and highlighted several key areas that require attention and action. The report has identified significant gaps in the PLR framework, institutional capacity challenges, and enforcement mechanisms shortcomings with a bearing on REDD+ implementation. The report underscores the need for comprehensive policy, legislative and regulatory reforms to address these gaps and ensure effective governance of REDD+ initiatives. Moving forward, it is imperative for policymakers and all other key stakeholders involved in REDD+ to work together to enact necessary policy and legislative changes and strengthen regulatory frameworks in order to address the arising gaps.

The National REDD+ Strategy has enumerated key recommendations for creating an enabling environment for REDD+ in Kenya, and this study further builds on these recommendations to propose a raft of measures that Kenya can utilize to enhance its capacity to mitigate climate change through forest conservation while promoting sustainable development, and advance the successful implementation of an effective, inclusive, and equitable REDD+ programme within the country.

Table 16: A highlight of this study's gaps and recommendations as against the REDD+ Strategy

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Application of International Law	<ul style="list-style-type: none"> Inconsistent meeting of international reporting requirements under the UNFCCC and other Multilateral Environmental Agreements. Lack of sufficient technical, financial and technological awareness which limits Kenya's ability to conduct monitoring and verification, collect and report data, and ultimately engage in international negotiations. Insufficient collaboration, knowledge exchange and cooperation amongst countries on REDD+. 	<ul style="list-style-type: none"> ✓ Adopt international guidelines for tree product certification and actualize their implementation. ✓ Develop a functional and fully compliant international climate change reporting process that allows timely reporting of progress from REDD+ implementation. 	<ul style="list-style-type: none"> Strengthened processes for meeting reporting obligations for Multilateral Environmental Agreements the country has ratified so as to ensure regular and timely reporting on international commitments and obligations. Increased participation of all critical stakeholders in the UNFCCC COP processes is necessary with awareness shared amongst these stakeholders on how to engage in pre-COP preparations, at the COP, and in post-COP processes. Adoption and implementation of mechanisms and platforms that encourage and enhance the ability of countries to collaborate, cooperate and share knowledge on REDD+. This will provide avenues for the harmonization of policies and strategies across neighboring countries or jurisdictions facilitating the efficient distribution of resources and expertise.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Institutional Governance Architecture	<ul style="list-style-type: none"> • Lack of clear guidelines on the mandates of established institutions. • Delayed implementation of the institutional governance framework provided in the National REDD+ Strategy. • Limited participation in forest conservation by non-State key stakeholders.. 	<ul style="list-style-type: none"> ✓ Strengthen capacity of KFS and KWS and County Governments in enforcing protection of forests ✓ Enhance institutional coordination for protection and conservation of existing forests. ✓ Support community involvement in the protection and conservation of forests. 	<ul style="list-style-type: none"> • Clarify the mandates of the different institutions with a role to play in the implementation of REDD+. This includes institutions such as NGEK, KNHRC, EACC, KRA, National Treasury, Ministry of Environment Climate Change and Forestry, and County Governments in order to enhance coordination and cooperation amongst them. • Fully establish the institutional framework envisaged by the National REDD+ Strategy This necessitates the appointment of members to the National REDD+ supervisory board and the National REDD+ Steering Committee. It also requires increasing the capacity of the NRCU within the Directorate of Forest Conservation and establishment of key Thematic Working groups. • Enhance effective participation of non-State key stakeholders in forest conservation efforts, including CFA, IPLC, and private sector entities as they all have a critical role to play in forest sector governance.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Forest, Land and Tree Tenure	<ul style="list-style-type: none"> Lengthy timelines for the development of laws and policies on forest management and conservation. NLC lacks a public land inventory database mapping all public lands in Kenya. Complexities and undue bureaucracy in the process of registering community land. 	