### International obligations

<table>
<thead>
<tr>
<th>Convention</th>
<th>Date of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ramsar</td>
<td>Ratified in 1990</td>
</tr>
<tr>
<td>World Heritage Convention</td>
<td>Ratified in 1991</td>
</tr>
<tr>
<td>Convention on Biodiversity</td>
<td>Ratified in 1994</td>
</tr>
<tr>
<td>UNCLOS</td>
<td>Ratified in 1989</td>
</tr>
<tr>
<td>UNFCCC/Paris Agreement</td>
<td>Ratified in 1994 / Ratified in 2016</td>
</tr>
</tbody>
</table>

Certain species of birds and marine mammals covered under CMS agreements have habitat in Kenyan mangroves [sea turtles, dugongs, birds of prey (fish eagle, osprey), crabs, prawns etc.].

**Entry into force:** 01/05/1999

**Associated Instruments**
- Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia *(MOU Signatory 09/05/2002)*
- Agreement on the Conservation of African-Eurasian Migratory Waterbirds *(ratified 01/06/2001)*
- Range State Agreement for Dugong Conservation *(MOU Signatory 19/08/2008)*
| International Maritime Organisation and associated instruments | The Memorandum of Understanding on the Conservation of Migratory *Birds of Prey* in Africa and Eurasia *(Raptors MoU Signatory 22/10/2008)*  
*The Memorandum of Understanding on the Conservation of Migratory Sharks* *(MOU Signatory 12/02/2010)* |
|---|---|

**Are there Ramsar sites including mangroves in the country?**

1 site:  
Tana River Delta Ramsar Site

**Are there World Heritage Sites including mangroves in the country?**

2. site:
<table>
<thead>
<tr>
<th><strong>Do the Nationally Determined Contributions of the country relate to mangroves?</strong></th>
<th>Lamu Old Town (cultural heritage site whose setting extends to mangroves surrounding the port) and Sacred Mijikenda Kaya Forests</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Kenya’s Intended Nationally Determined Contribution, 2015</strong></td>
<td>No specific reference to mangroves.</td>
</tr>
<tr>
<td>- 2.1: “Make progress towards achieving a tree cover of at least 10% of the land area of Kenya.”</td>
<td></td>
</tr>
<tr>
<td>- 2.2.1: “Enhance the resilience of ecosystems to climate variability and change.”</td>
<td></td>
</tr>
<tr>
<td><strong>How is carbon accounting conducted?</strong></td>
<td>Emissions of carbon dioxide from the combustion of biomass are assessed but not counted towards the contribution. ...</td>
</tr>
<tr>
<td></td>
<td>There is significant uncertainty in the BAU emission and mitigation potential estimates for this sector.</td>
</tr>
<tr>
<td><strong>Constitution and governance</strong></td>
<td><strong>Constitution of Kenya, 2010</strong></td>
</tr>
</tbody>
</table>
| **Is there any constitutional provision relevant to mangroves?** | **Article 42:** “Every person has the right to a clean and healthy environment, which includes the right—
(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and
(b) to have obligations relating to the environment fulfilled under Article 70 |
| **Article 69:** “1. The State shall-
 a. ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
 b. work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
 c. protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities; |
d. encourage public participation in the management, protection and conservation of the environment;

e. protect genetic resources and biological diversity;

f. establish systems of environmental impact assessment, environmental audit and monitoring of the environment;

h. eliminate processes and activities that are likely to endanger the environment; and

i. utilise the environment and natural resources for the benefit of the people of Kenya.

2. Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”

Article 70: “1. If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.

2. On application under clause (1), the court may make any order, or give any directions, it considers appropriate-

   a. to prevent, stop or discontinue any act or omission that is harmful to the environment;

   b. to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or

   c. to provide compensation for any victim of a violation of the right to a clean and healthy environment.

3. For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.”
Are access to information, access to justice and public participation recognized by the law?

**Access to Information Act, 2016**

**Section 3.** “The object and purpose of this Act is to (a) give effect to the right of access to information by citizens as provided under Article 35 of the Constitution.”

**Section 4. Right to information** “every citizen has the right of access to information held by—(a) the State; and (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.

[Provides details on limitations, application procedure, authorities, etc. related to access to information]

**Constitution of Kenya, 2010**

**Article 35:** “1. Every citizen has the right of access to—
   a. information held by the State; and
   b. information held by another person and required for the exercise or protection of any right or fundamental freedom.

   3. The State shall publish and publicise any important information affecting the nation.”

**Article 48:** “The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”

**Article 118:** “1. Parliament shall—
   a. conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
   b. facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

   4. Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.”
What are the national policies / strategies related to mangroves or coastal ecosystem?

