



Eastern and Southern Africa Regional Office (ESARO)

FINAL REPORT

**NATIONAL TECHNICAL REVIEW TO ASSESS ALIGNMENT BETWEEN OTHER
EFFECTIVE AREA-BASED CONSERVATION MEASURES (OECMs) DEFINITION
AND KENYA'S EXISTING LEGISLATION, POLICY AND IMPLEMENTATION
FRAMEWORKS**

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LIST OF ACRONYMS

1. IUCN	International Union for Conservation of Nature
2. IUCN-ESARO	IUCN East and Southern Africa Regional Office
3. ASAL	Arid and Semi-Arid Lands
4. UN FAO	United Nations Food and Agricultural Organization
5. PAS	Protected Area System
6. WCMA	Wildlife Conservation and Management Act
7. CBD	Convention on Biological Diversity
8. UNCED	United Nations Conference on Environment and Development
9. COP	Conference of Parties
10. ABT's	Aichi Biodiversity Targets
11. NBSAP	National Biodiversity Strategy and Action Plan
12. KM GBF	Kunming-Montreal Global Biodiversity Framework
13. WCPA	World Commission in Protected Areas
14. IPLC	Indigenous Peoples and Local Communities
15. KII	Key Informant Interview
16. WIOMSA	Western Indian Ocean Marine Science Association
17. NES	National Environment Secretariat
18. GoK	Government of Kenya
19. EMCA	Environmental Management and Coordination Act
20. NLC	National Land Commission
21. NLP	National Land Policy
22. NLUP	National Land Use Plan
23. NSP	National Spatial Plan
24. NEAP	National Environmental Action Plan
25. MABP	Man and Biosphere Programme
26. UNESCO	United Nations Educational Scientific and Cultural Organization
27. EAC	East African Community
28. RAMSAR	Ramsar Convention on Wetlands
29. NWS	National Wildlife Strategy
30. KWS	Kenya Wildlife Service
31. WRTI	Wildlife Research and Training Institute
32. CLA	Community Land Act
33. LAPSSET	Lamu Port South Sudan Ethiopia Transport Corridor

EXECUTIVE SUMMARY

In the early 1990s, the Government of Kenya introduced reforms in the conservation sector and adopted a policy of promoting wildlife conservation and management as a land use on private and community land. This policy has been given impetus by provisions embodied in the Wildlife (Conservation and Management) Act, 2013 and is widely acknowledged as an approach that links conservation with development on a sustainable basis.

At the global level, Kenya has ratified the Convention on Conservation of Biodiversity (UN-CBD) and is subsequently bound by its norms, principles and biodiversity conservation guidelines. The Global Biodiversity (GBF) was adopted by UN-CBD member states in 2023. It contains 23 targets aimed at halting and reversing nature loss. Target 3 of the GBF calls upon member states to ***“Ensure and enable that by 2030 at least 30 percent of terrestrial and inland water are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures (OECM’s).*** Recognition of OECMs presents a significant opportunity to characterise *de facto* effective long-term conservation taking place outside currently designated protected areas.

This study was commissioned to undertake a national technical review aimed at outlining and highlighting the Kenyan country context for the adoption, alignment and implementation of OECMs within the existing laws, policies and implementation structures.

The report is divided into 5 chapters. Chapter one introduces the study. Chapter 2 outlines the study scope and methodology. Chapter three is a synthesized analysis of Kenya’s policy, legal, and implementation frameworks as relates to OECM implementation. Chapter 4 summarizes the outcome of stakeholder consultations and, finally, the recommendations and conclusions of the study are contained in chapter 5.

The study established that Kenya’s policy, legal and implementation frameworks are not sufficiently robust to spur OECM implementation to the required standard. Indeed, those frameworks do not explicitly define or incorporate OECM provisions and principles. Nonetheless, a raft of opportunities exist within these frameworks that can incentivize immediate actions for mainstreaming OECM into existing implementation plans.

This study therefore recommends that relevant policies should be revised to mainstream and localize the elements of OECMs. Concurrently, critical national and county policies and laws should be reviewed and amended to align with and give impetus to implementing OECMs nationally.

The study recommends the following actions:

1. There is need for dialogue, discussions and trust building especially among IP&LCs on the overall goals and implementation of OECM through capacity building initiatives such as education, awareness creation and extension services. In this regard, biodiversity conservation actors should explore ways of collaborating with critical entities such as KWCA and County Governments, using inclusive approaches, to design and implement a comprehensive programme for capacity building.
2. There is need for legal reform to facilitate the identification and recognition of LMMAS as OECMs to enable these areas be used to report on actions taken by Kenya in relation to her international obligations under the CBD as relates to the GBF framework.
3. There should be targeted technical and financial support from the National Government and other actors to facilitate adjudication and mapping which would, in turn, give impetus to registration of community lands as stipulated under the Community Lands Act. In addition, biodiversity conservation actors should collaborate with the Cabinet Secretary in charge of land and County Governments to ensure that the process of documenting, mapping and developing the inventory of community lands is accomplished.
4. Institutionalize the “all in one approach” incorporating government and non-governmental entities to promote synergy and harmonization of planning, budgeting and implementation of projects and programmes. There is also need to develop an appropriate coordination framework comprising government and non-government actors with a clear focal point for matters touching on OECM.
5. Advocate for the inclusion of OECM supportive provisions in the ongoing review and amendment of relevant legislation, including the WCMA, and finalize formulation of regulations and guidelines to support OECM implementation for the relevant sectors.
6. Develop a mechanism for targeted and sustained resource mobilization from private and public sectors.

1. CHAPTER ONE: INTRODUCTION

1.1 Kenya Country Profile

The Republic of Kenya lies on the eastern coast of Africa and is divided into two almost equal parts by the equator. It has a total area of approximately 582,646 square kilometres, comprising 97.8% land and 2.2% water surface.¹ About 20% of the land area is classified as medium to high potential agricultural land, while the rest of the land is mainly arid or semi-arid. Forests, woodland, national parks and reserves account for about 12% of the land area. The Kenyan coastline extends for 536 km on the western border of the Indian Ocean and is characterized by beaches, mangroves, seagrass beds, coastal wetlands, lagoons and coral reef².

The country is also divided by the Great Rift Valley into two nearly equal parts, in a north-south direction that extends from Lake Turkana on the Ethiopian border in the north, to Lake Natron on the Tanzanian border. The average rainfall in Kenya is about 567 mm per year. The rains are unevenly distributed with the highlands east and west of the Great Rift Valley receiving the highest amounts while the lowland coastal, south-eastern, eastern and north-western Kenya comprising about 80% of the terrestrial land mass classified as arid and semi-arid land (ASAL).

The 2019 population of Kenya census established that Kenya had a population of 46.7 million people, indicating that the county's population has increased five-fold since independence in 1963. The population is dominated by young people with those below age 15 making up for 39% of the population³. The current population is estimated to be 55,100,586 with a growth rate of 1.995.

Kenya is endowed with a great diversity of ecoregions ranging from the coral reefs to the afro-alpine moorlands, from mangrove forests to soda lakes and from arid deserts to humid tropical forests⁴. These diverse habitats harbour a great variety of plants and animals, some of which are endemic, critically endangered or threatened with extinction.

A rapidly increasing human population has exerted pressure on the land for agricultural expansion, grazing, fuel wood collection, settlements and infrastructure development, among other demands. These land use changes have been the major factor in the massive

¹ The Making of a Framework Environmental Law in Kenya ACTS/UNEP 2001

² Wildlife Strategy, 2018

³ NCPD, 2022

⁴ Wanjala et al 1999

decline of wildlife populations in Kenya.⁵ Kenya lost more than 68% of its wildlife between 1977 and 2016 in the rangelands⁶. In the coastal zone, rapid land use changes have affected beachfronts, mangroves and their long-term ecology. On the other hand, between 1990 and 2010, Kenya lost about 6.5% of its forest cover to deforestation⁷. Coastal and inland wetlands have not been spared either and declined by about 40% between 1970 and 2003. The devastation of wetlands has led to a significant decline in river flow rates in most rivers, which is estimated at 30%.

It is now acknowledged that the main threat to maintaining ecologically viable ecosystems over the last 30 years has been loss of habitat. This has been exacerbated by the effects of climate change, mainly manifested by more periodic long dry spells and unpredictable rain patterns in most parts of the country.

The cornerstone of Kenya's biodiversity conservation policy and strategy has been the establishment of national parks, national reserves as refuge for conservation and protection of biodiversity and as representative samples of Kenya's diverse natural regions. These areas are governed and managed by the (national and county) government. They have solely been used to report on Kenya's national and international obligations relating to biodiversity conservation.

Today Kenya's protected area system (PAS) includes 29 national parks, 31 national reserves and 6 sanctuaries managed by Kenya Wildlife Service (KWS) and County Governments in both terrestrial and marine ecosystems. PAs cover about 8% of Kenya's land area. A significant proportion of the country's biodiversity is located outside the government protected area system on private and community conservancies that are estimated to harbour over 65% of Kenya's wildlife⁸. The government in the early 1990's introduced reforms in the conservation sector and adopted a policy of promoting wildlife conservation and management as a land use on private and community lands through the KWS Community Wildlife Programme. The objective was to compliment the government protected area system, increase benefits to landowners and reduce human wildlife conflict⁹. Currently, there are about 160 private and community conservancies at various levels of development, governance and management. This policy has been given impetus by provisions embodied

⁵ Western, 2009; Ogutu et al 2016.

⁶ Ogutu et al (2016)

⁷ FAO, 2010

⁸ Ministry of Tourism and Wildlife, 2018

⁹ KWS, 1991

in the Wildlife (Conservation and Management) Act 2013 and is widely acknowledged as an approach that links conservation with development on a sustainable basis.

