

LAW AND POLICIES THAT PROTECT THE MOST VULNERABLE AGAINST CLIMATE-RELATED DISASTER RISKS:

Findings and Lessons Learned from Kenya

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ACKNOWLEDGEMENTS

This report was developed by Sarah Nduku at the International Centre of Humanitarian Affairs (ICHA) within the Kenya Red Cross Society (KRCS) with support from Ahmed Idris, the Executive Director at ICHA, Catherine Wangechi, Policy and Advocacy assistant at ICHA and Naomi Ng'ang'a Data, Visualization and Reporting Officer at ICHA. Technical review and editing support were also provided by IRC-MSCA CAROLINE Research fellow, Dr Tommaso Natoli (UCC-IFRC) during his secondment to IFRC Disaster Law, Maria Martinez, and Stella Ngugi of IFRC Disaster Law, Africa Region.

Special thanks to the Regional Managers and County coordinators at the KRCS who provided support with data collection and conducting Key Informant interviews. Gratitude to the policy makers, community members, technical experts in the field of DRR and CCA as well as the students of public policy that participated in the interviews and gave their expertise in the development of this report.

Project implementing partners



This project has received funding from the Irish Research Council and the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 713279.



The IFRC also wishes to thank and acknowledge the support provided by the German Government for the completion of this project.



Suggested Citation: Nduku S., Law and Policies that Protect the Most Vulnerable Against Climate-Related Disaster Risks: Findings and Lessons Learned from Kenya, ICHA | IFRC , Nairobi (2021)

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ACRONYMS AND ABBREVIATIONS

ASALs	Arid and Semi-Arid Lands
CCA	Climate Change Adaptation
CIDP	County Integrated Development Plans
DRM	Disaster Risk Management
DRR	Disaster Risk Reduction
EDE	Ending Drought Emergencies
GDP	Gross Domestic Product
GHG	Greenhouse Gases
GoK	Government of Kenya
IFRC	International Federation of the Red Cross and Red Crescent Societies
KIs	Key Informants
KIIs	Key Informant Interviews
KNPDRR	Kenya National Platform for Disaster Risk Reduction
KRCS	Kenya Red Cross Society
MTP	Medium-Term Plans
NAP	National Adaptation Plan
NAPDRR	National Action Plan on DRR
NCCAP	National Climate Change Action Plan
NCCRS	National Climate Change Response Strategy
NDCF	National Drought Contingency Fund
NDMA	National Drought Management Authority
NDRMP	National Disaster Risk Management Policy
NDOC	National Disaster Operations Centre
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
SOPs	Standard Operating Procedures
UN	United Nations
UNDP	United Nations Development Programme





INTRODUCTION

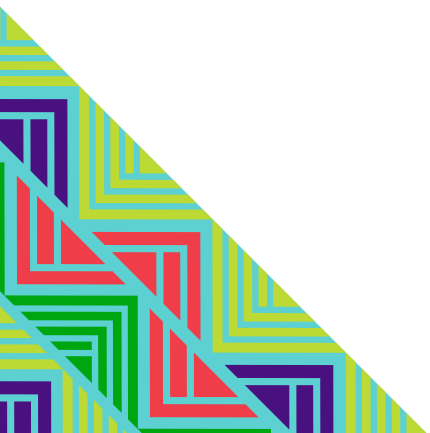
1.1 Background of the Study

This study represents a complementary output of the research project “Leave No One Behind - Developing Climate-Smart/Disaster Risk Management Laws that Protect People in Vulnerable Situations for a Comprehensive Implementation of the UN Agenda 2030”.¹

The project highlights the need for greater coherence between Climate Change Adaptation (CCA) and Disaster Risk Reduction (DRR),² as part of a holistic approach to global governance as envisioned within the framework of the UN Agenda 2030 and its centrepiece, the Sustainable Development Goals (SDGs). The basic connections between CCA and DRR lie in

their partly overlapping goals, namely the reduction of losses due to weather and climate-related hazards (including both slow-onset and sudden events) and the improvement of community resilience (i.e., their capacity to regain equilibrium after critical system disruptions) with a particular focus on the vulnerable within the community.

The aim of the present study is two-fold. On the theoretical level, it will contribute to the discourse on achieving a sustainable integration of CCA and DRR, by exploring the role of law and policy making in Kenya. In addition to the discourse on protection of people in vulnerable situations, the study will



investigate community participation in the development of CCA and DRR laws and policies, and its potential impact on community resilience. On a more practical level, this study was developed as a tool of reference for the institutional and operational mandate of the Kenya Red Cross Society (KRCS) and the

1.2 Structure of the Study

The first chapter of this study details the research background, methodology and context, inclusive of the disaster and climate profile of Kenya. The second chapter details the normative and legal frameworks relating to DRR and CCA in Kenya, with a focus on laws, policies, strategies, and institutions both at the national and subnational (i.e., 'county') level.

The third chapter provides a comparative assessment of the regulatory system described in the second chapter, expounding on the related findings

1.3 Methodology of the Study

The study was based on a combination of desk-based analysis and empirical research conducted in the region through qualitative techniques, namely interviews with Key-Informants (KIs). The KIs included: national and county governmental officials; KRCS county coordinators; representatives of civil society organisations/associations active in relevant sectors or representing vulnerable/marginalized groups including marginalized community members; and academics with relevant expertise.

A total of 27 virtual interviews were conducted using a semi-structured questionnaire comprised of thematic open-ended questions. The KIs were involved in their professional capacity and were selected based on inclusive and meritocratic criteria. The interviews reflected the KIs' specific expertise in the field and focused on their professional evaluation and experiences. All participants received and signed an informed consent form, where they acknowledged and specified the conditions for their participation. Privacy considerations were given the utmost importance, in line with the Kenyan and EU standards for secure data protection.

International Federation of the Red Cross and Red Crescent Societies (IFRC) Disaster Law Programme. It is expected to provide an evidence-based model for law and policymakers to advocate for effective normative frameworks that protect the most vulnerable against the impacts of major climate-related hazards.

on coherence between CCA, DRR and sustainable development. The fourth chapter considers community participation in the policy making process and proposes how more inclusive policy making can be achieved.

The fifth chapter provides recommendations on coherence on varied levels as well as how to increase meaningful community participation in the design, adoption and implementation of these laws, policies, and strategies.