<table>
<thead>
<tr>
<th>1. Sessional Paper Number 9 of 2005 on Forest Policy</th>
</tr>
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<tbody>
<tr>
<td>The main objectives of this policy is to inter alia contribute to sustainable land use through soil water and biodiversity conservation and tree planting through the sustainable management of forests and trees.</td>
</tr>
<tr>
<td>This policy document inter alia takes cognisance of the fact that indigenous forests are among the most complex ecosystems that need efficient management. Thus accordingly the challenges that most fragile and threatened ecosystems face including forests and other woody vegetation types in the arid and semi-arid lands, mangroves and bamboos require specialised attention.</td>
</tr>
<tr>
<td>The policy document calls for inter alia all existing indigenous forest reserves on public land to remain reserved; the status of indigenous forests to be determined and appropriate measures for restoration to be taken into account; forest reserves to be managed on the basis of approved management plans guided by sound forest management principles; and it also encourages community and other stakeholder participation in the management of indigenous forests.</td>
</tr>
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<table>
<thead>
<tr>
<th>2. Sessional Paper No.3 of 2009 on National Land Policy (NLP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The overall objective of the NLP is to secure land rights and provide for sustainable growth, investment and poverty reduction in line with the governments overall development objectives. The formulation of the NLP was guided by inter alia the following principles: intra-and inter-generational equity; secure land rights; effective regulation of land development; sustainable land use; access to land information; efficient land management; and transparent and good democratic governance of land.</td>
</tr>
<tr>
<td>The NLP deems the Kaya forests where mangroves are also found along the Kenyan coast to be community land and that ignoring customary land rights shall not be deemed to amount to ownership (page 14 and 15).</td>
</tr>
</tbody>
</table>
In order to conserve and manage the environment the NLP is categorical that measures on conservation and sustainable management, ecosystem protection, urban environment management, EIA’s and audits ought to be undertaken (page 30).

The objective of NEP is to inter alia ensure the sustainable management of the environment and natural resources, such as unique terrestrial and aquatic ecosystems, for national economic growth and improved livelihoods (page 8).
NEP has numerous guiding principles like for example ecosystem approach, precautionary principle, polluter pays principle etc. (page 9-10).
NEP acknowledges the fact that coastal and marine ecosystems in Kenya are under increasing pressure from significant direct threats like urbanisation, pollution from land based sources, over exploitation and destruction of marine living resources like mangroves and invasive and alien species etc. (page 14).
Thus accordingly the Government of Kenya is committed through NEP to inter alia promote the sustainable use and conservation of marine and coastal ecosystems; support research and training of coastal and marine ecosystems; as well as involve and empower communities in the management of coastal and marine ecosystems (page 14).

Vision 2030 (starting from 2008)
This is the country’s development blueprint that covers the period 2008 to 2030; it is based on three pillars (economic, social and political).
The social pillar seeks to ensure a just and cohesive society that enjoys equitable social development in a clean and secure environment.
This document also inter alia acknowledges the fact that respect of proprietary rights to land (communal or private) is an important driver of speedy economic progress. It also seeks to facilitate
the land administration process through the computerisation of land registries as well as through the introduction of an improved legal framework for faster land dispute resolution. (page 9). It also aims at ensuring that Kenya has a clean, secure and sustainable environment by 2030; through inter alia developing strategies that promote environmental conservation as well as harmonising environment related laws for better environmental planning and governance (page 19).

| Institutions and processes | **The Environmental Management and Coordination Act Cap 387 (EMCA) Revised edition 2012 (1999)**<br>The preamble to the EMCA states that it is “An Act of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected therewith and incidental thereto”.
|---|---|
| **What are the institutions that have authority regarding mangroves?** | The EMCA establishes the National Environment Management Authority (NEMA) at section 7(1). NEMA is the main authority for decision making and coordinating relating to mangroves.
| | [Other relevant authorities: Kenya Forestry Service and the Kenya Wildlife Service.] |
| **Are there mechanisms for cross agency coordination?** | **The Environmental Management and Coordination Act Cap 387 (EMCA) Revised edition 2012 (1999)**<br>**Section 4. Establishment of the National Environment Council** which shall consist of [ Minister who shall be the chairman; Permanent Secretaries from various ministries; representatives from public universities in Kenya, specialised research institutions in Kenya, business community, NGO’S, and the Director General].
| | **Section 5. Functions of the Council** [policy formulation; setting national goals and objectives for environmental protection; promote co-operation among public departments, local authorities, private sector, NGO’s and other organizations engaged in environmental protection programmes].
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the decision making process for activities related to mangroves?</td>
<td>Has been addressed under “At what level are decisions made (local, regional, national)?” below.</td>
</tr>
<tr>
<td>Is there guidance for cost benefit analysis?</td>
<td><strong>The Environmental Management and Coordination Act Cap 387 (EMCA) Revised edition 2012 (1999)</strong>&lt;br&gt;Decisions are made at the local and national level.</td>
</tr>
<tr>
<td>At what level are decisions made (local, regional, national)?</td>
<td><strong>Section 29. Provincial and District Environment Committees</strong>&lt;br&gt;(2) Every Provincial Environment Committee shall consist of—[Provincial Commissioner, Provincial&lt;br&gt;Director of Environment, other Ministries, local authorities, representatives of farmers/pastoralists, business community, NGOs, regional development authorities]&lt;br&gt;(3) Every District Environment Committee shall consist of—[District Commissioner, District Environment Officer, representatives of Ministries, local authority, farmers, women, youth, pastoralists, business community, NGOs, CBOs]&lt;br&gt;&lt;br&gt;<strong>Section 30. Functions of Provincial and District Environment Committees</strong>&lt;br&gt;(a) be responsible for the proper management of the environment within the province or district in respect of which they are appointed.</td>
</tr>
<tr>
<td>What are the mechanisms for monitoring and review?</td>
<td><strong>The Environmental Management and Coordination Act Cap 387 (EMCA) Revised edition 2012 (1999)</strong>&lt;br&gt;<strong>Section 68. Environmental audit</strong>&lt;br&gt;(1) The Authority shall be responsible for carrying out environmental audit of all activities that are likely to have significant effect on the environment.&lt;br&gt;(2) An environmental inspector appointed under this Act may enter any land or premises for the purposes of determining how far the activities carried out on that land or premises conform with the</td>
</tr>
</tbody>
</table>
(3) The owner of the premises or the operator of a project for which an environmental impact assessment study report has been made shall keep accurate records and make annual reports to the Authority describing how far the project conforms in operation with the statements made in the environmental impact assessment study report submitted under section 58(2).