<p>Improve tenure Security.</p> <ul style="list-style-type: none"> ✓ Support and enhance community organized groups to manage forests on community lands in line with community land act. ✓ Map out community lands with potential for REDD+ implementation and undertake targeted campaigns for tree growing. ✓ Develop and implement integrated livelihood strategies that incorporate trees within community lands. ✓ Develop and implement management plans that catalyse sustainable management of community forests with clear guidelines on the role's responsibility and benefits for all actors. <p>Review and harmonize policies, laws and institutions.</p> <ul style="list-style-type: none"> ✓ Establish a forest regulatory authority to coordinate forest sector development in the country. ✓ Finalize the Draft National Forest policy. ✓ Amend the FCMA 2016 to align to the Forest Policy ✓ Mainstream REDD+ in the FCMA 2016 ✓ Develop, disseminate and implement a code of ethics on standards and implementation of Standard Forest Management Practises. ✓ Develop and implement a benefits-sharing mechanism for REDD+ ✓ Strengthen research in forestry and climate change- ✓ Strengthen Indigenous People based institutions to support REDD+ implementation. ✓ Review the Public Private Partnership Act to strengthen private sector engagement. ✓ Revise the definition of mangrove areas to allow appropriate demarcation of boundaries of mangrove ecosystems. 	<ul style="list-style-type: none"> Fast track pending policies and laws regarding forest management, such as the Draft National Forest Policy, amendments to the FCMA, draft regulations under the FCMA and approve draft policies and guidelines such as the Free Prior and Informed Consent Guidelines to enable implementation of key provisions. Accelerate design and utilization of a country-wide Digital Public Land Inventory Database to enhance the NLC's ability to manage land resources, facilitate seamless data sharing and real-time data transfer among counties. Simplify and harmonize the community land registration process to enable county governments and land registries to work seamlessly to enable communities to register their land.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Local Communities, Indigenous peoples, Gender and Inclusion	<ul style="list-style-type: none"> • Insufficient study of the structural, behavioral, and cultural barriers that women and men face when participating in REDD+ activities. • Inadequate domestication of international treaties and conventions on the protection and respect of Indigenous People's rights. • Lack of full compliance with the 2/3 gender rule by both private and public institutions. 	<ul style="list-style-type: none"> ✓ Mainstream, youth, women and special needs groups in tree growing programmes. ✓ Integrate indigenous knowledge, practice and norms for forest management and conservation. ✓ Raise awareness and sensitize Indigenous People on afforestation and restoration in community lands. 	<ul style="list-style-type: none"> • Identify through research, the structural, behavioural, and traditional barriers that women and men face and addressing them during the implementation of REDD+. • Domesticate the provisions of international treaties and conventions on the protection and respect of Indigenous Peoples rights through the development of an explicit policy and legislative framework. • Implement REDD+ through a human rights-based approach that respects the rights of Indigenous Peoples to their territories ensuring their free prior and informed consent in any action to be taken on such land. • Facilitation of Indigenous Peoples' participation in decision making in the design of payment schemes during the three REDD+ phases, thereby assuring that their points of view on forest use are incorporated. • Enhance compliance by both public and private sectors with the minimum statute requirements of gender equality and inclusion

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Carbon Rights	<ul style="list-style-type: none"> • Lack of explicit law setting out who has the right to benefit from sequestered carbon and or reduced GHG emissions. • Lack of clarity on the nature, ownership, and transfer of carbon credits. • Lack of clarity on the modalities of the REDD+ Standards Assessment prescribed under the Climate Change Amendment Act, 2023. • Lack of clear modalities on the efficient working of the National Carbon Registry and other sector registries established under the Climate Change Amendment Act, 2023. • Knowledge gap at the county-level on carbon rights and land ownership and tenure. 	<ul style="list-style-type: none"> ✓ Establish a functional national registry system for carbon transactions. ✓ Establish a functional carbon accounting system to monitor national GHG mitigation targets. ✓ Clarify definitions of carbon rights and tenure rights to streamline benefits sharing mechanism for all stakeholders. ✓ Strengthen national and county capacity in PES projects formulation. 	