A water pan built by the Kenya Red Cross to help the community access clean and safe water. The pan holds 9800 cubic metres of water





REGULATORY FRAMEWORKS ON CCA AND DRR

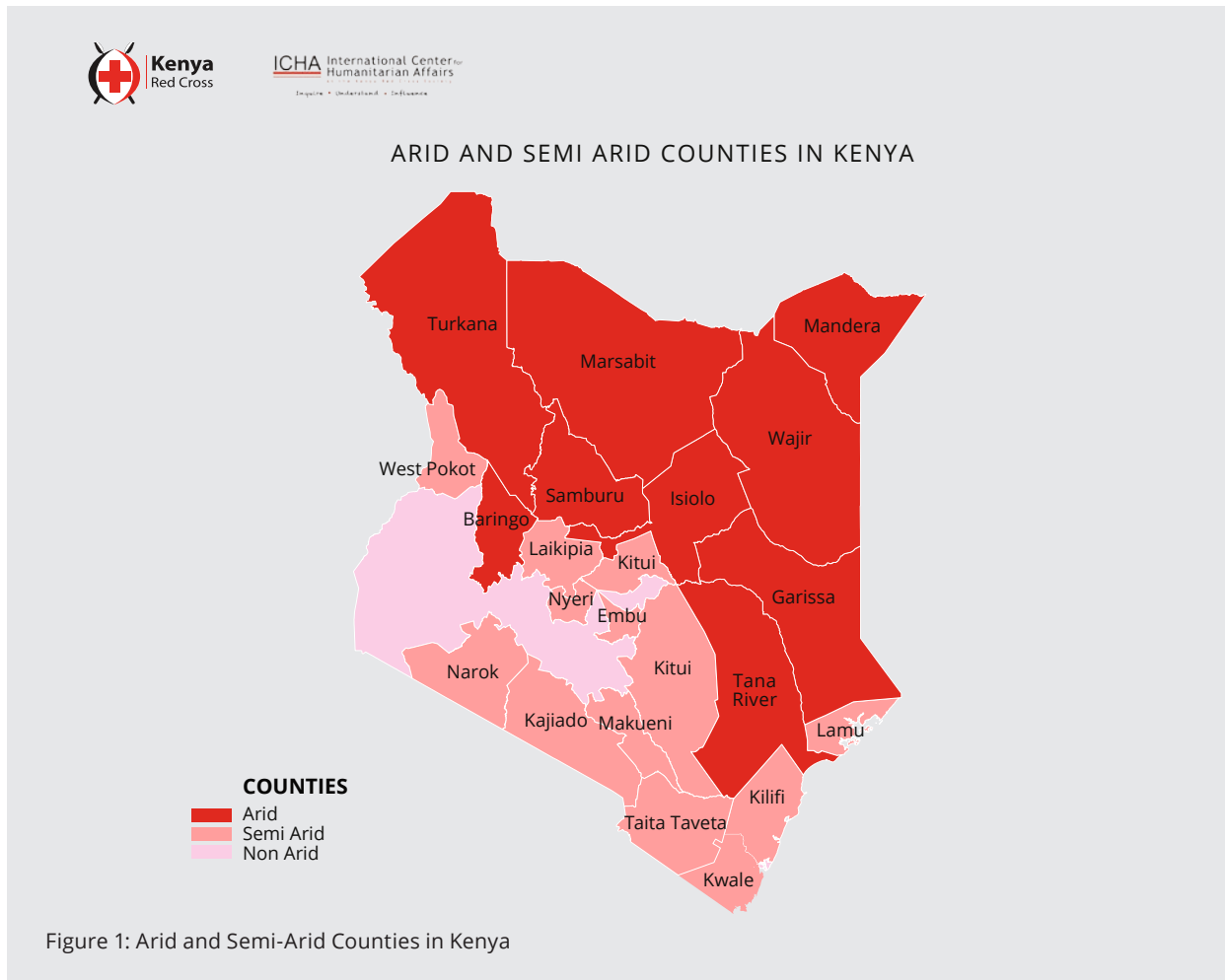
2.1 Climate and Disaster Profile in Kenya

An estimated 3-4 million Kenyans are affected annually by disasters that disrupt livelihoods and undermine national development. Approximately 70% of disasters in Kenya are hydro-meteorological in nature, namely flood and drought. The economic cost of flood and drought is estimated to create a long-term fiscal liability equivalent to about 2.0% - 2.4% of Gross Domestic Product (GDP) each year, or approximately US\$500 million per year. According to the World Bank, the 2016/17 drought left approximately 1.25 million people acutely food insecure by January 2017 with the number rising to 2.55 million people in need of immediate humanitarian assistance by January 2018.

Climate change has increased the frequency and intensity of disasters occurring in the country. In

2018, for the third consecutive season, most of the 23 counties in Kenya that lie in the Arid and Semi-Arid Lands (ASALs), were forecast to receive reduced rainfall which would drive this region into a drought (see Figure 1). The ASALs represent 84% the Kenyan land mass and host 30% of the Kenyan population. The ASALs are also characterised by high levels of poverty and low performance in the human development index with over 60% of the population living below the poverty line. ASALs include 18 of the 20 poorest counties in Kenya; some counties in the north, such as Turkana, Marsabit, Wajir and Mandera, have between 74% - 79% of people living below the absolute poverty line. Coupled with the poverty levels, the impacts of drought on these communities are often amplified.





The macroeconomic outlook of the country is also impacted by climate-induced disaster. Rising temperatures and changing rainfall patterns, resulting in increased frequency and intensity of extreme weather events such as droughts and flooding, continue to threaten the sustainability of the country's development. In 2017, Kenya's economic growth decelerated to a 5-year low of an estimated 4.9%, from 5.9% in 2016, due to the drought the country was facing at the time. This is mainly because the country relies on agriculture as a key sector for income generation.

Other key economic sectors in Kenya such as manufacturing and the service industry are also particularly susceptible to the impacts of climate change. Resultantly, the Government of Kenya (GoK) has been working on enhancing the country's disaster resilience and climate change adaptive capacity, through the development of a robust regulatory framework comprising laws, policies, plans as well as progressively establishing institutions at the national and county level.

2.2 National policy and legislative framework on CCA

At the core of the Kenyan institutional and legal framework for CCA is the Constitution. Article 42 of the Constitutions provides for the right to a clean and healthy environment for every Kenyan. This includes the right to have the environment protected

for the benefit of present and future generations thereby establishing a commitment to ecologically sustainable development. Articles 2(5) and 2(6) of the Constitution also provide that the rules of international law and any treaty ratified by Kenya shall



form part of the domestic legal system. Thus, the UNFCCC and the Paris Agreement, which provide for commitments made by countries towards CCA actions, form part of Kenyan law.

In 2010, Kenya initiated a concerted national effort to respond to climate change with the development of the [National Climate Change Response Strategy \(NCCRS\)](#). This was the first national planning document addressing the threats posed by climate change, while at the same time taking advantage of potential climate change related opportunities. Its mission, which is to be implemented until 2030, is to strengthen and focus nationwide actions towards CCA and GHG emission mitigation by ensuring commitment and engagement of all stakeholders in view of the vulnerable nature of Kenya's natural resources and society.³ The NCCRS provides a framework for integrating climate concerns into development priorities, government planning and budgeting.