(4) The owner of premises or the operator of a project shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental impact assessment study report submitted under section 58(2) and shall prepare and submit an environmental audit report on those measures to the Authority annually or as the Authority may, in writing, require.

Section 69. Environmental monitoring
(1) The Authority shall, in consultation with the relevant lead agencies, monitor
(a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or
(b) the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment.
(2) An environmental inspector appointed under this Act may enter upon any land or premises for the purposes of monitoring the effects upon the environment of any activities carried on that land or premises.

Permitting and planning regulations
Are there Environmental Impact Assessment requirements when it comes to projects in mangrove areas?

Section 58. Application for an Environmental Impact Assessment Licence
(1) Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing,
is necessary to obtain a permit to conduct such projects and if yes what is the process?

Section 42(1). No person shall, without the prior written approval of the Director-General given after an environmental impact assessment, in relation to a river, lake or wetland in Kenya, carry out any of the following activities—
(a) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake or wetland;
(b) excavate, drill, tunnel or disturb the river, lake or wetland;
(c) introduce any animal, whether alien or indigenous, dead or alive, in any river, lake or wetland;
(d) introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake or wetland;
(e) deposit any substance in a lake, river or wetland or in, on or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake or wetland;
(f) direct or block any river, lake or wetland from its natural and normal course; or
(g) drain any lake, river or wetland.

(2) The Minister may, by notice in the Gazette, declare a lake shore, wetland, coastal zone or river bank to be a protected area and impose such restrictions as he considers necessary, to protect the lake shore, wetland, coastal zone and river bank from environmental degradation and shall, in doing so, take into consideration the following factors—
(a) the geographical size of the lake shore, wetland, coastal zone or river bank; and
(b) the interests of the communities resident around the lake shore, wetland, coastal zone or river bank concerned.

(3) The Minister may, by notice in the Gazette, issue general and specific orders, regulations or standards for the management of river banks, lake shores, wetlands or coastal zones and such orders, regulations or standards may include management, protection, or conservation measures in respect of any area at risk of environmental degradation and shall provide for—
(a) the development of an overall environmental management plan for a lake, river, wetland or coastal area, taking into account the relevant sectoral interest;
(b) measures for the prevention or control of coastal erosion;
(c) the conservation of mangrove and coral reef ecosystems;
(d) plans for the harvesting of minerals within the coastal zone, including strategies for the restoration of mineral sites;
(e) contingency plans for the prevention and control of all deliberate and accidental discharge of pollutions into the sea, lakes or rivers;
(f) plans for the protection of wetlands;
(g) the regulation of harvesting of aquatic living and non-living resources to ensure optimum sustainable yield;
(h) special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea and the Exclusive Economic Zone;
(i) promotion of environmentally friendly tourism; and
(j) the management of biological resources.
(4) The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of the environment of lakes and rivers.
(5) Any person who contravenes or fails to comply with any orders, regulations or standards issued under this section shall be guilty of an offence.

**Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulation, 2009**

Section 12. Wetland Resource Use Permit
- “Subject to the provisions of Section 42 of the Act, no person shall carry out any of the activities stipulated therein without a permit issued by the relevant lead agency and an Environmental Impact Assessment License issued by the Authority where applicable.”