At the global level, Kenya has ratified several instruments with important provisions and impacts with respect to conservation of biodiversity. Among these instruments is the Convention on Biological Diversity (UN-CBD); United Nations Convention on Climate Change (UNFCCC); United Nations Convention to Combat Desertification (UNCCD); Convention on International Trade in Trade of Flora and Fauna (CITES); Convention on Migratory Species of Animals (CMS), Ramsar Convention and the World Heritage Convention (WHC) among others. The objective of the CBD is conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of benefits and is implemented through strategies like the GBF and National Biodiversity Strategies Actions Plans (NBSAP). By virtue of ratification, Kenya has agreed to be bound by the norms, principles and regulations outlined in the UN-CBD. Further, she has agreed to fulfil her obligations at the local level to ensure that the objectives of the convention are met.

1.2 The CBD Implementation Framework

The CBD is established as an over-arching framework which provides the general principles, objectives and basic commitments for signatories to the convention¹⁰. The Conference of Parties (COP) is the supreme decision-making body of the CBD and is open to all parties to the convention. In addition to COP-Decisions, parties to the CBD agree on a Strategic Plan for roughly every ten years. The first Strategic Plan 2010-2020 was adopted during COP 6 where parties committed to a more comprehensive and coherent implementation of the three objectives of the convention, and to achieve by 2020 a significant reduction of biodiversity loss globally. It was structured into five (5) strategic goals with twenty (20) targets, commonly referred to as Aichi Biodiversity Targets (ABT). GBF is the post 2020 successor plan to the 2010-2020 Strategic Plan.

Article 10 of the CBD requires each Contracting Party to as far as possible and as appropriate: *Integrate consideration of the conservation and sustainable use of biological resources into national decision-making; adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity; and protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.*¹¹

¹⁰ Sakiyama, M. (2018)

¹¹ CBD, Art.6

To implement the provisions of the CBD, Contracting Parties are urged to develop National Biodiversity Strategy and Action Plans¹² (NBSAP's) as an obligation to undertake national biodiversity planning. NBSAP's define the course of action containing specific targets and plans to fulfil the objectives of the Convention. In this context, NBSAP's are the strongest implementation mechanism in the CBD.

Periodic monitoring and review of progress in implementing the CBD is accomplished through preparation of National Reports (NR). All parties to the convention are obliged to periodically submit National Reports on measures taken to implement the Convention on a frequent basis¹³. National Reports supports the implementation of the CBD at the national level and serve as the basis for publishing the Global Biodiversity Outlook (GBO). The GBO serves as the final report card on progress against global biodiversity targets as embedded in the strategic plans and frameworks such as the CBD 2010-2020 Strategic Plan and its successor, the GBF.

1.3 Study Background

The Global Biodiversity Framework was adopted in December 2023 during the 15th CBD COP 15 held in Montreal, Canada. The agreement contains four (4) overarching goals to be achieved by 2050 that includes halting human-induced extinction of species; sustainable management and use of biodiversity; fair sharing of benefits from utilization of genetic resources; and providing adequate means for implementing GBF.

The GBF agreement also contains 23 target-prescriptions aimed at halting and reversing nature loss. Target 3 of the GBF Agreement calls upon member states to *“Ensure and enable that by 2030 at least 30 percent of terrestrial and inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures (OECM's), recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories”*¹⁴.

The CBD recognizes and defines OECMs as *“geographically defined areas other than protected areas, which are governed and managed in ways that achieve positive and sustainable long-term outcomes for the in-*

¹²CBD, Article 6A

¹³ CBD Article 26

¹⁴ CBD COP 15

situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socioeconomic, and other locally relevant values”.

Recognition of OECMs presents a significant opportunity to characterise *de facto* effective long-term conservation taking place outside currently designated protected areas, under a disparate range of governance and management regimes, implemented by a diverse set of actors. Some of these actors include indigenous peoples and local communities (IPLC), the private sector and government agencies.

Because, by definition, OECMs focus on areas outside the conventional protected area system, they can effectively contribute to UN member countries national biodiversity conservation aspirations and reporting obligations against area-based conservation targets. Considering the advent of the definition, and criteria for identifying OECMs (CBD, 2018) and IUCN guidelines for Recognising and Reporting OECMs (IUCN-WCPA, 2019) and subsequent adoption of the GBF (Dec 15.4) at CBD COP 15, there is now need to assess the potential for adoption and implementation of OECMs in different jurisdictions.

IUCN Eastern and Southern Africa Regional Office (ESARO) has initiated this study whose purpose is to at review and highlight the extent to which the policy, legislative and implementation frameworks in Kenya support and advance the OECM process. This study will complement and build on the outcomes of a rapid review study conducted by IUCN, Eastern and South African Regional Office (ESARO) in 2018, which recommended a national technical review to assess the alignment of OECMs with the existing legislative, policy and implementation frameworks in Kenya.

2. CHAPTER TWO: STUDY SCOPE AND METHODOLOGY

2.1 Study Objectives

The overall objective of the study is to undertake a national technical review aimed at outlining and highlighting the Kenyan country context for the adoption, alignment and implementation of OECMs within the existing laws, policies and implementation structures, with a view to understanding progress made so far in operationalizing the OECMs framework in Kenya.

2.2 Scope of Study

The study location is the Republic of Kenya with a focus on key biodiversity hotspot areas in the terrestrial and inland regions and the coastal and marine territory under Kenya's jurisdiction with the potential for the establishment of other effective area-based areas outside the existing government protected area system. The terms of reference of the study outlined the following key tasks and deliverables:

- (a) Literature review of all existing policies and legislation concerning protected areas and conservation areas outside of formal protected areas, including the Community Lands Act 2016 as well as the Wildlife Conservation Management Act 2013 and any other relevant legislation and pending Bills under consideration to help identify opportunities and challenges for the implementation of OECMs within the country;
- (b) Description of the current processes and/or initiatives that recognize and support conservation areas outside of protected areas such as those non-state management and resource-use approaches in Forest lands, Marine areas, Agricultural lands, Rangelands and Cultural areas, including their governance systems, stakeholder network analysis identifying all role-players and stakeholders, responsible Ministries, and the associated policy and legal frameworks underpinning this practice;
- (c) Conduct targeted stakeholder consultations to identify the gaps and needs for OECM identification and reporting in line the reviewed policies and legislations and linking it to national area-based conservation targets.; and
- (d) Review how well existing legislation, policies and practice aligns with and/or supports the Target 3 of the Kunming-Montreal Global Biodiversity Framework and conduct targeted stakeholder consultations to understand Kenya's broader interpretation of this target and how the country could address OECMs and other IPLC aspects of the target as reflected in the final negotiated text.

2.3 Study Methodology

A technical review of this nature requires the use of multiple methods for data collection, consolidation, analysis and reporting. Due to time limitations, the technical review relied on information gathered through literature review and data collected through the conduct of key informant interviews (KIIs).

Phase one of the study involved analysis of secondary information from a wide spectrum of published and non-published policy, legal, planning and strategy documents to gain an understanding of the existing policy, legal and implementation frameworks concerning protected areas and conservation areas outside the formal state protected area system. This review was critical in helping the study identify the opportunities and challenges for implementation of OECMs in Kenya.

Phase two of the study involved collection of qualitative data from stakeholders through key informants using open-questioning approach. The bulk of the interviews were conducted virtually while two were conducted in-person. The interviews aimed at identifying existing practices that support, recognize or assess sites that may meet the OECM's definition. Particular attention was paid to understanding and appreciating Kenya's broader interpretation of Target 3 and how OECM's indigenous people and local communities (IPLC) aspects of the targets can be addressed in Kenya.

A total of 21 stakeholders comprising state and non-state actors were interviewed (a full list is provided as a separate annex to this report). Those interviewed included senior government officials responsible for policy, reporting and monitoring implementation of policies and programs from Ministries of Wildlife, Environment, Fisheries and Forestry. Officials from regulatory authorities such as National Environment Management Authority (NEMA) and service and enforcement state corporations such as Kenya Wildlife Service, Kenya Fisheries Service and Kenya Forest Service were also interviewed. Other experts interviewed were drawn from state and non-state research institutions such as Wildlife Research and Training Institute, Western Indian Ocean Research Origination (WIOMSA) and Coastal Ocean Research and Development in the Indian Ocean (CORDIO). Practising experts in the environment and natural resources sector and potential OECM's areas were also interviewed.

3. CHAPTER THREE: LITERATURE REVIEW OF POLICY AND LEGISLATIVE FRAMEWORKS ON OECM IMPLEMENTATION IN KENYA

3.1 Introduction

The first post-independence government established its central policy position in Sessional Paper No.10 of 1965 on African Socialism and its Application to Planning in Kenya.¹⁵ This policy paper recognized the need to conserve natural resources for future generations, and also that the concern with the quality of the environment must be placed on equal footing with the need to exploit natural resources for national development. The National Environment Secretariat (NES) was subsequently established in 1971.

NES was charged with the coordination of national efforts in environmental matters and the review of policies and existing legislation on the environment. NES coordinated several initiatives towards preparation of the national environment policy. The 1994-99 Development Plan called for a sessional paper on sustainable development to set comprehensive guidelines and strategies on government action on environmental management (GoK, 1994)¹⁶. The Government commitment to proper environmental management was confirmed by the adoption of **Sessional** Paper No. 06 of 1999 on Environment and Development. This Sessional Paper for the first time since independence, provided comprehensive policy guidelines towards achieving sustainable development and was in response to the increasing concerns regarding the effects of development on the environment. This policy review culminated in the adoption of the Environmental Management and Coordination Act, No. 8 of 1999, (EMCA, 1999)

3.2 National Policy Framework

3.2.1 Kenya Vision 2030

Kenya's Vision 2030 was launched in 2007 as the new long-term development blueprint for the country with the aim of creating a globally competitive and prosperous country with a high quality of life by 2030.¹⁷ The vision envisages that a clean, secure and sustainable environment will be achieved through promoting environment conservation to better support the aspirations of the economic and social pillar. Vision 2030 amplifies the key role played by wildlife in the economy by contributing 90% to safari tourism and 75% of the total tourism earnings.