The country's first [National Climate Change Action Plan \(NCCAP 2013-2017\)](#) was developed in 2013 with the aim of implementing the NCCRS. Envisaged as the first of a series of five-year action plans, these documents aim to further the country's sustainable development goals through setting out priority adaptation, mitigation and enabling actions and promoting mainstreaming of climate change actions into development planning and budgeting processes. The objective of the first plan was to encourage low carbon climate resilient development throughout the country.⁴ The second action plan, [NCCAP 2018-2022](#), aims to further Kenya's sustainable development by providing mechanisms and measures to achieve low carbon climate resilient development in a manner that prioritises adaptation.⁵ It also takes into account the impacts of climate change on Kenya's socio-economic sectors, and further identifies strategic areas where climate action is linked to the [Big Four agenda](#), i.e. Kenya's current 5-year national development plan adopted in 2018.⁶

The country has also adopted the [National Climate Change Framework Policy \(2018\)](#) which provides a framework to guide the development and implementation of detailed climate change interventions listed in the Climate Change Action Plans. The Policy aims to integrate climate change considerations into planning, budgeting, implementation, and

decision-making at the national and county levels and across all sectors.⁷ It also establishes a funding mechanism and strategy that enables implementation of priority actions for climate resilience, adaptive capacity, and low-carbon growth.⁸

In 2016, in tandem with the NCCAP 2013-2017, Kenya adopted the [National Adaptation Plan \(NAP 2015-2030\)](#). The NAP details institutional arrangements, including monitoring and evaluation processes. It provides an analysis of current and future climate trends in Kenya,⁹ highlights key institutional¹⁰ and policy coordination relevant to climate change and presents the climate risk profile for the country.¹¹ It further identifies priority actions in the key planning sectors for the short, medium, and long term, in line with the country's development plans.¹²

The [Climate Change Act](#), adopted in 2016, is the main legislation guiding the country's CCA governance and actions. Its objective is to "enhance climate change resilience and low carbon development for sustainable development in Kenya". The Act establishes institutional structures, including the National Climate Change Council (the Council), headed by the President of Kenya, as well as the Climate Change Directorate. The Council is the overarching national institution on climate change.¹³ In addition to the President, it comprises nine other members appointed by him, as provided by the Climate Change Act.¹⁴ Its role is to provide strategic and policy direction for climate change to national and county governments, as well as to manage the Climate Change Fund established under the Act.¹⁵ The Council also approves and oversees the implementation of the NCCAP, and provides guidance on harmonizing sectoral laws and policies aligned to the objectives of the Act.¹⁶ Additionally, the Council is expected to "approve a national gender and inter-generational responsive public education awareness strategy and implementation programme".¹⁷

The Climate Change Directorate on the other hand is the lead governmental agency on national climate change plans and actions and serves as the Secretariat of the Council.¹⁸ The Directorate has the mandate to coordinate operations under these various plans, provide analytical support to various ministries, agencies, and county governments, and coordinate both national and international reporting

requirements.¹⁹The Climate Change Act also provides the structures and mechanisms for mainstreaming CCA at the national and county levels.²⁰

Another key instrument with relevance to climate change is the Kenya [Climate Smart Agriculture Strategy](#) 2017-2026. The broad objective of the Strategy is to adapt to climate change, build resilience of agricultural systems while minimizing emissions for enhanced food and nutritional security and improved livelihoods. In this respect, the strategy aims at enhancing the adaptive capacity and resilience of actors in the agriculture sector by addressing cross cutting issues that adversely impact 'climate-smart agriculture'.²¹ The Strategy recognizes the role of the Climate Change Act and the NAP in improving coordination and collaboration among institutions and stakeholders in climate smart agriculture.²²

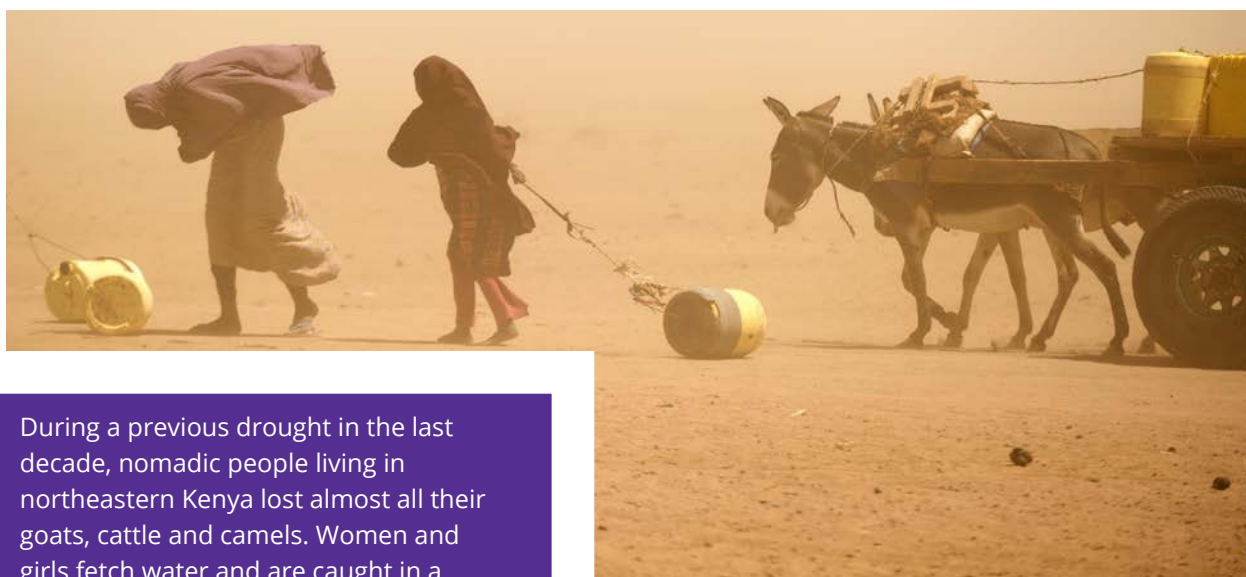
The country also has a [Climate Risk Management Framework](#) (2017) which outlines how the government intends to harmonise its climate change and disaster risk policies. According to the framework, there are ten priority areas that overlap between climate change and disaster risk policies, which can be areas for government intervention.²³

To finance these laws and policies, the country has also adopted the [National Climate Finance Policy \(2018\)](#).²⁴ It aims to improve the nation's ability to mobilise, track and effectively manage climate change finances through enhanced mobilization of climate finance that contributes to low-carbon,

climate-resilient development goals. This Policy sets out a guiding framework to enhance national financial systems and institutional capacity to effectively access, disburse, absorb, manage, monitor, and report on climate finance in a transparent and accountable manner.²⁵

On a subnational level, county governments may enact county legislation that facilitates the implementation of national policies, strategies and legislation on environmental affairs detailed above. Section 19 of the Climate Change Act (2016) calls on these authorities to integrate and mainstream national climate change actions into their County Integrated Development Plans (CIDP), which comprise Annual Development Plans, County Sectoral Plans and County Spatial Plans.

The data collection done at the county level for the completion of this study shows that at least 8 counties have developed subnational legal and policy frameworks addressing climate change. Garissa, Kitui, Isiolo and Wajir counties have enacted 'Climate Change Fund' regulations that allocate a portion of their development budgets to support local adaptation and mitigation actions. Makeni, Kilifi, Kakamega and Siaya counties have drafted Climate Change Bills and Policies. In terms of institutional frameworks at the county level, the Climate Change Act further establishes the county climate change units headed by the County Executive Committee Member in charge of climate change affairs at the county level.²⁶



During a previous drought in the last decade, nomadic people living in northeastern Kenya lost almost all their goats, cattle and camels. Women and girls fetch water and are caught in a small sandstorm.