**Environmental Management and Coordination Act (EMCA) 1999**

PART IV – ENVIRONMENTAL PLANNING

Section 37. National Environment Action Plan Committee
(1) There is established a committee of the Authority to be known as the National Environment Action Plan Committee and which shall consist of—[permanent secretaries, Business community representatives, NGO’s and Director General of NEMA].
(2) The National Environment Action Plan Committee shall, after every five years, prepare a national environment action plan for consideration and adoption by the National Assembly.

Section 38. Provisions of the National Environment Action Plan:-
(a) contain an analysis of the natural resources of Kenya with an indication as to any pattern of change in their distribution and quantity over time;
(b) contain an analytical profile of the various uses and value of the natural resources incorporating considerations of intergenerational equity;
(c) recommend appropriate legal and fiscal incentives that may be used to encourage the business community to incorporate environmental requirements into their planning and operational processes;
(d) recommend methods for building national awareness through environmental education on the importance of sustainable use of the environment and natural resources for national development;
(e) set out operational guidelines for the planning and management of the environment and natural resources;
(f) identify actual or likely problems as may affect the natural resources and the broader environment context in which they exist;
(g) identify and appraise trends in the development of urban and rural settlements, their impacts on the environment, and strategies for the amelioration of their negative impacts;
(h) propose guidelines for the integration of standards of environmental protection into development planning and management;
(i) identify and recommend policy and legislative approaches for preventing, controlling or mitigating specific as well as general adverse impacts on the environment;
(j) prioritise areas of environmental research and outline methods of using such research findings;
(jj) take into account and record all monuments and protected areas declared or deemed to have been declared by the Minister under the National Museums and Heritage Act;
(k) without prejudice to the foregoing, be reviewed and modified from time to time to incorporate emerging knowledge and realities; and land use planning does not cover mangrove areas.

| Is there a legislation specifically addressing the use or the alteration of mangroves? | **Environmental Management and Coordination Act (EMCA) 1999**

Section 55. Protection of the coastal zone [Inventory required for coastal zone, including state of mangroves] |
(1) The Minister may, by notice in the Gazette, declare an area to be a protected Zone.
(2) As soon as practicable upon the commencement of this Act, the Authority shall, in consultation with the relevant lead agencies, prepare a survey of the coastal zone and prepare an integrated national coastal zone management plan based on the report of such survey.
(4) The report of the survey of the coastal zone shall contain—(b) an inventory of the state of the coral reefs, *mangroves* and marshes found within the coastal zone;

### Sectoral laws

<table>
<thead>
<tr>
<th>What provisions of the forest legislation apply to mangroves?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <em>Forests Conservation and Management Act No.34 of 2016</em></td>
</tr>
<tr>
<td>Section 32. Declaration of a nature reserve</td>
</tr>
<tr>
<td>(1) Upon the recommendation of the Service, the Minister may, in consultation with the Minister responsible for local authorities where appropriate, by notice in the Gazette declare any forest area, or woodland or any part thereof, which has a particular environmental, cultural, scientific, or other special significance, to be a nature reserve for the purpose of preserving its biodiversity and natural amenities thereof.</td>
</tr>
<tr>
<td>(2) Where a nature reserve declared as such under subsection (1) occurs within a private forest, the Minister shall make such arrangements for compensation to the owner of such forest as may be arrived at by an independent valuer appointed by the Board on the recommendation of the relevant professional body.</td>
</tr>
<tr>
<td>(3) No cutting, grazing, removal of forest produce, hunting or fishing, shall be allowed in a nature reserve except with the permission of the Director granted in consultation with other conservation agencies, which permission shall only be given with the object of facilitating research.</td>
</tr>
<tr>
<td>(4) The provisions of this Part with respect to the revocation of declaration of a forest area or the variation of boundaries thereof shall apply with respect to a nature reserve.</td>
</tr>
</tbody>
</table>

**Section 33. Special use of nature reserve**
(1) Any forest community, or person who is desirous of utilising or conserving any grove or forest which is part of a nature reserve for cultural, religious, educational, scientific or other reasons shall submit an application, in the prescribed form, to the Board through the forest conservation committee for the area in which the nature reserve occurs.

(2) Upon receipt of the application referred to in subsection (1), the Board shall make inquiries regarding the application, including the authenticity of the application and the suitability of the site vis-à-vis the activities for which the application is made, and, based on such inquiry, the Board may within three months of receipt of the application—

(a) grant the application as requested;
(b) grant the application on specified terms and conditions; or
(c) refuse to grant the application, giving reasons for such refusal.

(3) Where an application has been submitted under subsection (1), a person aggrieved by the decision of the Board may appeal to the National Environment Tribunal established under the National Environmental Management and Co-ordination Act (No. 8 of 1999).

(4) Sacred groves found in any State forest, nature reserve, local authority forest or private forest shall not be interfered with and any person who, without lawful authority, fells, cuts, damages or removes any such grove or tree or regeneration thereof, or biodiversity therein, or abets in the commission of any such act commits an offence.