¹⁵ ACTS, 2001: *The Making of a Framework Environmental Law in Kenya*. ACTS-UNEP-Nairobi, Kenya Acts Press, 2001

¹⁶ GoK, 1994

¹⁷ Gok, 2007

Vision 2030 recognises the importance of landscapes connectivity in biodiversity conservation and therefore prioritizes the identification, mapping and securing conservation corridors and dispersal areas as a flagship Vision 2030 project. The identification and mapping report for corridors was published in 2017¹⁸. Many of the identified areas of the corridors and dispersal areas report overlap with areas which are potential OECMs.

3.2.2 Sessional Paper No. 3 of 2009 on National Land Policy

The overall objective of the National Land Policy is to secure rights over land and provide for sustainable growth, investment and the reduction of poverty in line with the Government's overall development objectives¹⁹.

This policy classifies all land in Kenya as public, community, and private land. This clarity on land tenure is important to the OECM's implementation in Kenya because it guides landowners and other stakeholders on the governance and management regimes that can apply in the potential OECM areas. An important feature of the NLP is that it lays the basis for potential OECMs. The policy recognizes IPLC lands and has clarity on provisions to secure community land and obligates the national land registration to define the term "Community" and vest ownership of community land in the community. The principles articulated in the NLP can therefore be mainstreamed in the various sectors to support implementation of OECMs in Kenya.

3.2.3 Sessional Paper No. 1 of 2017 on National Land Use Policy

The principal objective of the National Land Use Policy is "to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land and land related resources in a sustainable and desirable manner at National, County and Sub- County and other local levels"²⁰.

Importantly for biodiversity conservation, the land use policy emphasizes the need for sustainable environmental conservation and management and recognizes wildlife management as a land use.

The land use policy recommends that all sector policies and laws be reviewed and harmonized to bring them into accord with the provisions of the land use policy and the land policy. This recommendation creates an opportunity for laws relevant to the

¹⁹ GoK, 2009

²⁰

biodiversity conservation and land use to incorporate provisions for OECM's in their frameworks.

3.2.4 National Spatial Plan Policy 2015-2025

The National Spatial Plan Policy was published in 2014 as one of the flagship imperatives of Vision 2030 to provide for Kenya's long-term spatial development.²¹ The plan supports the implementation of strategic projects identified in Vision 2030 and emphasizes the need to balance the four aspects of planning, namely physical, social, financial and economic.

Spatial planning provides the nexus for harmonisation and integration of the different sector plans under Kenya's planning framework. The spatial planning framework is therefore critical in ensuring that there is harmony between potential OECM areas and the other different and sometimes competing land use types such as agriculture, livestock/pastoralism and infrastructural developments among others.

3.2.5 Sessional Paper No. 10 of 2014 on the National Environment Policy

The goal of the policy is "*better quality of life for present and future generations through sustainable management and use of the environment and natural resources*"²². The objectives of the policy include promotion of an integrated approaches to environmental management, strengthening the legal and institutional framework for effective coordination, sustainable management of unique ecosystems both aquatic and terrestrial. Further to this, the policy aims to enhance cooperation, collaboration, synergy and partnerships; and promotion and domestication, coordination and maximization of benefits from strategic multi-lateral environmental agreements (MEAS).

The above provisions are relevant and integral to area-based conservation measures to secure sustainable and effective in-situ conservation of biodiversity as envisaged in the OECM's conservation approach. The national Environment Policy informs the formulation and review of the Environmental Management and Coordination Act (EMCA), which is a framework law. The coordination and regulatory provisions of EMCA are crucial in mainstreaming OECMs in the other sector laws.

3.2.6 Sessional Paper No. 01 of 2020 on Wildlife Policy

The overall goal of the wildlife policy as stated in Sessional Paper No. 01 of 2020 is to create an enabling environment for conservation and sustainable management of wildlife. This

²¹ GoK, 2014

²² GOK, 2014

policy replaced the 1975 policy paper which was considered not robust enough to address emerging challenges and realities in the wildlife sector. The policy calls for an integrated approach to management of wildlife, taking into account that a significant proportion of wildlife is found outside the government owned parks and reserves, thus expanding space for conservation of biodiversity in tandem with the OECM's conservation approach.

Several sub-sections of Section 4.3 of the wildlife policy explicitly provide for the promotion of wildlife conservation and management as a land-use type by various types of landowners. This provision aligns well with the OCMs principle of recognising and supporting conservation of biodiversity outside the traditional government-owned protected areas. Sub-section 4.3.5. provides for the development and implementation of approved management plans that incorporate multiple land use practices. This Subsection 4.3.5.2 recommends the provision of incentives to support individual communities and other stakeholders to invest in wildlife. This provision supports non-government landowners improve on management of their lands that can contribute to sustainable and effective contribution to in situ conservation of biodiversity outside the protected area system consistent with the OECMs guidelines for recognizing and reporting OECM's. The sub-sections do not explicitly refer to OECMs but advocate similar principles to the OECMs discourse and guiding principles. Failure to mention OECM's could be attributed to the that draft policy was negotiated and agreed through public participation before OECMs concept was approved by COP 14 in 2018.

3.2.7 Sessional Paper No. 3 of 2010 on Livestock Policy

The overall objective of the livestock policy is to utilize livestock resources for food and nutrition security and improve livelihoods while safeguarding the environment. The policy identifies several wildlife species as non-conventional livestock, suitable for farming, in accordance with the provisions of the Wildlife Act. The policy notes that 80% of Kenya's land mass is arid and semi-arid (ASAL) and livestock is the main form of land use. The policy acknowledges that ASALs also host the bulk of Kenya's parks and reserves and subdivision of land is a major source of conflict, undermining both the pastoral and protected area lands.

The fact that majority of the potential OECM's in the form of conservancies, government owned land such as ADC Farms, forest reserves and military bases are also found in the ASALs provides a critical link that favours identification and recognition of these areas as OECMs.

3.2.8 Agricultural Policy, 2021

The most recent agriculture policy is embedded in the Ministry of Agriculture, Livestock, Fisheries and Cooperatives Agricultural Policy 2021, which is yet to be processed through Parliament. The Policy identifies current challenges in the Agricultural Sector and outlines suitable guidelines to address them. It provides measures towards the sustainable use of natural resources, particularly land and water, which are expected to boost agricultural production and productivity.

The policy recommends several radical land tenure and settlement and reforms to secure agricultural land in high-potential agricultural areas and the ASALs. These would include reviewing the individual land tenure regimes and consolidating the small parcels into bigger communal lands with a zonation plan that sets aside farmland as settlement villages. In the ASALs, the policy proposals envisage similar land tenure and zonation that sets aside communal grazing areas and settlement villages for the pastoral communities. These recommendations would have far-reaching impacts on society. It is however important to note that the proposals are not aligned with the National Land Policy and the National Land Use Policy and other relevant custodians of government land policy. It can therefore be concluded that buy-in to these proposals by the communities cannot be assured. It is therefore difficult to align the OECM approach to this uncertainty.

3.3 Legislative framework

3.3.1 Introduction

Legal and regulatory frameworks are important enabling tools for the actualization of new concepts and ideas.²³ They are also necessary for creating rights and obligations, establishing or strengthening institutional arrangements, identifying and specifying responsibilities of different stakeholders, shifting funding towards investments, providing incentives for the development of new and innovative technologies, imposing sanctions for violations and specifying other policy measures for accelerating the attainment of sustainable development goals.²⁴

In the context of OECMs, these frameworks serve various roles.²⁵ Laws and regulations can aid in defining or delineating the boundaries of and differentiating the types of area-based approaches, including what constitutes protected areas as opposed to OECMs. By prescribing criteria or planning frameworks, laws and regulations can inform the

²³ Yang Wanhua: *Law as a Tool to Promote Green Economy*, UNEP 9th Global Training Programme on environmental Law and Policy, 2-13 November 2009, page 19.

²⁴ Ibid.

²⁵ (Paterson.A.2023)

identification and recognition of potential OECMs. They may also provide important mechanisms and processes for recognizing and securing the land within the OECM. Further, laws and regulations may inform, enable and control the governance and management arrangements within the OECM and, further, regulate the monitoring and reporting arrangements and requirements to ensure the realization of identified long-term outcomes of OECMs.

Current Kenyan law and policy do not accord OECMs formal statutory recognition. However, various domestic policy and legal documents aim at promoting sustainable development, green growth, resource efficiency, sustainable consumption and production and effective and equitable responses to climate change. To this extent, these laws align with the concept of OECM and will be enumerated, in summary, in the following section.

3.3.2 The Constitution of Kenya, 2010 (CoK)

The CoK is the supreme law of the Republic of Kenya and binds all persons and all state organs at national and county government levels. Its provisions accord with various aspects relating to implementation of OECMs, as articulated in the Voluntary Guidance.

The guidance identifies several elements of effective and equitable governance models for area-based conservation initiatives. These include appropriate procedures and mechanisms to ensure: (a) the recognition, legitimate representation and participation of all rights-holders and stakeholders; (b) the recognition and accommodation of customary tenure and governance systems (including traditional knowledge, customary practices and customary sustainable use); (c) transparency and accountability in decision-making; (d) the equitable sharing of benefits and costs (including appropriate compensation and monitoring arrangements); (e) the fair resolution of disputes and conflicts; and (f) the impartial and effective implementation of the rule of law²⁶.

These elements are effectively supported by the CoK in the following ways.

- (a) Under Articles (2) (5) and (6), the CoK provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya. By implication, therefore, the CBD which anchors the concept of OECM, is incorporated under Kenyan law.
- (b) Under Article 10, the CoK provides certain national values and principles of governance including public participation, protection of the marginalized and non-discrimination. These values and principles bind all persons engaged in making, applying or interpreting

²⁶ Paterson A. (2023) *Scoping the Potential Influence of Law on Terrestrially Located Other Effective Area-Based Conservation Measures*, LEAD Journal, 2023, Vol. 18/1, page 32 – 50.