<ul style="list-style-type: none"> • Set out clear legislative provisions on the ownership of carbon rights. • Clarify the nature, ownership, and transfer of carbon credits in the Climate Change Amendment Act, 2023 and the Draft Climate Change (Carbon Markets) Regulations, 2023. • Develop guidelines that set out the process and modalities of the REDD+ Safeguards Standards Assessment. • Determine the modalities of the Carbon Registry established by the Climate Change Amendment Act, 2023 through the drafting of rules and regulations. • Build capacity on carbon rights and land ownership and tenure across all counties, focusing on enhancing the knowledge of county governments local communities and project developers.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Benefit Sharing	<ul style="list-style-type: none"> The existence of multiple enacted and proposed benefit sharing legislative and regulatory frameworks creates disharmony in the forest sector. The Climate Change Amendment Act, 2023 introduces benefit sharing through an annual social contribution that shall be disbursed to communities through a negotiated community development agreement. It does not however clarify the modalities for developing and implementing the agreement. 	<ul style="list-style-type: none"> ✓ Clarify land ownership, cost and benefit sharing arrangements to stimulate participation of communities and private sector in REDD+ activities. ✓ Streamline forestry benefit sharing mechanisms. ✓ Mandates KFS to establish and implement benefit sharing arrangements for the forestry sector 	<ul style="list-style-type: none"> Eliminate overlap in the case of benefit sharing by clarifying which benefit sharing agreements and provisions apply to REDD+, as both the Natural Resources (Benefit Sharing) Bill establishes a requirement for benefit sharing agreements between forest project developers and counties for the benefit of Local Communities, and the Climate Change (Amendment) Act establishes the requirement for Community Development Agreements between project developers and Local Communities in land-based projects, creating two different regimes for benefit sharing in forest projects. Clarify through regulation, key modalities of operationalizing the community development agreement including the roles of the parties to the agreement, the mechanism of disbursing the annual social contribution to communities, the role of county governments in overseeing and monitoring the negotiation and the process of recording and registering the agreement in the National Carbon Registry.
Measurement, Reporting and Verification	<ul style="list-style-type: none"> Delayed enactment of the draft Climate Change (Monitoring, Reporting and Verification) Regulations 2022. Funding of Monitoring Reporting and Verification (MRV) remains a challenge. Lack of an FRL that will provide accurate baseline data in the forestry sector to incentivize the reduction of emissions from deforestation and forest degradation. 	<ul style="list-style-type: none"> ✓ Develop the methodology for how forest emissions are monitored. ✓ Develop a data management system for REDD+ and sustainable forest management ✓ Actualization of the developed NFMS and FRL ✓ Integrate the National registry to aid monitoring and reporting 	<ul style="list-style-type: none"> Enact the Draft Climate Change (Monitoring Reporting and Verification) Regulations 2022 to clarify through regulation, the responsibilities of public and private sector entities on MRV. Support MRV through increased funding to meet costs for infrastructure development and the building of local technical capacity for maintaining the national MRV system to ensure high quality information and high integrity carbon credits from Kenya. Fast track the development of baselines that appropriately incentivize actions to reduce deforestation risk and ensure an appropriate MRV framework that ensures the integrity of abatement and alignment with UNFCCC requirements.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
