

# Overview of REDD+ in Kenya

## REDD+ Law Project - Briefing Paper

*July 2014*

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The **REDD+ Law Project** is led by Baker & McKenzie and the Cambridge Centre for Climate Change Mitigation Research (University of Cambridge), working with international and local advisers/institutions to assist countries in the development and implementation of their national REDD+ legal frameworks.

More information regarding this initiative is available at  
<http://www.4cmr.group.cam.ac.uk/research/projects/reddpluslawproject>

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## 1. BACKGROUND<sup>1</sup>

Kenya's economy has a very strong dependence on the natural environment and, in particular, forestry resources. Forestry underpins most sectors, including agriculture, horticulture, tourism, wildlife, and the energy. In some rural areas, the forests contribute over 75% of the cash income and provide almost all of households' energy requirements.

Although Kenya is classified as a low forest cover country, it loses about 54,000 hectares of forest cover every year. The major reasons for this loss are:

- Conversion of forest land to agriculture, settlements and other uses;
- Unsustainable utilization of forest products (including charcoal);
- Forest fires; and
- Shifting cultivation.

Loss of forest cover is particularly severe in the Arid and Semi-arid zones, where the agricultural frontier is expanding and charcoal burning is rampant. Significant forest cover loss has also occurred in the major catchment areas (popularly referred to as 'water towers') over the last three decades.

Kenya's forests resources contribute more than 3.6 per cent of Gross Domestic Product (GDP), and economic benefits of forest ecosystem services are more than four times higher than the short-term gains of deforestation. Preventing the further destruction of Kenya's forests and wetlands and investing in their restoration and sustainable use is one of the smartest and cost-effective natural capital investments Kenya can make, to not only combat climate change, but to create jobs and wealth, ensure water and food security, and deliver the *Vision 2030* objectives. Kenya needs strong political, fiscal, and technical support and commitment for the restoration and sustainable management of this critical resource.

*Vision 2030*, the country's economic blueprint, identifies forestry as one of the key drivers of the economy through its support to the primary sectors including agriculture, infrastructure, tourism and energy. Under *Vision 2030*, the country aims to protect the five water towers (Mt. Kenya, Aberdares, Mau, Cherangani and Mt. Elgon) and increase the forest cover to a minimum 10% through an aggressive afforestation, reforestation and restoration program. In addition, the country is addressing climate change through the development of a National Climate Change Response Strategy (NCCRS) and supporting Action Plans. This strategy provides a framework for re-orienting national

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<sup>1</sup> This text in this section is courtesy of the Kenya Forest Service (KFS).

programmes towards a low carbon development pathway, and has identified the forestry sector as a strong vehicle for supporting this effort.

## **2. REDD+ DEVELOPMENTS IN KENYA<sup>2</sup>**

### **2.1 Readiness phase**

REDD+ in Kenya is evolving as an attractive means to reduce forest sector carbon emissions. A number of activities are currently ongoing in the country to support efforts to design, develop and apply strategies and programs (**REDD+ Readiness**) to reduce emissions and enhance carbon sink capacities of forest ecosystems. The Forest Carbon Partnership Facility (FCPF), Natural Resources Management Project under KFS, and other bilateral supported programmes have been instrumental in providing technical and financial support for these efforts. Kenya has also benefited from the global programme support of the UN-REDD Programme in support of its REDD+ readiness activities. The Ministry of Environment, Water and Natural Resources coordinates the Readiness process, and a National REDD+ Coordination Office has been established within the Ministry to offer secretariat services for the activities.