2.3 National Policy and legislative frameworks on DRR/M

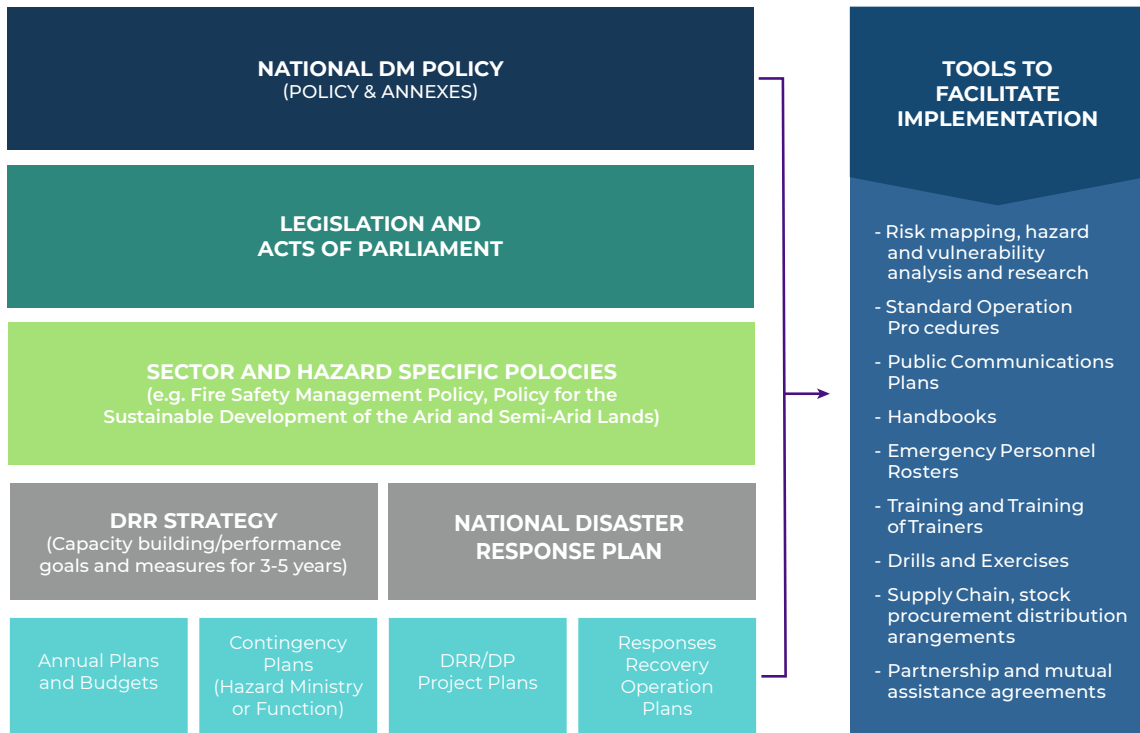


Figure 2: Conceptual View of the Disaster Management Policy in Kenya: Source IFRC: International Disaster Response Law in Kenya (2015)

The Kenyan legal and policy architecture relevant to DRR/M is found in several statutes and policy documents. At the apex is the Constitution of Kenya, under which both the national and county governments have been given the mandate to legislate and implement on DRR.²⁷ The first county governments were formed after the March 2013 general elections in the country. Therefore, being fairly new institutions and grappling with the full implementation of devolution as envisioned in the Constitution, some of the counties have not legislated on their disaster management function.

Kenya adopted a comprehensive National Disaster Risk Management (DRM) Policy in May 2018. This policy, which is the culmination of 20 years of various revisions, is a product of extensive stakeholder engagement. Its aim is to “build a safe and disaster-resilient nation through the establishment of a robust Disaster Risk Management System that contributes to and protects the achievements of Kenya’s national development”.²⁸ It outlines the need for the establishment, streamlining, and strengthening of DRM institutions, coordination frameworks,

partnerships, and regulations in Kenya. DRM, as articulated in the Policy, encompasses the full ‘disaster *continuum*’ from preparedness, response, relief, and rehabilitation, back to mitigation and prevention. Although the National DRM Policy envisages collaboration between the national and county governments, there are no clear modalities on how this collaboration is to be achieved.

The country has also adopted the [National Drought Management Authority Act \(2013\)](#). The Act established the National Drought Management Authority²⁹ and defined its duties and powers. This instrument also mandates the Authority to exercise overall coordination over all matters relating to drought risk management and to establish mechanisms, either on its own or with stakeholders, that will end drought emergencies in Kenya.³⁰ Interestingly, the Authority is also tasked with promoting the integration of drought management into development policies, plans and programmes. Although a national institution, the NDMA’s priority focus is on the 23 arid and semi-arid areas, which are more vulnerable to the impacts of drought (see Figure 1).

In 2015, the country adopted the National Framework for the Implementation of the Sendai Framework on DRR (2015-2018) the main aim of which was to operationalise the Sendai Framework in Kenya through the creation of the Kenya National Platform for Disaster Risk Reduction (KNPDRR).³¹ The KNPDRR is a multi-stakeholder national mechanism envisioned by the Sendai Framework to serve as an advocate for DRR at different levels.³² Its main function is to provide coordination for DRR among key ministries, civil society, academia, development partners, private sector and other relevant stakeholders. The platform supports analysis and advises on priority areas requiring concerted action on DRR. It also deliberates on and facilitates the integration of DRR into national, international, or bilateral policies.

The National Framework was later followed by the National Action Plan on DRR (NAPDRR) (2019-2022). The purpose of NAPDRR is to serve as a guideline for all stakeholders involved in DRR in Kenya to undertake their DRR interventions in a systematic, coordinated and harmonized manner.³³ The NAPDRR aims to facilitate alignment of the implementation of the Sendai Framework with the government's development agenda: the [Kenya Vision 2030](#),³⁴ the nation's [Third Medium Term Plan](#)³⁵ and the [Big Four Agenda](#). It also aims to provide a framework for tracking the mainstreaming and implementation of DRR within and across different sectors in Kenya.

The country's long-term development plan, [Kenya Vision 2030](#), prioritises the transition from a response focused approach to DRR to a more integrated approach that links climate risks to disaster risks. Vision 2030 is implemented through five-year plans namely Medium Term Plans (MTPs) and, although issues of climate and disaster were not prominently featured in the first and second MTPs, they have been highlighted as stand-alone sectors in the [third MTP \(2018-2022\)](#).³⁶

At the time of this report, the country has not adopted an overarching law on disaster management relating to all possible hazards. Two Bills on national disaster risk management have been presented to the National Assembly. One was adopted by the Senate in October 2018 and was presented to the National Assembly Finance Committee in February 2020. The second Bill underwent its first reading at the National Assembly in March 2019 and underwent a second reading in October 2020.