- laws or implementing policy decisions in Kenya. These provisions are in alignment with the elements laid out in the voluntary guidelines in as far as they promote participation, inclusivity and non-discrimination.
- (c) Article 69 of the CoK imposes fundamental obligations relating to the environment upon the State and places a duty on all Kenyan citizens to cooperate to protect and conserve the environment. These requirements present an opportunity for Kenya to put in place appropriate procedures and mechanisms for sustainable land use such as by designating certain areas as OECMs and laying down appropriate governance and management systems.
 - (d) Article 35 of the CoK guarantees the right of access to information held by the State and obligates the State to publish and publicize any important information affecting the nation. Through these requirements, the CoK assures citizens of transparency in administrative actions and safeguards against arbitrary use of power by the State. It also enables citizens to exercise their rights in an informed manner. These elements are critical in ensuring that OECM implementation is carried out transparently and democratically, embodying free, prior and informed consent by all landowners and especially by marginalized communities.
 - (e) Article 162 (2) of the CoK provides for the establishment of the Environment and Land Court. This court is an avenue for any party to challenge decisions made by public or private actors that may harm the environment or violate the rights of any individual or group of people. For OECM, this does not only impose on actors an obligation to ensure that fundamental processes such as identification and designation are carried out procedurally but also presents an avenue for persons to advocate or agitate for government intervention through measures such as OECM, where it has been inactive in meeting constitutional/ legal imperatives relating to conservation.
 - (f) Article 42 of the CoK guarantees every person the right to a clean and healthy environment. This provision does not only obligate the state to adopt progressive approaches such as OECM implementation that guarantee sustainable management of natural resources, but it also obligates the state to recognize the various vulnerable ecosystems and human rights concerns and consequently craft measures, (characterized by strong institutional and governance structures) (Kimkung. AL, 2018) to mainstream sound environmental management practices in all sectors of society.²⁷

²⁷ EL Kimkung · 2018, *The Right to Clean and Healthy Environment and The Role of Institutions in Kenya: Steps Forward or Steps Backwards*.

- (g) The CoK recognizes culture as the foundation of the nation and obligates the State to protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities and to facilitate use of this knowledge for environmental protection and conservation. OECMs can be found in areas inhabited by marginalized communities who possess indigenous knowledge of the local biodiversity. Implementation of OECMs through state interventions could confer upon local community's intellectual property rights in their indigenous knowledge and cultural practices while simultaneously enabling biodiversity conservation.
- (h) Kenya has two levels of government which are distinct but interdependent. Their respective mandates are outlined in the Fourth Schedule of the Constitution. Functional assignment between the two levels of government creates clear pathways for intervention. For instance, by virtue of Article 185, County Assemblies can make OECM-specific legislation to promote OECM implementation in their areas of jurisdiction. Secondly, because county planning and development is assigned to County Government, counties can easily streamline and implement OECM policies through their planning and budgeting processes.
- (i) Under Article 63 of the CoK, ownership of communal land is vested directly on communities. In addition, both registered and unregistered community land is secured by, firstly, conferring interim trusteeship of unregistered community land on county governments and, secondly, prohibiting the disposition or use of community land except in terms of legislation specifying the nature and extent of the rights of the members of each community, individually and collectively. These provisions are intended to secure land tenure, especially for marginalized communities. The implication is that parties can enter appropriate long-term contractual arrangements to support the management and governance of biodiversity-rich community lands as OECMs.

3.3.3 The Environmental Management and Coordination Act, 1999

The Environmental Management and Coordination Act (EMCA) is the framework law on matters concerning the environment in Kenya. It was enacted in 2000 to harmonize environmental legislation previously scattered among 77 national laws. EMCA sets the legal framework for safeguarding entitlement to a clean and healthy environment and its enjoyment. It also establishes key institutions and gives them wide mandates on the management and conservation of the environment. Key provisions in the Act that support OECM implementation are discussed below.

(a) Provisions that support anchoring OECMs in new legislation

Under Section 124 (1) of the Act, NEMA is conferred with the powers to initiate legislative proposals for purposes of giving effect to any treaty, convention or agreement ratified by Kenya or for enabling Kenya to perform her obligations or exercise her rights under such instruments. Taken together with Article 2 (6) of the CoK which incorporates all treaties and conventions ratified by Kenya as part of Kenyan law, NEMA is well-positioned to initiate new and innovative legislation to facilitate OECM implementation in Kenya.

(b) Provisions that support the creation of OECMs through easements

Part IX of EMCA provides an avenue for a long-term management strategy through the establishment of easements. Easements are underpinned by an agreement concluded between a landowner and a third party and may be granted voluntarily or by statutory means. The rights subject of an easement may remain attached to the land in perpetuity or for such a term of years as the court may determine or as agreed in a voluntary agreement. These provisions may be used to establish OECMs over privately held biodiversity rich lands for prolonged periods of time. Such an arrangement would not disenfranchise a landowner since an easement can be designed in a way that requires a landowner to set aside only a portion of the land in favour of a third party. Equally, such an arrangement requires that a landowner is fairly compensated regardless as to whether the easement is voluntary or statutory.

(c) Provisions that support the implementation of OECMs in areas declared as protected natural environments

- (i) Under Section 54 of EMCA, the Cabinet Secretary is empowered to declare any area to be a protected natural environment. The purpose of such a declaration includes the preservation of biological diversity. To meet this objective, NEMA is empowered to issue guidelines and prescribe measures for the management and protection of such areas.
- (ii) The introduction of the words “protected natural environment” is potentially problematic for OECMs as it does not make it clear whether these areas fall within the definition of government run protected areas. In addition, it is not clear whether non-conservation activities can be undertaken in these areas. As such, one must analyse the legal certainty and security, permanence and duration, and management objective of the legal document that supports their establishment to decipher whether they meet the criteria for an OECM. The ambiguity in the wording of this section also creates an opportunity for NEMA to issue guidelines and prescribe measures that are consistent with OECM processes.

(d) Provisions that enable implementation of OECMs in private lands through government incentives

Under Section 38 of EMCA, NEMA is required to develop a national environment action plan which shall—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. In addition, Section 57 (1) of EMCA enables the Cabinet Secretary responsible for Finance to propose to Government tax and other fiscal incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources. These provisions can be used to encourage the private sector to participate in global conservation efforts. In this regard, mechanisms such as payment for ecosystem services may be applied in biodiversity rich areas that also meet the OECM definition.

(e) Provisions that enable the Creation of OECMs through contractual arrangements

Section 48 of EMCA enables NEMA to enter any contractual arrangement with private owners of any land for purposes of registering such land as forest land. This provision enables OECM implementation by providing a legal form for laying out key OECM elements such as the management objectives for the area; the rights and obligations of the landowner (which relate mainly to complying with the management plan and any restrictions this may place on the use or development of the area); and the rights and obligations of NEMA (which include providing assistance to the landowner to manage the site in accordance with a management plan, and the monitoring and reviewing of the management plan). Such agreements also spell out the duration of the engagement and the manner of renewing the agreement periodically thereby ensuring long-term sustainability. Further, Section 48 is an OECM enabler to the extent that it complies with OECM principles of free, prior informed consent by barring the Director-General from taking any action which is prejudicial to the traditional interests of the local communities customarily resident within or around forest or mountain area converted into forests.

(f) Provisions on avenues for public participation

(i) EMCA embeds the well-established international environmental law principle that all relevant interested and affected parties should be consulted meaningfully on matters of governance. Under Section 5 (ca) of EMCA, the Cabinet Secretary in charge of matters environment is required to provide evidence of public participation in the formulation of environmental policies and the periodical environmental action plan. The import of these provisions for OECM is that public participation will be a precursor to the mainstreaming of OECMs in laws and policies. Significantly, when called upon, national courts will halt any development plans and strike out laws and policies that fail to incorporate the views of the public.

- (ii) EMCA can therefore be said to be supportive of OECM implementation to the extent that it provides open, structured and accountable platforms where stakeholders and/or affected persons can interact, exchange ideas and influence decision-making in OECM-related development projects, plans, policies and processes.

3.3.3 The Wildlife (Conservation and Management) Act, 2013

This is an Act of Parliament to provide for the protection, conservation and management of wildlife in Kenya. The Act has several provisions which are relevant to OECMs, including:

- (a) Section 2, which extends the application of the provisions and principles of the WCMA to all wildlife resources on public, private and community land, and Kenya's territorial waters. It therefore provides the basic legal framework for OECMs.
- (b) Section 4 encourages and recognizes wildlife conservation and management as a form of land use, on private and community land, thereby mainstreaming and incentivising *in situ* conservation and management of wildlife on potential OECMs. Further, the principles of subsidiarity, public participation and equitable distribution of benefits provide a framework for communities and indigenous people to be stewards of wildlife in non-protected areas including potential OECMs.
- (c) Section 18 establishes the County Wildlife Conservation Committees to, among other functions, bring together relevant stakeholders to harness participation in conservation and management of wildlife.
- (d) Section 23 provides for the establishment of the Wildlife Conservation Trust Fund as a public-private-partnership platform to mobilize and unlock financial resources to facilitate community –based wildlife conservation and management initiatives in potential OECMs.
- (e) Section 39 enables any person or community who own potential OECMs that host wildlife to individually or collectively establish wildlife conservancies for *in situ* conservation of wildlife. Relatedly, section 44 makes it mandatory for each conservancy to be managed in accordance with an approved management plan intended to ensure effective governance and management, with right holder and stakeholder involvement, to attain effective and sustained outcomes. These provisions correspond with and align with the OECM criteria and principles.
- (f) Section 40 enables communities, landowners, groups of landowners and existing representative organizations to register a community wildlife association (CWA) to facilitate cooperative management and conflict resolution, which both advance the OECM principles of sustained and effective governance and management as a means to attain sustained and effective contribution to conservation on potential OECMs.