REDD+ Finance Management	<ul style="list-style-type: none"> • Lack of clarity on the access and flow of finances in a nested REDD+ framework. • Insufficient funds being directed towards REDD+ initiatives. • Lack of REDD+ specific laws addressing the use and management of REDD+ funds. 	<ul style="list-style-type: none"> ✓ Support National Treasury to develop financial instruments that recognize forestry as an asset class for insurance and investment by pension funds. ✓ Develop policies and mechanisms for attracting private finance. ✓ Implement the Green Fiscal Incentive Policy. ✓ Develop dedicated forestry bonds. ✓ Support policies and fiscal incentives that increase finance allocation to the forestry sector at county level. ✓ Mainstream REDD+ into development planning and budgeting at national and county levels ✓ Engage various stakeholders on capacity building to monitor REDD+ projects. ✓ Mainstream REDD+ and carbon accounting in institutions of learning ✓ Establish a "community-of-practice" on REDD+ 	<ul style="list-style-type: none"> • Enactment of policies and laws that make Kenya attractive for REDD+ investment such as the development of National REDD+ Nesting Regulations to enable accounting and reporting emission reductions (ERs) of REDD+ initiatives on multiple scales, and access to multiple sources of financing. • Establishment of the Climate Change Fund as envisioned under Article 25 of the Climate Change Act and the Forest Conservation and Management Trust Fund under Section 27 of the Forest Conservation and Management Act to ensure capitalization of the Funds from various sources with portions earmarked for REDD+. • Develop a specific benefit sharing framework for REDD+ that articulates how funds are managed and distributed to stakeholders.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Transparency, Accountability and Anti-Corruption	<ul style="list-style-type: none"> • Respondents who witness incidents of unethical conduct in public offices do not always know where to report and the nature of the report to make. • The Anti-corruption Guidelines for REDD+ in Kenya are yet to be approved and consequently adopted thereby delaying and or preventing implementation. • Ethics and Anti-Corruption Commission (EACC) is not listed as a commission under Chapter 15 of the Constitution and lacks prosecutorial powers. • Special magistrates established under the Anti-Corruption and Economic Crimes Act (ACECA) only act as a court of first instance and all their decisions are subject to appeals from the higher courts who have review and revision powers against them. 	<ul style="list-style-type: none"> ✓ Develop, adopt, disseminate and enforce anticorruption policies and guidelines ✓ Mandates the Ministry of Environment, Climate Change and Forestry to support enforcement of REDD+ anti-corruption policies 	<ul style="list-style-type: none"> • Conduct capacity building on reporting and handling of corruption cases to ensure that all citizens know where and how to make a corruption complaint especially in the forest, land and environment sectors. • Adoption of the Anti-corruption Guidelines for REDD+ in Kenya and ensure their implementation. • Enhance collaboration between the EACC and the Office of the Director of Public Prosecutions (ODPP). This can include the EACC lodging civil suits alongside the ODPP's criminal suits. • Sensitization and training of judges and magistrates on combating corruption in REDD+ and other nature based solutions projects to provide judicial officers with the tools for analyzing ethical issues in this sector.

Thematic Areas	Identified Thematic Gaps Priority	REDD+ Strategy Recommendations	Study's Recommendations
Grievance Redress Mechanism	<ul style="list-style-type: none"> • Slow prosecution and low penalties for forest crimes and offences. • Limited Environment and Land Court (ELC) stations across the country, and —under-staffing of the few existing stations. • Grievance Redress Mechanism proposed for the SIS is different from that proposed in the strategy and the Climate Change Amendment Act, 2023. 	√ Calls for the establishment of the National REDD+ Feedback and Grievance Redress Mechanism	<ul style="list-style-type: none"> • Capacity building for prosecutors and judicial officers on environmental and forestry related offences and appropriate and legal penalties reflecting the gravity of offences. • Increase of ELC stations across the country, as there are currently 10 counties without an ELC station within them, thus making it difficult to access justice. • Harmonization of the various Grievance Redress Mechanisms established and sensitization of where the National REDD+ Strategy's Grievance Redress Mechanism established in the National REDD+ Strategy fits in with the provisions of the Climate Change Amendment Act, 2023.

References

- Abdulateef Ahmed, Kenya to Launch National Tree Growing, Land Restoration Campaign, News Central, December 19, 2022.
- Angelsen A, editor, Realising REDD+: National strategy and policy options, (Center for International Forestry Research, 2009)
- Architecture for REDD+ Transactions (ART), Art Overview for Stake Holders, (ART 2022).
- Beatriz Granziera et al, Eligibility Requirements for REDD+ Standards and Financing, (The Nature Conservancy & Conservation International, 2021).
- Bernier P., and Schoene, D., Adapting forests and their management to climate change: an overview. (Vol. 60, pp. 5-11). Rome, Italy (FAO, 2009).