Other ministries have also developed legal frameworks that include provisions on DRR actions. The Ministry of Education developed the [Education Sector Disaster Management Policy](#) which underscores the importance of early warning systems and coordination during DRM activities within the education sector. The policy also emphasizes the role of educational institutions in providing physical and psychological protection to the affected, as well as the importance of their early reconstruction in time of a disaster.³⁷

Other frameworks on DRR in the country include the Sessional Paper No. 8 on the [National Policy for the Sustainable Development of Northern Kenya and other Arid Lands](#) (the "ASAL Policy" 2012) and the Ending Drought Emergencies (EDE) Strategy (2012). The ASAL policy captures various aspects of DRR and emphasises the need to reduce the impacts of disasters by enhancing the preparedness of the country to disaster risks. Further, the EDE Strategy is aimed at developing and strengthening the institutional, legal, and financing framework for drought risk management and climate adaptation at both national and county levels, including the capacity to manage knowledge for evidence-based decision-making and practice.³⁸

Over the years, various institutions have been established to support the implementation of DRR in the country. In 1998, the GoK, through an executive order, established the National Disaster Operations Centre (NDOC)³⁹ as a response to the 1997/98 flooding caused by the El Nino rains and with the responsibility of coordinating the response to the floods. The work of the NDOC was institutionalized the same year following the 1998 terrorist bombing in Nairobi. Since then, the NDOC has maintained its mandate to monitor, co-ordinate and mobilise national resources to respond to disaster incidents in the country.

In 2013, the National Disaster Management Unit (NDMU) was also established by a Presidential Directive as an effective disaster management unit with an established command structure, budget, and Standard Operating Procedures (SOPs) based on best practices.⁴⁰ The Unit has supported the development and implementation of incident command structures for disaster response.



Many county governments have included DRR elements in their County Integrated Development Plans (CIDPs). CIDPs are five-year development blueprints that focus on improvement of livelihoods through citizen engagement and creation of an enabling environment for mobilization and sustainable use of resources within the counties. An assessment done during the course of this study showed an estimated 29 out of the 47 counties have adopted some form of DRR legal framework. In particular, 10 counties have a legal framework concerning disasters

or emergencies, while 19 counties have a draft bill awaiting adoption by the County Assembly. The assessment also showed that 4 counties have adopted a DRR policy, and 22 counties have draft DRR policies pending adoption. Therefore, there is opportunity for interested stakeholders to engage with and support the counties in the development of DRR legal and policy frameworks in order to create institutional frameworks to adequately manage and mitigate disaster risks within the counties.



Drought has swept across Kenya's arid and semi-arid regions in the north and north-east following two consecutive failed seasonal rains in 2016, making people food insecure especially in pastoral areas.



ASSESSING COHERENCE BETWEEN DRR AND CCA IN KENYA

For the purposes of this study, coherence refers to a situation where the multifaceted regulatory purposes exerted by different instruments within the CCA and DRR sectors are logical and consistent with one another, allowing for their effective coexistence.⁴¹ Similarly, a recent [study](#) by the Organisation for Economic Co-operation and Development (OECD) describes coherence as a process of coordination that can be pursued and operationalised horizontally across sectors; vertically at different levels of government (local, sub-national, national, regional and global); and through collaboration across stakeholder groups (e.g. governments and inter-governmental organisations, the private sector, civil society organisations and citizens).⁴² This study will customise and use the three measures suggested by the OECD study to assess DRR and CCA coherence in Kenya. The three measures are:

- a. Strategic coherence:** alignment in the goals and priorities of CCA and DRR in national and county laws, policies, frameworks, plans and strategies;
- b. Institutional coherence:** alignment in the institutional arrangements that are created for the implementation of the objectives on CCA and DRR; and
- c. Coherence in resource allocation:** alignment and prioritisation of CCA and DRR measures and financial mechanisms for them.

Furthering the analysis of DRR-CCA coherence in Kenyan regulatory framework, this section will also include findings from key informants interviewed for the completion of this study. Interviews were conducted with national and county governmental officials; KRCS county coordinators; representatives of civil society organisations/associations active in relevant sectors or representing vulnerable/marginalised groups including marginalized community members; and academics with relevant expertise.



3.1 Strategic Coherence

3.1.1 Coherence in Laws

As previously discussed, Kenya has developed key legislative and policy instruments for CCA, while a national law for DRR/M is still under development. As discussed in section 3.1.3 below, the lack of a national DRR/M law is a hindrance to the implementation of coherent CCA and DRR activities. It is anticipated that, in future, laws and policies with aligned priorities and objectives will provide the framework for pursuing coherence in varied CCA and DRR related activities. In the absence of a national DRR/M law, the analysis in this section 3.1 focuses on strategic coherence between the respective objectives, goals and visions presented in the existing instruments.

It is worth noting that the [Climate Change Act](#) identifies the need for coherence between CCA and DRR through section 3, which defines its objects and purposes. According to this provision, the Act shall be applied to mainstream climate change responses into development planning, as well as climate change disaster risk reduction into strategies and actions of public and private entities.⁴³ The Act also provides that the NCAAP should:

- a. mainstream climate change disaster risk reduction actions in development programmes;⁴⁴
- b. to set out a structure for public awareness and engagement in climate change response and disaster reduction.⁴⁵

3.1.2 Coherence in Policies

The two overarching policies of CCA and DRR both aim to reduce the impacts of climate related disasters and enhance resilience through mainstreaming CCA and DRR into development planning, and the creation of relevant national and county institutional frameworks. In particular, the [National Climate Change Policy](#) acknowledges the adverse impacts of disasters to the economy and aims to **reduce** vulnerability to the impacts of climate change by building adaptive capacity, enhancing resilience and strengthening capacities for disaster risk reduction in the country.⁴⁶

Its counterpart in DRR, the National Policy on DRM (NPDRM), also makes significant advances towards coherence of CCA and DRR. At the outset, the NPDRM attributes the frequency and impacts of disasters across the country to climate change.⁴⁷ Accordingly, one of its key objectives is to enhance resilience to the impacts of disaster risk and climate change at the county and national levels. The NPDRM provides some strategies for the accomplishment of this policy objective, notably:

- **Strategy 1:** to allocate the necessary resources at all levels of administration for the development and implementation of disaster risk reduction strategies, policies, plans, laws, and regulations in all relevant sectors; and
- **Strategy 7:** to ensure the dissemination of climate change information.

The NPDRM further lays out policy strategic actions for DRR including conducting and reviewing comprehensive multi-hazard disaster risk surveys, and the development of national disaster risk assessments and maps which include climate change scenarios. This high-level strategic acknowledgement of the relevance of using climate and meteorological data for DRR increases opportunities for cooperation across the CCA and DRR sectors.

Similarly, the [NAP 2015-2030](#) seeks to enhance the resilience of vulnerable populations to climate shocks through adaptation and DRR strategies. The Plan acknowledges the various disasters that are exacerbated by climate change such as floods and drought. It also proposes adaptation actions that are geared towards DRR. Likewise, the [NCCAP 2018-2022](#) identifies DRR as one of seven climate change priority action areas that are expected to promote climate-resilient development and deliver on the long-term goals of [the NAP 2015-2030](#).⁴⁸ The seven priority areas in [NCCAP 2018-2022](#) indicate how action will contribute to the achievement of the SDGs and include appropriate SDG indicators to help measure progress on adaptation and SDGs at the national level.