- (g) Section 50 establishes the Wildlife Research and Training Institute (WRTI). Its functions include formulation of the state of conservation report to enable reporting and monitoring Kenya's national and international obligations on biodiversity conservation, including in relation to OECMs under the CBD.
- (h) Section 65 enables landowners of potential OECMs to adopt practices that are compatible with the OECM goals through creation of easements by voluntary private arrangements.
- (i) Section 116 enables the Cabinet Secretary to, upon the recommendation of KWS, make regulations for or concerning any matter that is necessary to give effect to the Act, including prescribing measures that enhance community participation in the conservation and management of wildlife. This broadly worded provision presents an opportunity to mainstream the OECM concept into existing legal and implementation frameworks relating to conservation outside state-protected areas.

Possible Challenges to Implementation of OECMs under the Wildlife Act

The following provisions of the WCMA are likely to present challenges for the implementation of the OECM concept in Kenya:

- (a) Wildlife conservancies are significant potential OECMs. However, the definition in section 3 of a '*wildlife conservancy*' as '*land set aside by an individual landowner, body corporate, group of owners or a community for purposes of wildlife conservation in accordance with the provisions of this Act.*' does not align with the OECM concept to the extent that it likens a conservancy to a protected area and implies that wildlife conservation is the primary conservation objective of the area.
- (b) Full implementation of the Act has been hampered by failure to gazette and implement close to twenty pieces of subsidiary legislation, some of which have the potential to enable OECM implementation including regulations on co-management arrangements. These include the draft Conservancies and Sanctuaries Regulations - whose objectives were to promote the development of conservancies on private and community land, harmonize the procedures for the establishment and registration of conservancies and harmonize the standards of management of conservancies – directly relate to conservancies OECMs. Failure to enact them has meant section 39 of the WCMA cannot be given full force and effect.

3.3.4 The Community Land Act, 2016

This Act was enacted to give effect to Articles 63(5) of the Constitution, provide for the recognition, protection and registration of community land rights, management and administration of community land and to provide for the role of county governments in

relation to unregistered community land. Article 63 of the Constitution provides that community land shall vest in and be held by communities identified based on ethnicity, culture, or similar community of interest. The CLA contains several provisions which are relevant to OECMS, including:

- (a) Section 3 adopts, as guiding principles, Articles 10 and 60 of the Constitution (the principles of national governance and land policy, respectively. These lay emphasis on sustainable use of land and wildlife resources, transparency, accountability, equality, equity and democratic ideals like public participation in the management of natural and land resources. These principles are relevant because they set comprehensive standards for effective governance and management of potential OEMs.
- (b) Section 5(3) which provides that customary land rights including those held in common shall have equal force and effect in law with freehold or lease hold rights acquired through allocation, registration or transfer. This provision formalizes and strengthens community land tenure.
- (c) Section 6 provides that county governments shall hold in trust all unregistered community land on behalf of the communities for which it is held. Implementation of OECMs can therefore still be undertaken within community lands under county governments' interim trusteeship, management and administrative functions, with appropriate involvement of the community.
- (d) Section 7 makes it mandatory for a community claiming an interest in or right over community land to be registered. Registration of the community thereby enables it to have security of tenure in respect of the land comprising potential OECMs and thereafter to exercise full governance, management and administrative functions over the land through appropriate representative institutions.
- (e) Under section 15, a registered community shall have a community assembly consisting of all adult members of the community, and they shall elect a county land management committee to manage and register community land on behalf of the community. This defined and legitimate governance and management entities may therefore support identification and recognition of ongoing practices and OECMs.
- (f) Under section 19, a registered community may prepare and submit a plan for the development, management and use of its land for approval of the county government. The community plan must integrate elements relating to, among others: conservation, environment and heritage; environmental impacts; and integration of the plan with an approved physical development plan. The plan under section 19 may therefore support OECMs by contributing to the achievement of sustained and effective conservation of biodiversity on community land.

- (g) Section 20 entrenches the requirement for sustainable conservation and management of land-based natural resources within community land across counties in accordance with relevant applicable laws, policies and standards on natural resources. More specifically, all communities across Kenya must establish measures to protect critical ecosystems and habitats, incentives for communities and individuals to invest in income-generating natural resources conservation programmes; measures to facilitate the access, use and co-management of forests, water and other resources and procedures for the registration of natural resources in an appropriate register. The provisions of section 20 align with OECM requirements, including the need for geographical definition, and meeting governance and management requirements. They are therefore relevant for OECMs.
- (h) Section 29(1) allows a community to designate and reserve special purpose areas including community conservation areas. It therefore enables the designation or identification of an area as an OECM. However, section 29(2) provides that an area designated as such shall be used exclusively for the designated purpose and is to this limited extent at variance with OECM requirements.
- (i) Section 36 aligns with the concept of FPIC in relation to indigenous peoples' land, territory and resources, as it provides that investment in community land shall be made after a "free, open consultative process". The community assembly has the legitimacy to consent to an investment agreement, without which the development initiative cannot be implemented on community land. These safeguards are important and align with the human rights-based approach to governance required for an OECM's identification governance, management and reporting with rightsholders' involvement and consent²⁸.

Challenges facing Implementation of the CLA

The CLA was predicated upon registration of communities, which has not yet occurred in many potential OECM areas in Kenya. Accordingly, communities have not been able to register themselves as communities and register their land. This undermines the management governance and secure land tenure, which are critical ingredients for OECMs recognition and implementation. Additionally, section 29(2) provides that an area designated as a special purpose area shall be used exclusively for the designated purpose and, to that extent, is at variance with OECM requirements.

²⁸ Ngobizitha Ndlovu and Enyinna Nwauche, *Free Prior and Informed Consent in Kenyan Law and Policy after Endorois and Ogiek*, Cambridge University Press, 2022.

3.3.5 The Land Act, 2012

The Land Act 2012 was enacted to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources. Some of the provisions of the Land Act relevant to OECMs include:

- (a) Section 4, which requires the National Land Commission and any State officer or public officer to adhere to the values and principles of equitable access to land, security of land rights, sustainable and productive management of land resources, transparent and cost-effective administration of land, conservation and protection of ecologically sensitive areas, technical and financial sustainability, democracy, inclusiveness and participation of the people.
- (b) Section 2, which recognises various forms of land tenure including freehold, leasehold and communal land rights.
- (c) Sections 19, which explicitly provides for a wide variety of measures for conservation of land-based natural resources that align with OECMs because they protect critical ecosystems and habitats; giving communities and individuals incentives to invest in income generating natural resource conservation programmes as well as facilitating the access, use, and co-management of forests, water and other resources by communities who have customary rights to them; formulating procedures for registration of natural resources in an appropriate register; enacting procedures for the registration of natural resources ; involvement of stakeholders in resource use and management and putting in place measures to ensure benefit sharing.

3.3.6 The Forest Conservation and Management Act, 2016

The Forest Conservation and Management Act (FCMA) was enacted to give effect to Article 69 of the Constitution relating to forest resources; to provide for the development and sustainable management, including conservation and rational utilization of all forest resources for Kenya's socio-economic development. It applies to all forests on public, community and land in Kenya. The provisions of the FCMA relevant to OECMs include:

- (a) The guiding principles in section 4, including good governance, public participation and community involvement in the management of forests, consultation and co-operation between the national and county governments and the values and principles of public service in accordance with Article 232 of the Constitution.
- (b) Section 4 also prioritizes the protection of indigenous knowledge and intellectual property rights of forests resources and international best practices in management and conservation of forests. It therefore aligns with the OECM requirements for equitable

governance and respect for IPs and LCs in recognition or reporting of OECMs, and respect for their traditional governance authorities.

- (c) Section 8 (j), which sets out the functions of the Kenya Forest Service (KFS) to include managing water catchment areas in relation to, among other objectives, carbon sequestration and other environmental services, in collaboration with other stakeholders.
- (d) Section 39 which provides for the establishment of nature reserves on any national, county, community or private forests. These are flagship areas for the establishment of OECMs on public land.
- (e) Section 42(1)(f) and (j) provide, respectively, that all indigenous forests and woodlands shall be managed on a sustainable basis for, among other purposes, carbon sequestration and other environmental services and providing a habitat for wildlife in territorial forests and fisheries in mangrove forests. This provides the framework for governance and management of forests in a manner that enables forests to provide ecosystem functions and services such as carbon sequestration in tandem with other conservation objectives, such as providing habitats for wildlife and accordingly aligns with OECMs.
- (f) Sections 42(2) and 44 entrench the principle of sustainable forest management for integrated objectives, through participatory approaches. Section 43(3) provides a mechanism for implementing the OECM requirements of OEMs relating to involving and empowering IPs and LCs in management of forest ecosystems.
- (g) Section 44 makes management plans, prepared through a consultative process, mandatory for all categories of forests, including community owned forests. If well implemented, aids the achievement of sustained and effective in-situ conservation of biodiversity. The integrated planning approach provides a framework for provision of ecosystem functions and services, and the attainment of cultural, spiritual and other relevant values in forest OECMs.
- (h) Section 48 which provides for co-management arrangements in the forest sector. This provides an opportunity for recognizing OECMs in the forest estate.

Challenges Relating to using the Forest Act for implementing the OECMs

- (a) Community-based approaches to forest management are hampered by weak governance institutions and lack of downward accountability, which are either attributable to or made more acute by poverty, illiteracy and low levels of understanding.
- (b) There has been minimal stakeholder commitment to fully implement community-based approaches to forest management and lack of adequate targeted funding.

3.3.7 The Water Act, 2016

Parliament enacted the Water Act, 2016 to provide for the regulation, management and development of water resources, water and sewerage services, and for other connected purposes.