- Catherine P. and Andrew B., Reducing Emissions from Deforestation and Forest Degradation in Developing Countries: Key Actors, Negotiations and Actions, (Carbon and Climate Law Review, Volume 3, 2008)
- CIFOR, International Database on REDD+ Projects and Programmes, (CIFOR, 2022)
- Charlotte Streck, "Who Owns REDD+? Carbon Markets, Carbon Rights and Entitlements to REDD+ Finance",
- Chomba S. Kariuki J. Lund J. and Sinclair F., Roots of inequity: How the implementation of REDD+ reinforces past injustices. (Land Use Policy, Volume 50, 2016)
- Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, (UNFCCC, 2010).
- Ethics and Anti-Corruption Commission, Report of Activities and Financial Statement for the Financial year 2018/2019, (EACC 2019)
- FAO, From reference levels to results reporting: REDD+ under the United National Framework Convention on Climate Change, (FAO, 2020).
- Food and Agriculture Organization of the United Nations (FAO), Global Forest Resources Assessment 2020: Main Report (FAO 2020).
- Food and Agriculture Organization of the United Nations (FAO), The role of FAO in land tenure reform to support REDD+ implementation, (FAO, 2017)
- Carbon Partnership Facility (FCPF), 2022 Annual Report, (FCPF, 2022).
- Forest Carbon Partnership Facility (FCPF), About the FCPF, (FCCP, 2022).
- Forest Trends' Ecosystem Market Place (EM), The Art of Integrity: State of the Voluntary Carbon Market 2022: Quarter 3, (EM, August 2022).
- Global Environment Facility (GEF), Summary of Negotiations of the Eighth Replenishment of the GEF Trust Fund, GEF/C.62/03 (GEF 2022).
- Global Gender and Climate Alliance (GGCA), Gender and Climate Change: Gender in REDD+ Policy Brief, (GGCA 2016)
- Government of Kenya (G.O.K), Kenya's Nationally Determined Contributions, Ministry of Environment and Forestry (MoEF, 2020)
- Government of Kenya, (G.O.K), Kenya's National Approach to Safeguards and a Safeguards Information System for REDD+ Implementation, Ministry of Environment and Forestry (MoEF, 2021)

- Government of Kenya (GoK), National REDD+ Strategy, (Ministry of Environment and Forestry (MEF) December 2021 (MEF 2021)
- Government of Kenya (G.O.K), Taskforce Report on Forest Resources Management and Logging Activities in Kenya, Ministry of Environment and Forestry (MoEF, 2018)
- H.-O. Pörtner et al, "IPCC, 2022: Summary for Policymakers", in H.-O. Pörtner et al (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (Cambridge University Press, 2022).
- Inter-American Development Bank (IDB), *Gender, Forests and Climate Change*, (IDB 2021)
- International Bank for Reconstruction and Development, (The World Bank), *State and Trends of Carbon Pricing 2022*, (World Bank 2022).
- International Panel on Climate Change (IPCC), *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, IPCC AR6 WGIII (IPCC 2022).
- Irina K, *Post-Rio Treaties: Implementation Challenges*, (Pace Environmental Law Review, Volume 13, 1995).
- Kameri-Mbote, *Kenya Land Governance Assessment Report*, World Bank Group (2016)
- Kenya Forest Service (KFS), *National Forest Resources Assessment Report, 2021* (KFS 2021).
- Kenya Forest Service (KFS), *Overview* (KFS 2022)
- Lowering Emissions by Accelerating Forest Finance Coalition (LEAF), *Press Release Statement: Leaf Coalition Commitments Top 1.5 billion*, (LEAF, 2022).
- Joanes O. et al, *Implementing REDD+ at the national level: Stakeholder engagement and policy coherences between REDD+ rules and Kenya's sectoral policies*, (Forest Policy and Economics, Vol 65, 2016).