Section 34. Presidential protection of trees

(1) The President may, on the advice of the Minister, by order published in the Gazette, declare any tree, species or family of tree species to be protected in the whole country or in specific areas thereof, and the Minister shall cause this information to be disseminated to the public.

(2) Any person who fells, cuts, damages or removes, trades in or exports or attempts to export any protected tree, species or family of trees or regeneration thereof or abets in the commission of any such act commits an offence.
(3) The provisions of subsection (1) shall be reversed when the President is, on the advice of the Minister, satisfied that the protection is no longer necessary.

2. Proclamation No. 44 of 30th April 1932
- Mangroves have had legal their legal status as government reserve forests in Kenya since Proclamation No. 44 of 30th April 1932

3. Legal Notice No. 174 of 20th May 1964
Through this gazette notification of mangrove forests in Kenya all land between high water and low water marks in the localities described below were included:
- “On the mainland and islands adjacent to the coast from Kimbo Creek in the South, to the village of Kiunga on the mainland in the north;
- On the banks of Tana river (northern branch) between Kipini and Kao (Kau);
- On the mainland and islands to the coast from the mouth of the northern Kilifi river in the north, to Ras Ngomeni in the south;
- In the following creeks and all branches thereof: Mida (Uyombo), Kilifi (Southern), Takaungu and Mtwapa;
- In all tidal areas lying to the north west, west and south west of the straight line between Ras Kinangone (Flora point) at the entrance of Port Reitz, and Ras Jundas (southern most point of subdivision 232 of section II, mainland Morth at the entrance to Port Tudor, but excluding any portion of the shore of Mombasa island and
- On the mainland and islands adjacent to the coast from Chale Point in the north, to the boundary of the Trust Territory of Tanzania in the south.

<table>
<thead>
<tr>
<th>What provisions of the marine or coastal legislation apply to mangroves?</th>
<th>Environmental Management and Coordination Act (EMCA) 1999</th>
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<tbody>
<tr>
<td></td>
<td>Section 55 of the EMCA addresses this issue.</td>
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<tr>
<td>What provisions of the protected areas legislation apply to mangroves?</td>
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<td>-------------------------------------------------------------</td>
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<tr>
<td><strong>Environmental Management and Coordination Act (EMCA) 1999</strong></td>
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<tr>
<td><strong>Section 54. Protection of environmentally significant areas</strong></td>
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<tr>
<td>(1) The Minister may, in consultation with the relevant lead agencies, by notice in the Gazette, declare any area of land, sea, lake or river to be a protected natural environment for the purpose of promoting and preserving specific ecological processes, natural environment systems, natural beauty or species of indigenous wildlife or the preservation of biological diversity in general.</td>
<td></td>
</tr>
<tr>
<td>(2) Without prejudice to subsection (1), the Authority may, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the management and protection of any area of environmental significance declared to be a protected natural environment area under this section.</td>
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<thead>
<tr>
<th>What provisions of water and wetlands legislation apply to mangroves?</th>
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<tbody>
<tr>
<td><strong>Water Act No.43 of 2016</strong></td>
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<tr>
<td><strong>Section 2</strong> defines a &quot;water resource &quot;to mean any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below the ground, and includes sea water and transboundary waters within the territorial jurisdiction of Kenya;**</td>
</tr>
<tr>
<td><strong>Section 2</strong> defines “water resource management” to mean the conservation including soil and water conservation, protection development and utilization of water resources.</td>
</tr>
<tr>
<td><strong>Section 2</strong> defines &quot;pollution&quot;, in relation to a water resource, to mean any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource so as to make it- (a) less fit for any beneficial purpose for which it is or is reasonably be expected to be used; or (b) harmful or potentially harmful to- (i) the welfare, health or safety of human beings; (ii) any aquatic or non-aquatic life or property; or (iii) the environment:</td>
</tr>
</tbody>
</table>
Regulation of Water Rights and Works

Section 36 “A permit is required for any of the following purposes:-
(a) Any use of water from a water resource except as provided by section 37;
(b) The drainage of any swamp or other land;
(c) The discharge of a pollutant into any water resource; and
(d) Any other purpose to be carried out in or in relation to a water resource which is prescribed by regulations made under this act to be a purpose for which a permit is required.

Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulation, 2009

Section 2. defines “wetlands” to mean “areas permanently or seasonally flooded by water where plants and animals have become adapted; and include swamps, areas of marsh, peat land, mountain bogs, bank of rivers, vegetation, areas of impeded drainage or brackish, salt or alkaline; including areas of marine water the depth of which at low tide does not exceed 6 meters. It also incorporates riparian and coastal zones adjacent to the wetlands.”

Section 4. Objectives of Part;[conservation and sustainable use of wetlands and their resources; integration of sustainable use of resources in wetlands into the local and national management of natural resources for socio-economic development; conservation of water catchments and the control of floods; sustainable use of wetlands for ecological and aesthetic purposes; protection of wetlands as habitats for species of fauna and flora; provide a framework for public participation in the management of wetlands; enhance education research and related activities; and to prevent and control pollution and siltation].