Under Section 29, the Act establishes Water Resource Users Associations (WRUAs). WRUAs are community-based associations established to ensure collective management of water resources and resolution of conflicts concerning the use of water resources. Their coverage areas are designated via sub-catchments or the hydrological extent of a water resource. The Water Resources Management Rules, 2006 operationalizes Section 29 of the Act by providing the procedure for registration of WRUAs. The Regulations also define WRUAs as “an organisation, corporate body or person that has legal status” By virtue of registration, WRUAs are empowered to enter contractual arrangements with other legal persons. This provides an avenue for forging cross-sectoral partnerships that could facilitate OECEMs implementation in designated catchment areas. Such an arrangement finds support in the IUCN guidelines which recognize watersheds or other areas managed primarily for water resource management that also result in the in-situ conservation of important biodiversity, as potential OECEMs.

3.3.8 The County Governments Act, 2012

The County Governments Act, 2012 was enacted by Parliament to give effect to constitutional provisions on devolution, to provide for county governments' powers, functions and responsibilities to deliver services and for connected purposes. It offers various opportunities for OECEM implementation in Kenya.

(a) Provisions that support anchoring OECEMs in legislation

Section 5 of the Act outlines functions assigned to the different arms of government, which include the mandate to legislate over county functions by county assemblies. This mandate directly aligns with suggested actions for CBD parties who are called upon to review and reform relevant laws and policies to realize the elements of OECEMs based on their legislative mandate, Counties can put in place context-specific, new, and innovative laws that enable OECEM implementation in their localities.

(b) Provisions that enable mainstreaming of OECEMs in county plans

- Decision 14/8 requires evidence of a long-term intent to maintain the OECEM to ensure the continuation of its expected outcomes. This implies the need to develop long-term management plans to guide and inform the actions of any management entity that oversees an OECEM. The laws on devolution have various important

provisions revolving around management planning and calls for different categories of plans which include; (a) county-integrated development plans, (b) spatial plans (c) sectoral plans, and (d) city and urban areas plans. Planning processes offer an opportunity for the identification and recognition of areas of high biodiversity as OECMs and for putting in place appropriate governance and management structures through inclusive consultative processes.

(c) Provisions on the creation of awareness

Having been mandated by the Constitution to ensure and coordinate public participation at the local level, Counties have sufficient leeway to facilitate awareness creation on the concept of OECM continuously.

(d) Provisions requiring public participation in OECM processes

To ensure good governance, the Act has inbuilt provisions that act as safeguards against government excesses. These principles align with the principles of democratic governance ingrained in OECM processes. For instance, section 87 outlines the principles that ought to guide citizen participation in matters of governance, section 91 obligates County Governments to facilitate the establishment of structures for citizen participation and section 97 obligates them to observe certain principles when undertaking public participation. These sections cumulatively offer sufficient safeguards for the protection of cultural and propriety rights of local communities and therefore augur well for OECM implementation.

3.3.9 The Physical and Land Use Planning Act, 2019

Section 52 of the Act mandates County Governments to declare an area as a special planning area for reasons which may include the fact that the area has unique development, natural resources, environmental potential or challenges. Where such a declaration has been made, the county is further mandated to suspend development in that area until a physical and land use development plan in respect of the area has been approved. When issuing suspension directives, the county must specify the area declared as a special planning area and the nature of the proposed development for which the declaration has been made. Relying on these provisions, it is feasible that a County Government may identify biodiversity-rich areas as special planning areas and put in place development plans that meet the objectives of OECMs alongside other country-specific objectives.

3.3.10 The Climate Change Act, 2023

The Climate Change Act came into force on 15 September 2023. This sector-wide Act is to be applied for the development, management, implementation, and regulation of mechanisms to enhance climate change resilience and low carbon development for the

sustainable development of Kenya. The Act presents the following opportunities for OECM implementation in Kenya.

(a) Opportunity for mainstreaming OECMs in laws and policies

Section (5) of the Climate Change Act, 2023 obligates the Council to carry out various functions including to; (a) advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate change resilient development; (b) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act. Creation of OECMs is a necessary measure for creating resilience to climate change in communities. These provisions provide an opportunity to mainstream OECM in current laws and policies and to review and amend legislation that could hinder implementation.

(b) Providing a mechanism for monitoring and reporting

Under Section 9 (1), the Act establishes the Climate Change Directorate which is mandated to carry out roles such as to²⁹ (a) to develop strategies and coordinate actions for building resilience to climate change and enhancing adaptive capacity, and (b) to coordinate adherence to the county's international obligations including associated reporting requirements. The creation of an entity that is responsible for monitoring and coordinating reporting obligations supports the objectives of OECM by ensuring that the country can take stock of the progress made in climate change mitigation through the creation of OECMs and meet its international reporting obligations.

(c) Enabling identification of the OECM concept as a climate change response measure

Section 13 empowers the Cabinet Secretary to coordinate the preparation of climate change action plans, strategies and policies. It further provides that the Action Plan shall prescribe measures and mechanisms to specifically identify all actions required as enablers of climate change response;

(d) Affirming the need for public participation

The Climate Change Act recognizes public participation as one of its guiding principles and calls upon the entities created under it to align their actions accordingly. Under Section 24, the Act reiterates that public entities at each level of government shall, always when developing strategies, laws and policies relating to climate change, undertake public awareness and conduct public consultations. Further, it is provided that public consultations shall be undertaken in a manner that ensures the public contribution makes an impact on the threshold of decision making. In addition, the Cabinet Secretary is

²⁹ Climate Change Amendment Act Section 9 (8)

obligated to ensure that the climate change action plan is developed with the input of a variety of stakeholders including holders of indigenous knowledge (S.13 (5)(g)) The Act goes further to outline the way public participation is to be conducted under the 2nd schedule. The schedule also spells out the manner of accessing information and determines feedback mechanisms. These provisions enable the implementation of OECMs through transparent and democratic processes that not only ensure free prior informed consent, but also uphold and respect the cultural and proprietary rights of local communities.

(e) Enabling the creation of agreements relating to Carbon markets

The Act provides a framework for trading in carbon credits. Section 23 stipulates that participation in an initiative authorizing trade in carbon credits may be; (a) as a result of a bilateral or multilateral trading agreement (b) as a result of trading with a private entity and (c) in a voluntary carbon market.³⁰ Section 23 (c) then states that the Cabinet Secretary, with the approval of the Cabinet, may enter into an agreement with a private entity to offset carbon emissions and shall include any emission reduction resulting from agreements entered into under this section in the national reporting mechanism to the United Nations Framework Convention on Climate Change. Initiatives authorizing trade in carbon credits, such as carbon projects in potential OECMs, integrate in situ biodiversity conservation with ecosystem services generating funds for socio-economic development thereby for OECMs. Through these provisions, proponents are able to lay down implementation processes that support trade in carbon credit and ensure conservation.

(f) Enabling the creation of Community development agreements

Section 23E provides important considerations for local communities undertaking conservation. It begins by stipulating that all land-based projects undertaken under the Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the project in public and community land where the project is under development. Provisions under Section 23E (5) go further to outline the issues that are to be incorporated into a community development agreement which include the sharing of benefits from the carbon markets and carbon credits between the project proponents and the impacted communities. These provisions enable parties to set out implementation process that support trade in carbon credit while also ensuring conservation in a manner that safeguards IPs and LCs rights and interests.

(g) Providing incentives

³⁰ Ibid 23

According to subject matter experts,³¹ the high cost of conservation can be a disincentive to conservationists, particularly in situations where there are no benefits to offset these costs. Providing affected communities and landowners with appropriate incentives is one of the strategies that may encourage landowners to initiate and sustain conservation practices. Section 26 of the Climate Change Act is pertinent in this regard, in as far as it stipulates elaborate provisions on incentives for the promotion of climate change initiatives.

3.3.11 The Public Benefit Organizations Act, 2013

The PBO is an Act of Parliament enacted to provide for the establishment and operation of public benefit organizations; to provide for their registration; to establish an administrative and regulatory framework within which public benefit organizations can conduct their affairs and for connected purposes.

The institutional framework for a successful OECM may include several organizations including (a) public institutions responsible for environmental management, (b) community-based organizations and NGOs involved in the management of natural resources, and (c) public/private financial institutions providing resources for the improvement of natural resources management. Under section 10 (3) a registered PBO shall by virtue of such registration be a body corporate with perpetual succession capable, in its name to undertake activities such as entering into contractual agreements with other entities. These provisions enable PBOs and NGOs to work directly with landowners through agreements governed by the law of Contract.

3.3.13 Fisheries Management and Development Act, 2016

This is an Act of Parliament whose objective is to protect, manage, use and develop the aquatic resources in a manner which is consistent with ecologically sustainable development, to uplift the living standards of the fishing communities, to introduce fishing to traditionally non-fishing communities and to enhance food security.

(a) Provisions that enable Public- Private Partnership (PPP) investments

The Act establishes the Kenya Fisheries Services (KeFS) and empowers it to arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions. The Director of KeFS is also mandated to enter into agreements for the management, conservation, use and exploitation of fisheries resources.

³¹ Waithaka J. and Njoroge W.G (2018) *The Role of potential OECMS in Safeguarding Space for Nature in Kenya: a Case study of Wildlife Conservancies.*

These provisions open up the sector for PPPs investments. Such PPPs may be designed to meet OECM objectives.

(b) Provisions that enable establishment and regulation of Beach Management Units

Section 37 empowers the Cabinet Secretary to make regulations setting out standards for the management of beach management units. The Act intersects with the Land Registration Act which authorizes the Ministry of Land to ensure that fish landing sites, which are categorized as community land, are registered and protected from grabbing or unrelated use. It further stipulates that the Registrar shall recognize the land with a special lease issued to the registered members. These provisions coupled with the fact that BMUs have their own by laws that articulate management and governance processes, provides an opportunity for collaboration between BMU's and other entities interested in OECM related investments.