Similarly, the NAPDRR is based on the Sendai Framework for DRR, the [Paris Agreement](#) on climate change and [Agenda 2063](#), the continent's strategic framework that aims to deliver on its goal for inclusive and sustainable development.⁴⁹ At the national level, it borrows from the National Climate Change Act as well as the [NCCAP 2018-2022](#). The NCCAP highlights some of the interventions relating to both CCA and DRR in its proposed interventions including drought resilience and CCA for enhancing adaptive capacity at community level; as well as climate-smart agriculture to enhance the resilience of agricultural systems against pests, droughts and disasters.

In addition to the foregoing, one of the most notable efforts at achieving policy coherence between CCA and DRR is the 2016 [Climate Risk Management Framework](#) for Kenya. Its goal is to integrate CCA and DRR at the national and county level, by fostering coordination and complementary practices among the relevant actors in national and county governments as well as in development and humanitarian organizations. It also outlines the national government's intention to harmonise its climate change and disaster risk policies. According to the Framework, there are ten priority areas that overlap between climate change and disaster risk policies, which can be areas for government intervention. Specifically, the government intends to:

- a. harmonise programmes and projects and create a coordination mechanism among the national government (institutional framework);
- b. create an enabling policy and legal framework for integrated climate risk management (policy framework);
- c. build capacity at national and county level for integrated climate risk management (capacity building);
- d. analyse the level of exposure, vulnerability to disasters, and capacity at the local scale (exposure, vulnerability, and capacity);
- e. involve communities at risk, and consider gender and marginalized groups (gender mainstreaming);
- f. mobilise financial resources for climate risk management (resource mobilization);

- g. mainstream climate risk management into sector programmes, plans and activities (mainstreaming climate risk management);
- h. design and implement pilot projects for climate risk management at county and national level (pilot projects);
- i. enhance research and dissemination of information about climate risk management (training, research, and outreach); and
- j. create platforms for sharing lessons and good practices on integrated climate risk management (learning).⁵⁰

Although many counties have developed laws on DRR, the lack of a national overarching law on DRR to standardise DRR practices across the country has led to the varied practices at the subnational level. In this sense, the lack of a guided harmonised approach in developing county DRR laws poses a significant challenge to enhancing coherence. Further, several counties are yet to finalise their disaster risk profiles thus making it harder to explore the strategic linkages between CCA and DRR in risk management.

3.1.3 Interview Findings

During the interviews conducted for the completion of this report, KIs confirmed that the lack of a national DRM law was a hindrance to the implementation of coherent CCA and DRR activities, both at the national and county level. This is mainly because the counties are reliant on national laws to act as a benchmark for the development of county government priorities and strategies. National government officials interviewed also noted that, without a national overarching law on DRR, there would be gap in strategic coherence between CCA and DRR. Civil society actors mentioned that the delay in the adoption of the national law on DRR was due to diverse stakeholders' interests.

From the interviews conducted with county government representatives it was noted that a significant number of counties did not have legislation on CCA because climate change is considered a cross cutting issue in all sectors that does not need stand-alone legislation. Nonetheless, in their development plans, most of the counties acknowledged climate change and disasters as challenges impacting the attainment of their development agenda.



Civil society actors, government officials and academics interviewed noted that one of the key hinderances to increased coherence in laws and policies for CCA and DRR was the thinking that as separate laws/policies on CCA or DRR exist, there should consequently be a siloed approach to their implementation. This seems to discourage coordination between institutions constituted under respective CCA and DRR frameworks even when their mandates are complementary.

National and county government officials noted that in the drafting of these laws, a similar siloed

approach was followed. Only the expertise of DRM experts was sought developing DRR laws or only that of climate change experts in the case of CCA laws. This limited the opportunity to cross pollinate ideas, priorities, and strategies in the development of these laws and policies. The outcome was therefore that approaches, priorities, and strategies for improving the resilience of communities are different, as well as the technical language used in different instruments, even though the long-term goals in these separate laws remain the same.



▶ © Minna Passi / Finnish Red Cross

A year after drought disaster, Red Cross has helped the farmers in Kenya, Garissa to get pumps so that they are able to use the water of river Tana in their farm.

3.2 Institutional Coherence

From the foregoing it is evident that marked efforts to strategically align laws and policies on CCA and DRR are currently ongoing in the country. However, instances of institutional coherence are fewer as implementation tends to happen through administrative and sectoral silos. Nonetheless, section 18 of the [Climate Change Act](#) states that the National Climate Change Council should identify priority strategies and actions of DRR related to CCA strategic areas.⁵¹ The section further provides that the Council should develop a specific public safety component for DRR for incorporation by all levels of government to prevent climate change induced disasters, and manage emergency responses.⁵²

A key challenge to institutional coherence relates to financing. In many instances, the institutions tasked to co-ordinate CCA and DRR actions are not responsible for the financing of these actions. An illustration of this is the Climate Change Directorate (CCD), currently part of the Ministry of Environment and Forestry. The CCD manages the overall implementation of action plans, including coordinating climate

change actions and related monitoring, reporting and verification. On the other hand, the National Treasury is responsible for developing a strategy and issuing regulations on procedures and powers to identify sources of climate finance and monitor funds use. Although the Cabinet Secretary for the Ministry of Environment works with the Treasury to develop incentives to promote climate change initiatives, the Climate Change Fund is vested in the National Treasury.⁵³ In this instance the CCD is the implementing body while the National Treasury is tasked with managing climate change funds.

A similar pattern can be noted in the DRR sector, where the NDMU, the NDOC, the NDMA as well as the Ministry of Devolution and Arid and Semi-Arid Lands are mandated to coordinate DRR actions in the country. The National Treasury and Planning department on the other hand manages DRR funding through the Disaster Risk Financing Strategy (2018). The implementing agencies do not hold the funds for DRR, as they are vested in the National Treasury.