Section 5. General Principles
(1) The following principles shall be observed in the management of all wetlands in Kenya—
(a) Wetland resources shall be utilized in a sustainable manner compatible with the continued presence of wetlands and their hydrological, ecological, social and economic functions and services;
(b) Environmental impact assessment and environmental audits as required under the Act shall be mandatory for all activities likely to have an adverse impact on the wetland;
(c) Special measures shall be essential to promote respect for, preserve and maintain knowledge innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
(d) Sustainable use of wetlands shall be integrated into the national and local land use plans to ensure sustainable use and management of the resources;
(e) The principle of public participation in the management of wetlands;
(f) The principle of international co-operation in the management of environmental resources shared by two or more states;
(g) The polluter-pays principle;
(h) The pre-cautionary principle; and
(i) Public and private good.

(2) The obligations under these Regulations shall at all times take into account the provisions of other statutes.

**Section 8. Protected Wetlands**

(1) The Minister may, by notice in the Gazette, declare an area to be a protected wetland where such area has national and international significance due to its—biological diversity; ecological importance; landscape; natural heritage; or aesthetic value.
Upon declaration of an area to be a wetland, the following shall be the only activities permitted to be carried out in the area—research; eco-tourism; restoration or enhancement of the wetland; or any other activities identified in the Management plan.

### 9. Procedure for Declaration of a Protected Wetland

(1) The declaration of a protected wetland under regulations 8 may be done by the Minister—

(a) in consultation with the relevant lead agency; or

(b) on the recommendation of the Authority on its own motion or in consultation with the lead agency, a registered civil society organization or an individual person.

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**What provisions of biodiversity legislation apply to mangroves?**

**Wildlife Conservation and Management Act No 47 of 2013**

**Section 3.** defines “biodiversity” to mean the variability among living organisms from all sources including ecosystems and the ecological complexes of which they are a part, compassing ecosystem, species and genetic diversity.

**Section 3.** defines “wildlife” to mean any wild and indigenous animal, plant or microorganism or parts thereof within its constituent habitat or ecosystem on land or in water, as well as species that have been introduced into or established in Kenya.

**Section 30.** Prohibited activities “Any activity which is likely to have adverse effects on the environment, including the seepage of toxic waste into streams, rivers, lakes and wetlands is prohibited”

**Section 31.** Declaration of protected areas(1) The Cabinet Secretary, may ....[declare an area to be a marine protected area; declare a wetland to be a protected area under the management of the Service; publish a management plan for national parks, marine protected areas and Service-managed wetlands]
### Section 36. Declaration of a marine conservation area

(1) The Cabinet Secretary may... declare any marine area to be a marine conservation area where the area is—[rich in biodiversity or harbours endangered and threatened marine species; or a critical habitat for a variety of marine resources].

### Industry laws

#### Fisheries Act Cap 378

**Section 5. Fisheries management measures**

(1) The Director may with the approval of the Minister, by notice in the Gazette, impose any of the following measures that are necessary for the proper management of any fishery—
(a) closed seasons for designated areas, species of fish or methods of fishing;
(b) prohibited fishing areas for all or designated species of fish or methods of fishing;
(c) limitations on the methods of gear, including mesh sizes of nets, that may be used for fishing;
(d) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded;
(e) regulate the landing of fish and provide for the management of fish landing areas; and
(f) control of the introduction into, or harvesting or removal from, any Kenya fishery waters of any aquatic plant.

**Section 8. General licensing provisions**
(1) Without prejudice to any regulations made under this Act, no person other than persons fishing for their own consumption, shall catch or assist in catching fish in Kenya fishery waters otherwise than under and in accordance with the terms and conditions of a valid licence issued to him under this Act: Provided that the Minister may by order published in the Gazette determine the quantity of fish which may be deemed to be fish for own consumption under this section, and different orders may be made for different areas of Kenya.

(3) Each licence issued under this Act shall be valid for such species of fish, type of fishing gear, method of fishing and area as may be specified in the licence.

(5) Any person who catches fish in Kenya fishery waters without a licence, or in contravention of the conditions imposed on a licence, issued under this Act shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

Section 22. Marine mammals

(1) No person or vessel in Kenya fishery waters shall, without the prior written authority of the Minister, fish for marine mammals or use a port in Kenya for the purpose of equipping or supplying a vessel intended to be used for fishing for marine mammals.