CONCLUSION

Chapter 3 identified and listed various provisions within the existing policy and legal frameworks that align with the OECM criteria. Those findings are presented under Annex 3 to this study in synthesized form.

CHAPTER FOUR: SUMMARY OF THE FINDINGS OF STAKEHOLDER CONSULTATIONS

4.1 Introduction

At the inception of this study, a stakeholder analysis was conducted, as a result of which, 34 stakeholders were identified as potential Respondents. Twenty-five out of those 34 potential Respondents were interviewed. This section provides a summary of the outcome of those interviews. The chapter has been presented under 4 thematic areas, in tandem with the interview guide.

4.2 Definition of OECMs

More than half of the Respondents acknowledged that the phrase “OECM” is not widely understood, even among stakeholders, primarily due to the novelty of the concept and the lack of sensitization on the manner of its application. It was observed by several Respondents that the definition of “conservancy” in both the Wildlife Policy and Wildlife Act gives the impression that these are areas under the same category of protection and management like national parks and national reserves and not multiple-use areas. Consequently, Respondents expressed concerns about embracing new conservation concepts as it denotes a *change of user* with the potential for compulsory acquisition of private lands by the government.

These observations underscore the need for greater engagement with law and policymakers on mainstreaming OECM in law and policy. There is also a need for dialogue, discussions and trust building, especially with IPLC groups on the overall goals and processes of OECM implementation.

4.3 Interpretation of the concept of OECM

Most Respondents lacked clarity on the concept of OECMs. However, notably, most Respondents from the coastal area affirmed that the concept is relatively well-understood within the fisheries, coastal and marine sectors as compared with the terrestrial and inland waters. It was reported that various agencies have initiated several programmes and projects, especially in locally managed marine areas such as Kuruwitu Locally Managed Marine Area (LMMA) in Kilifi Country, which align with OECM implementation. They, however, decried the fact that, while some areas have been acknowledged as potential OECMs, they have not been identified and mapped as such, and therefore cannot be used for reporting on Kenya’s obligation to meet the 30x30 GBF targets. Their responses accentuate the need for legal reform to facilitate the identification and recognition of OECMs and point to the fact there are missed opportunities for OECM implementation within the country.

4.4 Policy Issues

The majority of Respondents noted the lack of an OECM-specific policy as a barrier to OECM implementation in Kenya. The fact that no single government institution is providing stewardship to the OECM initiative was also highlighted as a reason for the slow uptake.

4.5 Legislative Issues

(a) Land Tenure

Several Respondents highlighted challenges with the implementation of the Community Land Act. For instance, they noted that there are *procedures in the CLA that require County governments to create inventories for communal lands while the National government is required to deploy community land registrars in each county. These actions are critical for perfecting the registration of land titles in communities. Due to this, the Respondents lamented that even though some communities had commenced the processes of transitioning from the repealed law to the relatively new CLA, there were serious challenges bedevilling these processes leading to low levels of compliance.*

These findings imply that a large section of the population in areas with OECM potential do not have security of tenure in the land they inhabit. This discourages them from making long term investments in the land and precludes them from being able to use the land for collateral in securing loans, which is a detrimental factor to sustainable land management.

(b) Adequacy of existing laws as relates to OECM implementation

Majority of the Respondents observed that there are currently no OECM-specific legal frameworks that stakeholders can work with to implement OECM's in Kenya. Many of the Respondents, however, noted that various laws on environment and natural resources have provisions and principles which are favourable and support implementation of the OECM concept. They also agreed that the CoK provides a strong basis for introducing new conservation concepts, such as OECMs, as a means of attaining high levels of environmental protection, conservation and management.

4.6 Indigenous People and Local Communities

Most Respondents acknowledged the importance of including explicit provisions targeting IP&LCs within the GBF framework and noted that these types of protective provisions would further entrench inclusivity while respecting cultural differences of various local communities. These observations by on the need to ring-fence land tenure security for IPLC derive from the historical tendencies of land grabs from powerful elites and the conversion of their ancestral lands into other land use types such as parks and reserves for exclusive use

for conservation. It is therefore imperative that the national and county policies and laws have elaborate provisions to assure IPLC on their land rights.

4.6 Implementation issues

The majority of respondents were of the view that the current institutional arrangements are favourable to the implementation of OECMs. This is due to the flexibility allows ease of co-management especially in areas where there are jurisdictional overlaps. Notwithstanding this, many of the respondents also noted a tendency for adopting a 'silo approach' in the execution of programmes and projects between relevant sector agencies. Some of the Respondents therefore noted the need for joint planning and execution cooperatively by adopting the 'whole-of-one government and whole-of-one society approach to avoid duplication and overlaps.

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This section aims to identify and evaluate various factors which assist or hinder the implementation of OECMs in Kenya. The study selected a SWOT analysis as the most suitable method to systematically evaluate the “strengths” “weaknesses” “opportunities” and “threats” within policy, legal and implementation frameworks. The benefit of the SWOT analysis resides in a comprehensive identification of external and internal influences which yield strategic insights on the status of preparedness for OECM implementation in Kenya. The results of that exercise are summarized in the SWOT analysis matrix provided in the table below:

Table.1 – SWOT Analysis Matrix

Policy/Legislation	Strengths	Weaknesses	Opportunities	Threats
Sessional paper No. 10 of 2014 On the National Environment Policy	<ul style="list-style-type: none"> Contains policy provisions for sustainable management of biodiversity and ecosystems which is a central theme in the OECM's approach to conservation 	Several regulations to operationalize and legislation are still pending including guidelines for ecosystem planning, natural capital assessment and valuation	The policy provides sufficient institutional arrangements for supporting the operationalizing OECMs	Pending subsidiary legislation impedes giving full operational effect to the policies that facilitate OECMs
Sessional Paper No. 3 of 2009 on National Land Policy	<ul style="list-style-type: none"> Lays the foundation for governance and management of land which are critical considerations for the identification and recognition of potential OECMs 	Delays in the review of the NLP undermines mainstreaming of conservation measures including OECM.	The provisions on land classification in the NLP can empower landowners to make decisions which would be favourable to the OECM's identification and recognition.	The delay in the review of NLP undermines the revision of other policies that can support the implementation of OECMs.
Wildlife Policy	Contains provisions for promoting wildlife conservation and management as a viable land use outside the PAS	KWS, WRTI and other government agencies should provide robust research, education, and extension services	There has significant growth in collaboration between landowners and conservation NGOs to promote conservation outside the PAS	High dependency on external partners is not sustainable
National Spatial Plan Policy (2015-2045)	Contains provisions that enable harmonization and integration of the different	Regime changes often lead to changes in priorities and interventions which may lead to	Plans are reviewed periodically thus creating an opportunity for amendments/re-alignment with	Due to budgetary constraints, the government has to prioritize interventions

	sector plans under Kenya's planning framework. This could facilitate OECM mainstreaming into county planning frameworks	the exclusion of important projects and programs.	emerging priority areas.	with visible short-term impacts at the expense of long-term sustainable ones.
Environmental Management and Coordination Act, 1999	<ul style="list-style-type: none"> Contains provisions that enable the development of OECM in new legislation 	A stand-alone legislation in OECM may limit implementation and cause inter-sectorial coordination challenges	Legislative proposals can be initiated by private members	The law-making process is long and protracted
	<ul style="list-style-type: none"> Contains provisions that may incentivize a landowner to adopt practices which are compatible with OECM goals through easements or private contracts. 	The complexity and voluntary nature of this arrangement may undermine understanding, implementation and acceptance.	OECM implementation offers socio-economic benefits that may attract actors	Majority of territories with OECM potential are yet to acquire legal registration which restricts participation of landowners in such initiatives.
	<ul style="list-style-type: none"> Contains provisions that bind all actors to undertake public participation in all policy and law-making processes 	The standard for legally compliant public participation is high and may not be achieved across the board.	County governments are mandated to conduct awareness creation on an ongoing basis	Disputes relating to public participation invariably end up in court with adverse implications
County Governments Act	<ul style="list-style-type: none"> Contains provisions that can facilitate mainstreaming of OECM in county plans and policies 	There is low technical capacity within county government which hinders mainstreaming of OECM into county plans.	Capacity Building initiatives can be undertaken by non-government actors.	County plans may not be implemented due to financial and technical constraints
	<ul style="list-style-type: none"> Contains provisions that mandate awareness creation 	County officials may not have adequate capacity to create awareness within their localities on OECM issues	Counties can mobilize resources for capacity building from development partners.	There is a risk of mismanagement of funds
	<ul style="list-style-type: none"> Contains provisions that facilitate the creation of carbon markets through community development agreements 	Merging OECM implementation with Carbon trading may present technical challenges due to the complexity of both concepts	Public participation is embedded in the process which creates room for thorough interrogation of community agreements	Due to the voluntary nature of the transaction, parties may still develop contracts that do not align with the

				elements of OECM.
Fisheries Management and Development Act	<ul style="list-style-type: none"> Contains provisions for co-management through the establishment of BMUs 	The 2007 BMU guidelines are not robust enough to anchor effective co-management arrangements	BMUs have demonstrated that co-management arrangements can contribute to effective biodiversity conservation.	Conservation-related initiatives are overshadowed by economic opportunities presented by the blue economy
Wildlife Conservation and Management Act, 2013	<ul style="list-style-type: none"> Contains provisions that support biodiversity conservation outside protected areas 	The existing definition of critical potential OECMs like conservancies does not align with OECM	The ongoing review of the WCMA presents an opportunity to incorporate reforms relating to OECMs	Legislative review processes are lengthy and time-consuming
	<ul style="list-style-type: none"> Contains provisions for wildlife co-management arrangements outside protected areas 	The implementation of these sections requires operationalization through guidelines and regulations	The ongoing review of the WCMA presents an opportunity to incorporate reforms relating to OECMs	The Act cannot be fully implemented in the absence of guidelines and regulations
	<ul style="list-style-type: none"> Makes provisions for establishment of a trust fund which makes funding available for conservation within and outside protected areas 	The fund is yet to be operationalized due to lack of consensus on the focal point.	There are opportunities for resource mobilization through other mechanisms that can facilitate OECM implementation in Kenya	The criteria and conditions for funding are often too complex and may not be met by local actors in need of funding for OECM implementation
	<ul style="list-style-type: none"> Contains provisions that may incentivize a landowner to adopt practices that are compatible with OECM goals through easements 	The complexity and voluntary nature of this arrangement may undermine understanding, implementation and acceptance.	OECM implementation offers socio-economic benefits that may attract actors	Majority of territories with OECM potential are yet to acquire legal registration which restricts the participation of landowners in such initiatives.
	<ul style="list-style-type: none"> Recognizes wildlife conservation as a land use 	Lack of adequate data for planning	Wildlife as a land use can be incorporated into the national and county government planning frameworks	Lack of commitment to formulate and implement plans
Community Land Act, 2012	<ul style="list-style-type: none"> Contains provisions that facilitate registration of land owned by IP&LC in areas with OECM potential 	The Act was predicated upon the registration of communities. This hasn't occurred. Consequently, communities have been unable to	Implementation of OECM can still be undertaken within community lands under county governments interim trusteeship, management and	There is a risk that county governments may enter into arrangements that go against community interest.