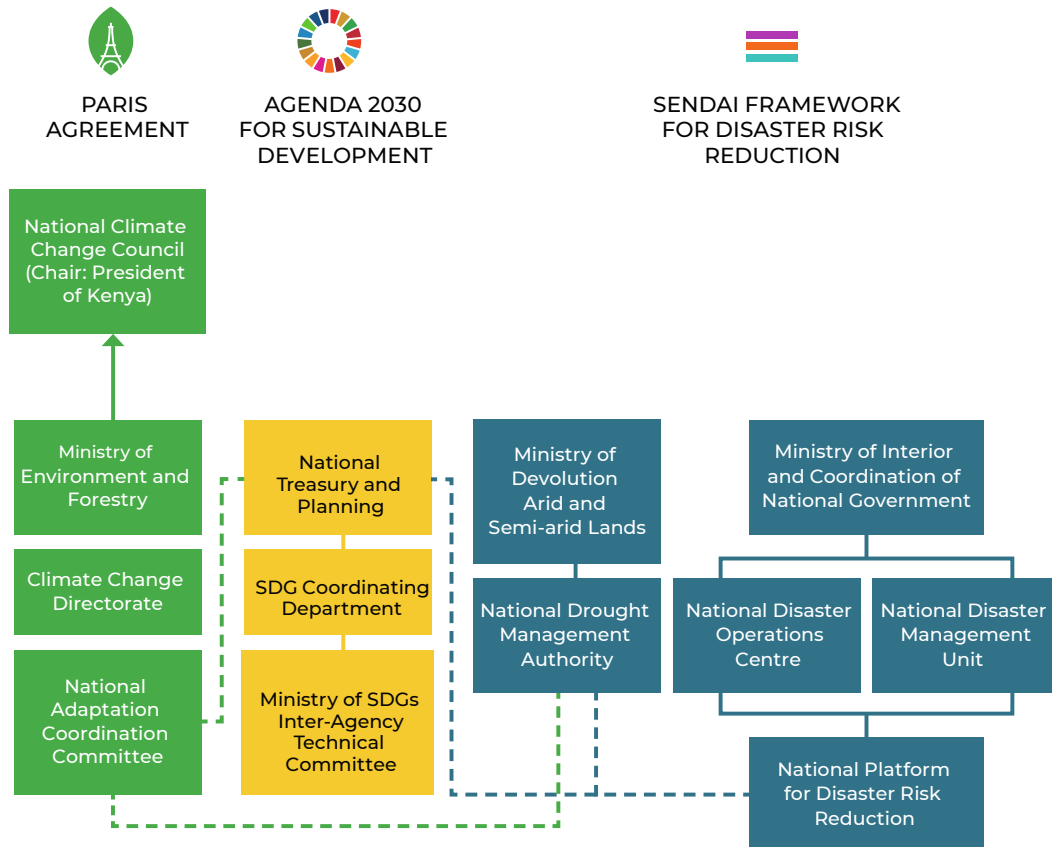


Figure 3: Kenya's Institutional Arrangements related to the 2030 Agenda for Sustainable Development, the Paris Agreement, and the Sendai Framework for Disaster Risk Reduction 2015-2030.¹⁵⁴



Another impediment to coherence at the institutional level is that the institutions created to implement CCA and DRR are created by different laws or presidential directives, to undertake distinctive yet overlapping mandates. The institutions created under the disaster risk management related laws and policies were developed for the implementation of the disaster management phases including mitigation, preparedness, response, and recovery. The composition of these institutions is therefore targeting key actors to facilitate the implementation of these core disaster functions. Climate laws on the other hand are concerned with the development of institutions to implement mitigation and adaptation actions and are structured to attain these functions. For example, the National Disaster Management

Unit was created to address the existing gaps in disaster risk management and promote the use of best practices in management of emergencies and disaster. Its functions can be described as solely focussed on coordination of DRM in the country.⁵⁵ On the other hand, the Climate Change Act establishes the National Climate Change Council whose functions are focussed on coordination of climate change activities.⁵⁶ The overlap in these institutions' activities or the interlinkages between DRM and CCA are not apparent in the description of their activities.

A further obstacle to institutional coherence is that some of the institutions established in law and policy are yet to be constituted and operationalized. Recognizing the need to adopt a coordinated approach in the execution of activities, existing institutions responsible for implementation of DRR activities would be unable to explore these avenues for collaboration if the responsible CCA institution is not yet functional. An example of this is that the Council created by the [Climate Change Act](#) was not operational as of June 2020, although parts of the Act were being implemented through the CCD.

A fourth obstacle is the existence of multiple institutions charged with the DRR functions at the National level. These include the NDMU, the NDOC, Ministry of Interior and Coordination of National Government, the NDMA, and the Ministry of Devolution and Arid and Semi-Arid Lands. The National Disaster Risk

Management Bill, 2019, if enacted into law, will establish an agency⁵⁷ to coordinate the response to and management of disasters, and would subsume the NDMU and NDOC, allowing for increased coordination in DRR actions. This agency would be expected to work with the CCD to enhance coherence between CCA and DRR.

A similar lack of institutional coherence is seen at the county level, with responsibilities for CCA and DRR being distributed across different departments and ministries similarly to the national level. In most counties, CCA is usually the mandate of environment, water, or natural resource ministries, while DRR on the other hand is the responsibility of the office of the governor, within the department of special programs or within the department of security. This fragmentation in spheres of operation leads to a lack of coordination and alignment of functions even where their functions are interrelated.

3.2.1 Interview Findings

National and county government officials noted that because different ministries were responsible for CCA and DRR, bringing together the two agendas was a challenge. The two are viewed as separate sectors with their different strategies and priority areas of work. In this respect, meetings coordinated by CCA actors, with an agenda focussed on discussing CCA implementation often did not include DRR actors and vice versa. This makes it difficult to align areas of implementation between the two sectors.

County government officials also indicated that most of the counties did not yet have a department/directorate dealing primarily with climate change. CCA issues were therefore allocated to the departments that deal with the environment and natural resources.

Despite the foregoing, government officials as well as civil society actors interviewed indicated that functions and institutions implementing CCA and DRR should be separated and be explicit to prevent overlap and duplicity of functions. The risk of duplication was noted as a higher risk at the national level where there were multiple agencies dealing with DRR.⁵⁸

3.3 Coherence in Resource Allocation

Where functions and institutions are created by law, resources must be equally allocated to allow their effective implementation. The lack of coherence in the sources of funding for CCA and DRR can lead to a lack of coherence in implementation of DRR and CCA strategies.

The fragmentation of CCA and DRR governance sectors is also present in their respective funding mechanisms as they are often spread across varied ministries. An illustration of this is the [Climate Change Act](#) which established the Climate Change Fund⁵⁹ to support adaptation actions and other [NCCAP 2018–2022](#) priority actions such as food security. The proposed DRM Bills also contemplate the creation of a DRM fund to be used for the prevention, mitigation, response, and recovery from disasters. Whereas the Climate Change Fund and the DRM Fund have some strategic overlap, they remain separate funds created by different legal instruments and managed and implemented under different ministries with little coherence in their implementation.

Similarly, CCA and DRR funds are separate at the county government level. Counties with CCA and DRR laws have created respective funds for provided functions.⁶⁰ In addition to the DRM Fund the [Public Finance Management Act](#) requires⁶¹ all counties to set aside a minimum of 2% of their budgets as an emergency fund, to be utilised to fund any urgent and unforeseen expenditures. The separation of these two funds leads to a lack of coherence in resource allocation because CCA funds will be channelled to the County Climate Change Fund while those for DRR will go to the County DRM fund.

A general impediment to coherence of resource allocation is that many counties are yet to allocate funds for CCA and DRR in their annual budgets; even in those with adopted laws and policies on DRR. As of January 2020, Garissa, Isiolo, Kitui, Makueni and Wajir are among the counties that had developed their County Climate Change Fund Acts and allocate annual budgets to implement CCA actions. For DRR,

it was not clear how many counties had allocated annual budgets for DRR, but the counties interviewed had not.

3.3.1 Interview findings

KIs interviewed indicated that whereas the country had made strides in the development and adoption of laws and policies relevant for CCA and DRR, some of the policies were not being fully implemented since their adoption due to inadequate budgetary allocation. This is especially true at the county level where allocation of resources for CCA and DRR was not being done even in those with adopted laws and policies on CCA and DRR. The lack of budgetary allocation was linked to arguably insufficient budgets to meet the county needs, and resultantly priority was given to sectors like health, education and to recurrent expenditures within the county governments.