(2) Where any vessel is used in contravention of subsection (1), the master and owner thereof shall each be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Section 23. Minister’s power to make regulations

(1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for any or all of the following purposes—“. (b) establishing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and
the fees payable therefor; (c) prescribing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor; (k) promoting and regulate or control the cultivation of live fish of any kind or species; (l) exempting any type of fishing gear or vessel or any person from any provision of this Act.”

| What type of regulation applies to protect mangroves from aquaculture conversion? | Section 23 of the Fisheries Act Cap 378 above addresses this issue. |
| What provisions of the agriculture legislation apply to mangroves? | **Mining Act No.12 of 2016**  
**Section 176. Environmental laws to prevail**  
(1) A mineral right or other licence or permit granted under this Act shall not exempt a person from complying with any law concerning the protection of the environment.  
(2) A mining licence shall not be granted to a person under this Act unless the person has obtained an environmental impact assessment licence, social heritage assessment and the environmental management plan has been approved.  
**Section 179. Land use**  
The holder of a permit or licence under this Act shall use the land in accordance with the terms of the permit or licence and shall ensure—  
(a) the sustainable use of land through restoration of abandoned mines and quarries;  
(b) that the seepage of toxic waste into streams, rivers, lakes and wetlands is avoided and that disposal any toxic waste is done in the approved areas only; (d) that upon completion of prospecting or mining, the land in question shall be restored to its original status or to an acceptable and reasonable condition as close as possible to its original state. |
**Section 180. Requirement of site restoration and mine-closure plans** (1) The Cabinet Secretary shall not grant a prospecting licence, a retention licence or a mining licence to an applicant, unless the applicant has submitted a site mitigation and rehabilitation or mine-closure plans for approval.”

**Section 181. Environmental protection bonds** (1) An applicant for a prospecting licence, a retention licence or a mining licence shall provide a bond or some other form of financial security in this section called an environmental protection bond sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations of the holder under this Act.”

<table>
<thead>
<tr>
<th>Land tenure</th>
<th>State owned (leases, concessions...)</th>
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| **What type of land tenure apply to mangroves?** | **Land Act No.6 of 2012** Article 12 : “(2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—
(b) public land that falls within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;”
→ mangroves cannot be allocated |
| Privately owned (are there restrictions?) | **NO. Private people cannot own mangroves because it is a natural reserve.**
*Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulation, 2009* 14. **Duty of Land Owners Users and Occupiers** (1) Every owner, occupier or user of land which is adjacent or contiguous to a wetland shall, with advice from the Authority, have a duty to prevent the degradation or destruction of the wetland, and shall maintain the ecological and other functions of the wetland.
(2) Any person who fails, neglects or refuses to protect a wetland under sub-regulation (1) commits an offence.

<table>
<thead>
<tr>
<th>Community management</th>
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<tbody>
<tr>
<td><strong>Are there customary or community legal systems?</strong></td>
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<tr>
<td><strong>How does the system work?</strong></td>
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</table>

### Community Land Act No. 27 of 2016

**Section 4.** (1) Community land in Kenya shall vest in the Community.  
2) Subject to the provisions of this Act or any other written law, the State may regulate the use of community land in accordance with Article 66 of the Constitution.  
(3) Community land shall vest in the community and may be held under any of the following tenure systems—  
(a) customary; (b) freehold; (c) leasehold and (d) such other tenure system recognised under this act or other written law.

**Section 5. Protection of community land rights**  
(1) Every person shall have the right, either individually or in association with others, to acquire and own properly, in accordance with Article 40 of the Constitution—  
(a) of any description; and  
(b) in any part of Kenya.  
(2) Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with this Act and any other written law.
(3) Customary land rights, including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transfer.

(4) Subject to Article 40 (3) of the Constitution and the Land Act, no interest in, or right over community land may be compulsorily acquired by the State except in accordance with the law, for a public purpose, and upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.

(5) Subject to the provisions of section 46 of this Act, any person who immediately before the commencement of this Act had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right.

[The Community land act *inter alia* also provides for the Procedure for registration of communities, Procedure for recognition and adjudication of community land and Registration of community land]

(1) Community land shall be registered in accordance with the provisions of this Act and the Land Registration Act, 2012 (No. 3 of 2012).

<table>
<thead>
<tr>
<th>Recognized in statutory law</th>
<th>Recognised under the Constitution of Kenya 2010, Land Registration Act 2012 (No.3 of 2012), Community Land Act No.27 of 2016 as well as the Forests Act.</th>
</tr>
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<tbody>
<tr>
<td>Not recognized in statutory law</td>
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**Can communities hold rights to manage mangroves?**

<table>
<thead>
<tr>
<th>Legislation</th>
<th><em>Forests Act</em>&lt;br&gt;Section 22. Customary rights</th>
</tr>
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</table>
Nothing in this Act shall be deemed to prevent any member of a forest community from using, subject to such conditions as may be prescribed, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.