Significant policy, legislative and institutional changes have occurred over the last few years in Kenya that complement the REDD+ efforts in the country. The Constitution, National Development Plan (Vision 2030), The Arid and Semi Arid Lands (ASALs) Policy, the National Land Policy and the National Climate Change Response Strategy (NCCRS) and Action Plan (NCCAP) identify forestry as one of the key sectors for delivering national sustainable development and climate change goals. The Environment and Forest Policies and supporting legislation are currently under review to align them with the Constitution and to embrace emerging issues like climate change, participatory management and REDD+. Capacities of key institutions like Kenya Forest Service (KFS) and Kenya Wildlife Service (KWS) are also being strengthened to provide the required support and guidance for sustainable management and conservation of forestry resources. Similar efforts are being directed to community associations to strengthen their engagement in forest conservation efforts. The KFS has also undergone significant transformation, in line with the Forests Act 2005, to embrace a modern, decentralized and transparent approach to forest management that ensures full participation of stakeholders. The World Bank, United Nations Development Programme (UNDP) and the Finnish Government have significantly supported forestry conservation efforts in the dry lands, aware that these areas hold most of the country's forest resources and equally hold the greatest potential for

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<sup>2</sup> This text in this section is courtesy of the Kenya Forest Service (KFS).

reducing carbon emissions and enhancement of forest carbon stocks. The REDD+ readiness process should reinforce these activities and future sector engagements.

Kenya hosts a number of land-based carbon projects, including Wildlife Works Kasigau Corridor REDD Project that has sold carbon credits in the voluntary market.

Kenya's Readiness Preparation Proposal (R-PP) outlines a strategy for developing REDD+ in Kenya, with the broader goal of implementing "environmentally and socially sustainable land-use and forest policies."<sup>3</sup> The R-PP contains:

- 4 REDD+ strategy options, where 'REDD+ strategy' is used to refer to various policies, measures and actions taken by public and private actors that are developed for the purpose of reducing emissions and increasing removals of Greenhouse Gases (GHG) in the forest sector.<sup>4</sup> The REDD+ strategies to be tested are: 1) reducing pressure to clear forests for agriculture and other uses; 2) promoting sustainable utilisation of forests; 3) Improving forest law enforcement and governance; and 4) enhancement of carbon stocks<sup>5</sup>;
- A management and consultation approach to underpin all activities undertaken as part of the REDD+ implementation phase;
- An approach to design Kenya's carbon reference emission level/reference level, and monitoring system; and
- An approach to assess and monitor social and environmental impacts from the REDD+ strategies.

Kenya seeks to attract both public and private investment through REDD+, and hopes that REDD+ will contribute to 'green growth.'

## **2.2 Key stakeholders in REDD+ in Kenya**

Key stakeholders in Kenya's REDD+ implementation are:

- National and County level governments (including the Ministries of Finance; Devolution and Planning; Agriculture, Livestock and fisheries; Lands, Housing and Urban Development; Energy and Petroleum; and, Environment, Water and Natural Resources), the Kenya Forest

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<sup>3</sup> Kenya - Revised REDD Readiness Proposal ("R-PP"), August 2010; Executive Summary, page v: para 1.

<sup>4</sup> *Ibid*, page 35: paragraph 7. Further: "A REDD+ strategy can involve programs, investments by authorities in the capacities and management structures of their respective institutions, and financial incentives and instruments that induce a change in behaviour."

<sup>5</sup> *Ibid*, Section 2b: pages 34-43.

Service, the National Environment Management Authority, the Kenya Forest Research Institute, the Kenya Wildlife Service, and the National Museums of Kenya;

- Civil society: international NGOs (WWF, IUCN); National NGOs (Greenbelt Movement, Kenya Forests Working Group, Forest Action Network, NACOFA, Nature Kenya, other NGOs that articulate interests of vulnerable and marginalized groups);
- Development partners: JICA, Finnish Government, USAID, World Bank, UNDP, FAO, UNEP;
- Universities and Research Institutions: Jomo Kenyatta University of Agriculture and Technology, Kenyatta University, Moi and Nairobi Universities, KARI; and
- Banks, timber industry, farmers and investors (the private sector).