		register community land thus undermining management and governance and secure land tenure	administrative function.	
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CONCLUSIONS

The study established that Kenya’s policy, legal, and implementation frameworks are not sufficiently robust to spur OECM implementation to the required standard. Indeed, those frameworks do not explicitly define or incorporate OECMs. Nonetheless, a raft of opportunities exist within these frameworks that can incentivize immediate actions for mainstreaming OECM into existing implementation plans. The study’s overall conclusions are as follows:

1. There is low understanding of the OECM concept and limited technical capacity for its implementation even among key stakeholders because the concept is new and complex. This lack of understanding has many far-reaching implications such as:
 - (a) Negative perceptions about the intentions behind OECM implementation.
 - (b) Fear and apprehension concerning the effects of implementation of OECMs on landowners.
 - (c) Poor governance and management of potential OECM areas.
 - (d) Failure to recognize and incorporate IP&LCs’ knowledge, skills and cultural practices which are supportive of biodiversity conservation into OECM implementation.
 - (e) In the case of IPLCs, this lack of understanding undermines the exercise of any meaningful FPIC, which is essential for the implementation of OECMs using a rights-based approach.
2. Several ongoing programmes and projects, especially in locally managed marine areas (LMMAS), align with OECM goals. However, these areas where these programmes and projects are being undertaken have not been identified and mapped and cannot therefore be used for reporting on Kenya’s obligations to meet the 30x30 GBF target.
3. The Community Land Act, 2016 has not been fully implemented in many areas, including territories occupied by IP&LCs, due to inadequate funding and low commitment to full operationalization. This omission has significant implications for OECM implementation, including lack of security of tenure in areas that are prime candidates for OECM implementation. This lack of full implementation of the Act is also detrimental to governance and management of communal lands because the institutions tasked with governance and management are yet to be operationalised.

4. There are overlapping and conflicting mandates touching on OECMs amongst government institutions, resulting in incoherence of OECM initiatives.
5. The existing legal framework provides for collaboration through co-management arrangements, such as BMUs, CFAs and CWAs. It is therefore favourable to the implementation of OECMs. However, in practice, many agencies tend to adopt 'silo approaches' in planning for and executing programmes and projects. The resulting duplication and conflicts undermine implementation of integrated approaches which are critical for sustainable and effective biodiversity conservation.
6. Whereas the current policy and legal frameworks contain supportive provisions for OECM implementation, the subsidiary legislation or guidelines that would facilitate their full operationalizing are not yet in force. Consequently, full operationalization is not attainable.
7. There is lack of targeted funding to support potential OECMs.

RECOMMENDATIONS

8. Biodiversity conservation actors should initiate discussion, trust building and dialogue, especially with IP&LCs, on the overall goals and implementation of OECM through capacity building initiatives such as education, awareness creation and extension services. Biodiversity conservation actors should also explore ways of collaborating with strategically positioned entities, such as KWCA and County Governments, to design and implement a comprehensive programme for building capacity of stakeholders using inclusive approaches.
9. The existing legal framework should be reformed to facilitate the identification and recognition of LMMAS as OECMs to enable these areas be used to report on actions taken by Kenya in relation to her international obligations under the CBD as relates to the GBF framework.
10. Biodiversity conservation actors should seek targeted technical and financial support from the National Government and other actors to facilitate adjudication and mapping of community land and thereby give impetus to registration of community land. In addition, biodiversity conservation actors should collaborate with the Cabinet Secretary in charge of land and County Governments to ensure that the process of documenting, mapping and developing the inventory of community lands across Kenya is accomplished.
11. The "all in one approach" incorporating government and non-governmental entities to promote synergy and harmonization of planning, budgeting and implementation of projects and programmes should be institutionalized. An appropriate coordination framework

comprising government and non-government actors, with a clear focal point for matters touching on OEEM, should be developed, funded and operationalized.

12. Ministries, Agencies, and non-government stakeholders should put in place an advocacy program targeted at, firstly, the inclusion of OEEM supportive provisions in the ongoing review and amendment of relevant legislation, including the WCMA and, secondly, finalization of regulations and guidelines to support OEEM implementation for the relevant sectors.
13. Ministries, Agencies, and Non-Government Organizations (NGOs) should develop mechanism for targeted and sustained resource mobilization from private and public sectors.

The study proposes that implementation of these recommendations adopts a systematic implementation framework as elaborated in the matrix below:

IMPLEMENTATION MATRIX

Recommendation	Activity	Responsibility
Design and implement a comprehensive programme for capacity building	Establish an ad-hoc inter-agency technical committee to prepare EAC materials for capacity building	Ministry responsible for Environment and county governments
Conduct Education and awareness on OEEM, especially in important biodiversity hotspots.	Conduct municipal hall and under-the-tree workshops to sensitize stakeholders	Ministries and Agencies responsible for lands, environment, and natural resources at the national and county government.
Review policies and laws relevant to the recognition and identification of potential OEEMS	Establish sector technical drafting committees Develop TORs for Sector Committees Draft Policies and laws for interrogation by stakeholders Undertake Public participation for the draft policies and laws Process the laws the laws through Parliament	Office of the Attorney General Kenya Law Reform Commission and the relevant sector Ministries/agencies and non-government organizations
Collaborate with the relevant entities to obtain targeted technical and financial support for full implementation of CLA	Facilitate; (a) Registration of community groups	Ministries in the National and County Governments, Agencies, and Non-Government Organizations (NGOs)

	<p>(b) Deployment of community land registrars to the counties</p> <p>(c) Preparation of land inventories</p> <p>(d) Land adjudication and mapping and registration</p>	
Institutionalize the “all in one approach” and develop an appropriate coordination framework	Establish an inter-agency committee to provide stewardship for the Preparation of guidelines to guide the adoption of the “all in one approach” and a coordination framework.	Ministries in the National and County Governments, Agencies, and Non-Government Organizations (NGOs)
Formulate regulations and guidelines that support OECM implementation	<p>Prepare draft regulations and guidelines</p> <p>Conduct public participation for the regulations and guidelines</p> <p>Process the regulations through Parliament</p> <p>Prepare and implement plans as guided by the regulations and guidelines</p>	Ministries, Agencies, and non-government stakeholders
Develop a mechanism for targeted and sustained resource mobilization from private and public sectors. (Wildlife Trust Fund, GEF, GBF Fund)	<p>Prepare an OECM resource mobilization strategy</p> <p>Lobby for inclusion of budgetary allocation for implementation of OECM in national and county budgets</p>	Ministries, Agencies, and Non-Government Organizations (NGOs)

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ANNEXES

TABLE 1: LIST OF STAKEHOLDERS INTERVIEWED

No	Name	Job Title/Area of Expertise	Institutional Affiliation
1	Arthur Tuda, PhD	CEO, Wildlife/Marine Science Expert	WIOMSA
2	Rodrck Kundu	Secretary; Fisheries and Blue Economy	State Department of Fisheries and Blue Economy
3	Steve Itela	CEO, Wildlife Expert	CAK
4	Lucy Waruinge	CEO, Wildlife/NR	ACC
5	John Kamanga	CEO, Wildlife Community Conservation	SORALO
6	Raabia Hawa	Director and Founder	Ulinzi Africa Foundation
7	Dishon Murage,	East Africa Field Representative Marine/Fisheries	Seacology Foundation
8	Gladys Warigia Njoroge	Policy and Advocacy Manager	KWCA
9	Fiesta Warinwa	CBNRM, Former Country Director, AWF	Freelance Consultant
10	Geoffrey Odhiambo	Research Scientist/Community – Based Conservation	CORDIO EA.
11	Apollo Kariuki	Management Planning/Community Conservation, formerly at KWS	Freelance Consultant
12	Elizabeth Wambugu	Head Planning/Principle Londiani Forestry College	Kenya Forest Service
13	Jamleck Ndambiri	Head Planning/Indigenous Forest Conservation	Kenya Forest Conservation
14	Cyrus Mageria	Deputy Director, MEA's	Ministry of Environment
15	Helen Nzainga	Rural and Urban Planning	Lecturer, UoN
16	Alibhai	Inland Waters Ecologist	Freelance Consultant
17	Annette Omwoyo	Legal Assistant	Kenya Law Reform Commission

18	Brian Muthoka	Programme Officer	Council of Governors
19	David Ndeere	Chief Veterinary Officer	Wildlife Research and Training Institute (WRTI)
20	Alfred Mwanake	Chief Executive Officer	Taita Taveta Wildlife Conservancies Association
21	Munira Anyonge	Kenya Country Director	The Nature Conservancy (TNC)
22	Shadrack Ngene	Ag. Conservation Secretary	State Department for Wildlife