Agreement

### Economic regulations

<table>
<thead>
<tr>
<th>Are some investment law provisions relevant to mangroves?</th>
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<tr>
<td>Are there financial incentives that could apply to conservation/restoration of mangroves?</td>
</tr>
<tr>
<td><strong>Section 25. National Environment Restoration Fund</strong> [The object of the Restoration Fund shall be as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.]</td>
</tr>
<tr>
<td><strong>Section 57. Fiscal incentives</strong> [the tax and fiscal incentives, disincentives or fees may include—(a) customs and excise waiver in respect of imported capital goods which prevent or substantially reduce environmental degradation caused by an undertaking; (b) tax rebates to industries or other establishments that invest in plants, equipment and machinery for pollution control, re-cycling of wastes, water harvesting and conservation, prevention of floods and for using other energy resources as substitutes for hydrocarbons; (c) tax disincentives to deter bad environmental behaviour that leads to depletion of environmental resources or that cause pollution; or (d) user fees to ensure that those who use environmental resources pay proper value for the utilization of such resources.</td>
</tr>
<tr>
<td><strong>Forest Conservation and Management Act No.34 of 2016</strong></td>
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</tbody>
</table>
Section 18. The Forest Management and Conservation Fund shall be used for the following purposes:
- development of forests;
- maintenance and conservation of indigenous forests;
- promotion of community-based forest projects;
- facilitation of education and research activities;
- maintenance and protection of sacred trees and groves and other areas of cultural, ethno-botanical or scientific significance;
- undertaking of surveys and establishment of databases;
- the protection and management of unique trees for biodiversity conservation;
- management and protection of protected trees; and
- such other purposes as may be prescribed by rules made under this Act.

Section 19. Sources of Fund
(1) The Fund shall consist of:
- monies from time to time appropriated by Parliament for purposes of the Fund;
- moneys levied upon forest beneficiaries;
- income from investments made by the Board; and
- grants, donations, bequests or other gifts as may be made to the Fund.

<table>
<thead>
<tr>
<th>Are there codes of conduct or other non-binding guidance instruments?</th>
<th>Industry codes of conducts</th>
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<tbody>
<tr>
<td></td>
<td>Government/NGOs codes of conducts</td>
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<tr>
<th>Are there certification systems for sustainable products/practices (ex: shrimp)?</th>
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<tr>
<th>Are there any provision addressing the restoration of mangroves?</th>
<th>The Environmental Management and Coordination Act Cap 387 (EMCA) (Revised edition 2012(1999)) Section 108 Issue of Environmental Restoration Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Subject to any other provisions of this Act, the Authority may issue and serve on any person in respect of any matter relating to the management of the environment an order in this Part referred to as an environmental restoration order.</td>
<td></td>
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<tr>
<td>(2) An environmental restoration order issued under subsection (1) or section 111 shall be issued to—</td>
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</tr>
</tbody>
</table>
| What are the legal requirements for restoration projects? | The Environmental Management and Coordination Act Cap 387 (EMCA) Revised edition 2012 (1999)  
EIA’s and Audits have to be conducted in accordance with the provision of Section 58 of EMCA. |
|---|---|
EMCA established the National Environment Tribunal for these purpose.  
Section 125. Establishment of the National Environment Tribunal  
(1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members [Chairman nominated by the Judicial Service Commission, advocate of the High Court, environmental lawyer and two experienced persons in environmental management field].  
Section 129. Appeals to the Tribunal  
(1) Any person who is aggrieved by—  
(a) a refusal to grant a licence or to the transfer of his licence; (b) the imposition of any condition, limitation or restriction on his licence; (c) the revocation, suspension or variation of his licence;... |
(e) the imposition against him of an environmental restoration order or environmental improvement order may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

Section 130. Appeals to the High Court
(1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court of Kenya.

What are the sanctions?

Section 138. Offences relating to Environmental Impact Assessment “...failure to prepare or make false statements in an EIA is an offence and one is liable on conviction to imprisonment for a term not exceeding twenty four months or to a fine of not more than two million shillings or to both such imprisonment and fine.”

Section 142.-“polluting the environment (land, water, aquatic) is an offence and upon conviction, one is liable to a fine not exceeding five hundred thousand shillings and in addition the court may direct that the offender pay the full cost of cleaning up the polluted environment and of removing the pollution”.

Section 143. Offences relating to Environmental restoration orders, easements, and conservation orders
Any person who—fails, neglects or refuses to comply with an environmental restoration; environmental easement, issued under this Act; environmental conservation order made under this Act, commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding five hundred thousand shillings, or to both.

Wildlife Conservation and Management Act
Section 89. Offences relating to pollution “Any person who discharges any hazardous substances or waste or oil into a designated wildlife area; pollutes wildlife habitats and ecosystems; discharges any
pollutant detrimental to wildlife into a designated wildlife conservation area contrary... commits an
offence and shall be liable upon conviction to a fine of not less than two million shillings or to
imprisonment of not less than five years or to both such fine and imprisonment.”

Section 90. Offences relating to conservation orders and easements [Any person who—
(a) fails, neglects or refuses to comply with a wildlife conservation order; or(b) an easement...,
commits an offence and shall be liable upon conviction to a fine of not less than five hundred
thousand shillings or to imprisonment of not less than three years or to both such fine and
imprisonment.”