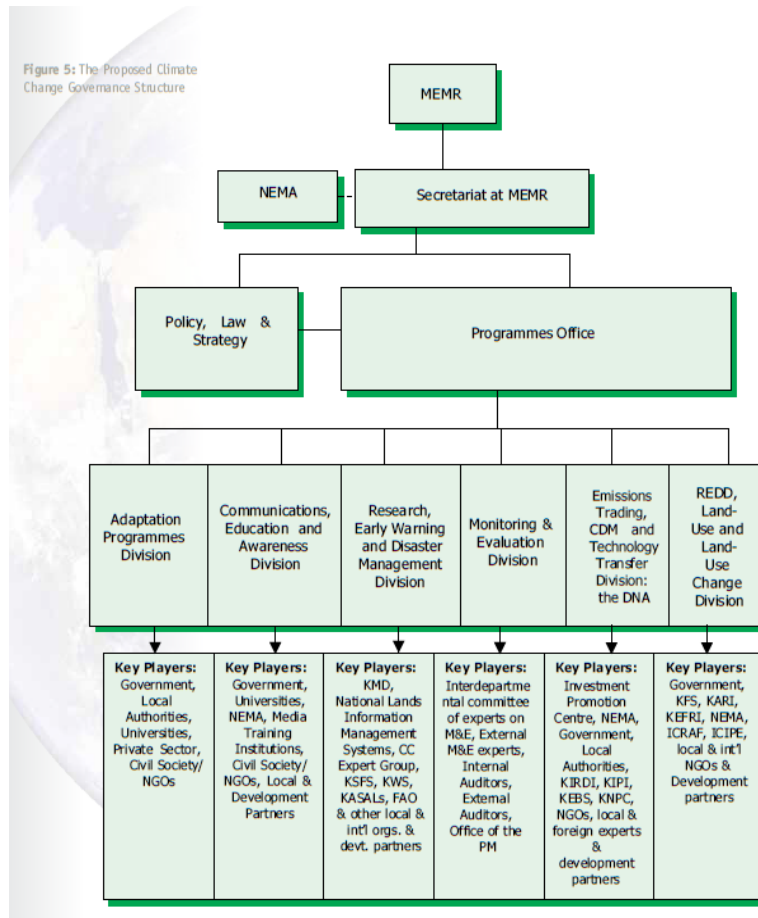
## **2.3 Emerging framework for REDD+ governance**

### **2.3.1 *Climate change governance***

Kenya has ratified the United Nations Framework Convention on Climate Change (UNFCCC). Regionally, Kenya is a member of the East Africa Community (EAC) which has adopted the *East African Community Climate Change Policy*, dealing with forestry and sustainable land management in the contexts of both adaptation and mitigation.

Before 2013, climate change coordination activities in Kenya were vested in the Ministry of Environment and Mineral Resources (with the mandate for forest conservation and management vested in the Ministry for Forestry and Wildlife). The current Government places both of these responsibilities within the new, consolidated Ministry for Environment, Water and Natural Resources. Consistent with the NCCRS, a Climate Change Secretariat has been established within the Ministry of Environment, Water and Natural Resources. The NCCRS proposed a structure for climate change governance in Kenya (see diagram below); the new Climate Change Bill 2014 could also affect the structure this structure.

## PROPOSED CLIMATE GOVERNANCE IN KENYA



*National Climate Change Response Strategy (Government of Kenya, April 2010), page 91.*

**IMPORTANT NOTE:** *This proposed structure is likely to be updated.*

### 2.3.2 REDD+ institutions

Kenya's R-PP notes that the policy, legal and institutional arrangements for REDD+ will fall under the institutional framework proposed by the NCCRS (see diagram below). REDD+ implementation will be linked to the REDD+, Land use and Land Use Change division, and a tiered structure has been created to oversee REDD+ implementation:

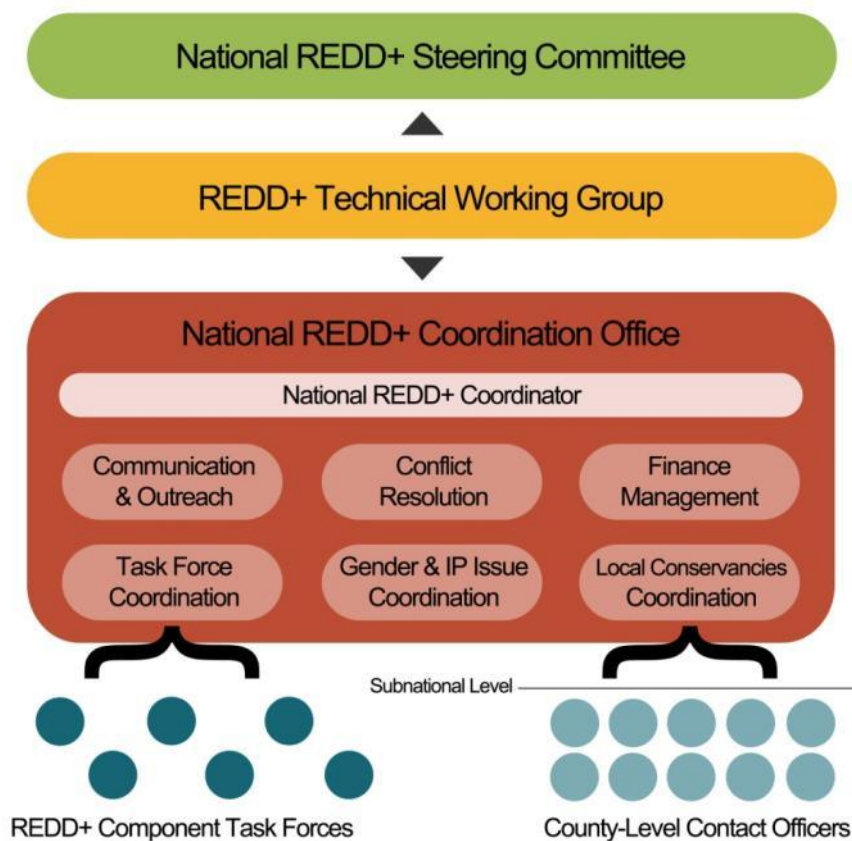
- National REDD+ Steering Committee;
- Technical Working Group;
- National REDD+ Coordination Office; and

- REDD+ Component Task Forces and Local Conservancy Officers (however, the Local Conservancy Officers will change according to the new County government arrangements, and will become ‘County Level Contact Officers’).

The REDD+ process in the country proposes a four tier management arrangement whose objectives are to:

- Integrate and contribute to broader climate change goals as stated in the National Climate Change Response Strategy;
- Provide support to development of a coherent and successful REDD+ Strategy;
- Bring clear decision making authority to the REDD+ process that is informed by both national climate change goals and REDD+ goals; and
- Ensure Kenya has its own high level expert technical working group to advise the decision making authority.

### REDD+ GOVERNANCE STRUCTURE



Adapted from the Government of Kenya, 'REDD Readiness Preparation Proposal' (Submitted to the Forest Carbon Partnership Facility, June 2010) 9 fig 5, updated to change 'Local Conservancy Officers' to 'County-level Contact Officers.'



### 2.3.2.1 *The National REDD+ Steering Committee (RSC):*

The National REDD+ Steering Committee has a varied role:

- Policy guidance and implementation of REDD+ activities;
- Resource mobilization;
- Assurance of timely delivery of a national REDD+ strategy, national reference emission level and an effective carbon monitoring system;
- Quality control of REDD+ preparedness deliverables; and
- Providing a mechanism for international collaboration with other REDD+ processes.