- JCM, *Joint Crediting Mechanism Guidelines for Developing Proposed Methodology for Reducing 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-plus)*
- John Costenbader, *Legal Frameworks for REDD: Design and Implementation at the National Level*, IUCN Environmental Policy and Law Paper No. 77 (IUCN, 2019)
- John Parrotta et al, (eds.), *Forests, Climate, Biodiversity and People: Assessing a Decade of REDD+*, International Union of Forest Research Organizations (IUFRO) World Series Volume 40, (IUFRO, 2022).
- Kenya Association of Manufacturers (KAM), *Report on the Sustainable Forestry Business Sector*, June 2021, (KAM, 2021)
- Marina M., *Forest Ecosystems, and the Carbon Cycle*, (Pacific Institute for Climate Solutions, 2017).
- Massarella K. Schroeder H. & Brockhaus M., *Building Authority and Legitimacy in Transnational climate change governance: Evidence from the Governors' Climate and Forests Task Force*, (Global Environmental Change in Science Direct, Volume 64, Issue 3, 2020)
- Munuo N. & Glazewski J., *The Implementation of REDD+: Self-Governance through the Lens of Reflexive Law*, (Carbon & Climate Law Review, Volume 12, Issue 2, 2018)
- Nantogo M, *All that glitters is not gold: Power and participation in processes and structures of implementing REDD+ in Kondo, Tanzania*, (Forest Policy and Economics in Science Direct, Volume 100, 2019).
- National Gender and Equality Commission, *Annual Report 2019-2020*, (NGEC2020)

- Oduor M., The status of international law in Kenya, (Africa Nazarene University Law Journal, Volume 2, 2014)
- Paul T, New Human Rights Concept for Old African Problems: An analysis of the challenges of introducing and implementing indigenous rights in Africa, (Journal of African Law, Volume 61, 2017)
- Rosemary L., REDD+ Transparency, Participation and Resources Rights: The role of law, (Environmental Science and Policy on Science Direct, Volume 14, Issue 2, 2011)
- Stella Maris O, The Status of Tenure Security in Kenya: Land Tenure Systems and Land Economics, (Technische Universitat Munchen, 2019)
- Tehan, M. et al, The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD (Cambridge University Press, 2017).
- United Nations Convention on Combating Desertification, The LDN Target Setting Programme, (UNCCD, 2021).
- United Nations Development Programme (UNDP), Kenya Forest Carbon Partnership Facility (REDD+ Readiness Project), (UNDP, 2021)
- United Nations Framework Convention on Climate Change (UNFCCC), Report of the Conference of Parties on its 13th Session, held in Bali from 3 to 15 December 2007, Decision 1/CP.13, FCCC/CP/2007/6/Add.1 (UNFCCC 2007). In 2010 at COP 16, there was an "agreed outcome" in the form of the Cancún decision on REDD+ which was adopted to expand the role of forests in mitigating climate change to include conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks, as envisioned by the Bali Action Plan.
- United Nations Framework Convention for Climate Change (UNFCCC), Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action. FCCC/CP/2005/MISC.1 (UNFCCC, 2005).
- UN Habitat, Land tenure security in selected countries: Synthesis Report (UN Habitat, 2014)
- United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD), Guidance Note on Gender Sensitive REDD+, (UN-REDD, 2013)
- N-REDD, UN-REDD Framework for Supporting the Development of Country Approaches to Safeguards, (UNREDD, 2021)
- UN-REDD, UN-REDD supporting work on Tenure and REDD+, (UN-REDD, 2021)
- UN-REDD/Myanmar Programme, Policies, Laws, and Regulations (PLRs) that can help to address the Cancun Safeguards for REDD+ in Myanmar: Summary by Safeguard, (UN Environment World Conservation Monitoring Centre (UNEP-WCMC, 2019)
- UN-REDD Programme, UN-REDD Programme Partners Focal Points- updated as of 14th July 2022, (UN-REDD 2022)
- UN-REDD, Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD Programme), Impact Flyer: Forest Solutions to the Climate Emergency, (UN-REDD, 2020)
- UN-REDD, Eighth Consolidated Annual Progress Report of the UN-REDD Programme Fund, 2016-Annual Report of the UN-REDD Programme Fund (UN-REDD 2016)



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