The apex body for REDD+ management is the **National REDD+ Steering Committee (NCS)**. The Terms of Reference were developed and approved during the Committee Meeting in December 2010. The NSC is chaired by the Principal Secretary in the Ministry responsible for forestry. RSC membership comprises the Principal Secretaries from the Ministries in charge of Environment, Water and Natural Resources; Energy and Petroleum; Devolution and Planning; and Finance, as well as the Directors of KFS, KEFRI and NEMA. Others are IUCN, WWF, KFWG, a representative from Universities, UNDP/UNEP and the Donor Coordination Group; and the National Association of Community Forest Associations (NACOFA).

### 2.3.2.2 *REDD Technical Working Group (TWG)*

The Technical Working Group (TWG) is comprised of different individuals who have been engaged in REDD+ discussions in Kenya since 2009. It is currently divided into 3 subgroups: Consultation and Participation; Methodology; and Policy and Institutions. The subgroups and the current TWG are expected to disband, and the new TWG for R-PP implementation will be redefined as a smaller entity bringing together specific expertise. Among other qualifications, members are expected to have expertise in forestry, finance, land use, agriculture, wildlife management, timber production and the management of private sector enterprises. In addition, there will be one representative from civil society organisations, one representative from community forest associations, one representative from water resource users groups, and one representative from indigenous communities living in forests.

The TWG is expected to play a key advisory role for the National REDD+ Steering Committee, and to liaise with the National REDD+ Coordination Office in carrying out operationalization of the R-PP. Specifically, it will be responsible for oversight of the R-PP implementation process, and be responsible for managing the monitoring and evaluation activities.

### 2.3.2.3 The National REDD+ Coordination Office (NRCO)

The National REDD+ Coordination Office has been established at the Ministry of Environment, Water and Natural Resources to facilitate implementation of proposed R-PP activities and a Coordinator has been recruited. In addition the Steering Committee has approved the establishment of a National Technical Working Group (TWG) and six thematic working groups to drive the REDD+ implementation process. Thematic Working Groups on SESA, Consultation and Participation and MRV have already been established and are operational. The TOR for the SESA process has been finalized and Recruitment for the SESA Facilitator concluded.

### 2.3.2.4 REDD+ Component Task Forces

Six thematic groups have been established.

## 3 Regulatory framework for REDD+ investment

### 3.1 *Policy framework for development, climate change and REDD+*

The National Climate Change Action Plan (NCCAP) seeks to assist development partners in aligning their investments with the Government of Kenya's climate change priorities and that "investments are nested within Vision 2030 and Kenya's national planning process."<sup>6</sup> Kenya's policy framework regarding sustainable development contains a number of guiding documents relevant to REDD+ investment, including:

- Vision 2030;
- National Climate Change Response Strategy (NCCRS);
- National Climate Change Action Plan (NCCAP);
- National Land Policy;
- National Environmental Policy;
- Draft Carbon Investment Policy; and
- National Forest Policy.

The Forestry Policy (2014) is particularly relevant in the context of REDD+ implementation. It contains a revised policy framework that is designed to be consistent with the principles articulated in the Constitution of 2010, and will be implemented via a new forests act (at present, the Forest Conservation and Management Bill 2014 is under discussion for this purpose). This framework

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<sup>6</sup> National Climate Change Action Plan 2013-2017, page 27, bullet point 5.

emphasises community participation in forestry management, and also emphasises the role of both State and non-State actors in the forest sector, and the role of the forest sector in contributing to economic growth and poverty alleviation goals (including the private sector). **REDD+ interventions will need to be consistent with the Forest Policy (2014) and its implementing law.**

### 3.2 *Legal frameworks relevant to different aspects of REDD+ investments*

In addition to the overarching constitutional obligation regarding a right to a clean and healthy environment, many different areas of Kenyan law are relevant to REDD+ implementation. These include land laws, environmental laws, anti-corruption laws, commercial laws, public financial management laws and agriculture laws.

#### POLITICAL MAP OF THE REPUBLIC OF KENYA



Image courtesy of *The Commonwealth* online

Available at <http://www.thecommonwealth.org/YearbookHomeInternal/139131/> (accessed June 13 2013).