At the county level, the KIs noted that county governments were hesitant in earmarking funding for climate and disaster risk management. This was mainly attributed to there being limited resources, therefore other sectors like health, education or water and sanitation got most of the resources, leaving CCA and DRR to be funded mostly through external donations and programs.

It was noted by national and county government officials that climate and disaster issues were considered cross cutting issues that should not have separate funding as they should be mainstreamed in all sectors. This was particularly true where these other sectors have also been required to legislate on how they will prevent and mitigate disaster risks within their sector. An example is the Educational Sector Disaster Management Policy. The Ministry of Education will allocate some budget within the sector for DRR and, as it is likely costs of coordinated DRR activities will be shared by collaborating actors like the NDMU, the budgeting process for DRR activities will be coordinated among concerned agencies.



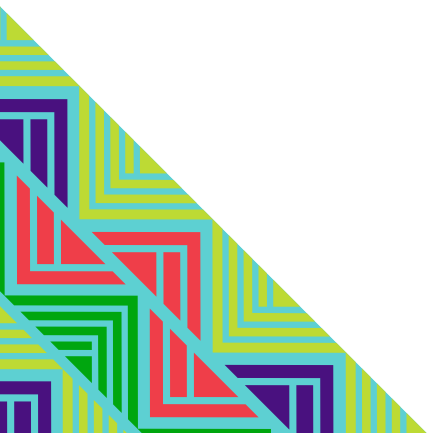


COMMUNITY ENGAGEMENT AND PARTICIPATION IN CCA AND DRR LAWS AND POLICIES

Vulnerable groups within communities are arguably often disproportionately impacted by the effects of disasters.⁶² One way to mitigate against this is to involve local communities in the development of CCA and DRR laws and policies. This ensures proper articulation of the needs of these populations, reflecting specific vulnerabilities, and informs the responsible authorities on how to address the identified needs and what roles and responsibilities may be placed on communities to help improve their resilience capacity. Therefore, this chapter will explore how community participation in the development of

relevant DRR and CCA policies and laws can ensure no one, including vulnerable groups, gets left behind.

The NCCRS notes the need for vulnerability assessments to support the development of response measures that ensure protection of the environment for future generations. The NCCRS also recommends development of a targeted capacity building framework that provides for capacity building for local communities to enable them to adapt to adverse impacts of climate change.⁶³ The National Climate Change Action Plan also proposes various priority adaptation actions in different



sectors aimed at increasing the coping capacity of those likely to be vulnerable to the adverse effects of climate change. These efforts are expected to be carried out in tandem with actions targeting vulnerable populations whose main livelihoods are based on agriculture or pastoralism as seen in the ASAL regions.⁶⁴ The National Disaster Management Authority Bill also provides that the authority shall be responsible for undertaking public awareness on disaster preparedness and response as well as establishing and operating a National Early Warning Disaster Monitoring System.⁶⁵ It however does not provide how these functions will be undertaken.

Both CCA and DRR agendas have the common objective of reducing vulnerabilities, protecting livelihoods, and strengthening resilience. The lack of inclusion in the policy and legislative development process for CCA and DRR not only limits the opportunity for interventions to adequately, and contextually strengthen the communities' capacities to cope with climate and disaster risks but also hinders vulnerable groups from attaining sustainable development.

One of the principles of public service and good governance in Kenya is the involvement of the people in the process of policymaking. The [2018 Public Participation Bill](#) proposes to provide a general framework for effective public participation in order to give effect to the constitutional principles of democracy and participation of the people. The central principle in the Bill is that the public, communities, and organizations to be affected by a decision have a right to be consulted and involved in the decision-making process.⁶⁶ The assumption is that with enhanced public participation all the needs of all the people will be heard, understood, and addressed. The reality is not as reflective of this aspiration. Kenya still has more than 60% of its population excluded from participation in governance processes.⁶⁷ In many instances, public participation, because of how it is conducted, is limited to consultations with a predetermined set of people: government agencies, educated members of the community, town-based organisations etc; the outcome of this is the process of public participation is itself exclusive.⁶⁸

The KIs interviewed agreed that the inclusion of everyone, and more significantly the vulnerable groups, was a human right and a constitutional principle protected by the Constitution as well as the

[County Government Act](#).⁶⁹ This right must be met in the policy making process as well as in the implementation and accountability process. KIs also noted that because of the diversity of interests in policy making, the inclusion of all the vulnerable groups into the conversation was sometimes overlooked. An example was given of the draft DRM Bill that has been delayed partially due to the competing needs of all the stakeholders interested in the subject matter.

The KIs also identified several challenges that impede the participation of vulnerable groups in CCA and DRR policy formulation. First, it was indicated that the policy making process in Kenya seemed geared towards an educated elite, leaving out the uneducated to become marginalized. An advertisement for public participation for a law, policy or plan at the national and county level is done through a gazette notice, usually written in English. The publicized draft laws, policies and plans are also written in English, with no translations being made available. The public is then asked to access the draft law, policy, or plan online or through print media, and make written submission to the laws. In many instances, the public is also given opportunity to make oral presentations to the relevant law, policy, or plan. These public participation sessions are held within towns and conducted in English and Kiswahili without translators being made available. This process inevitably leaves out the most vulnerable and uneducated groups from the policy making process. This observation from the KIs has been discussed in studies that seek to understand the role of education in public participation. A study done in Lisbon paints a direct correlation between level of education and interest to participate in policy making. It concludes that the more educated members of a community are more inclined to participate in policy making.⁷⁰

It was also noted that some county public participation exercises were done as a formality to meet the requirements of the Constitution without being meaningful thereby undermining the legitimacy of the public participation process as envisioned in the Constitution.⁷¹ KI interviews done at the community level indicated that the policies were brought to them already finalized. The public participation process was done through one-way conversations, so they did not feel engaged in the process. The technical language used in the text of policies and laws on CCA



and DRR was also recognised to be geared towards the technical experts within the specialised fields of DRR and CCA leaving out all “non-technical” people from understanding the language and thus meaningfully participating in the development of these laws and policies. From the interviews done it was noted that Kilifi County, Samburu County, Laikipia County, Garissa County and Tana River County had adopted participatory approaches to DRR. They were implementing the Community Managed Disaster Risk Reduction (CMDRR) approach that puts the communities at the centre of DRR planning and policy making. Through the CMDRRs, a better understanding of the disaster contexts, the policy priorities for the counties as well as available resources were communicated to the communities. Of note, women, youth, and persons with disabilities were included in the CMDRRs making them more inclusive.⁷²

Other interviews conducted at the community level indicated that for many vulnerable groups, since they do not understand the complexities within which policy actors operate, they lack the political influence and the resources to represent themselves thus they remain vulnerable to other people’s interpretation of what is best for them.⁷³ Their relatively weak influence in the context of rigid policy processes limits their contribution. As a result, policies made under these conditions are non-responsive to their needs, are not transparent and may impact the effectiveness of CCA and DRR activities in communities. Civil society actors have been working to support communities to overcome this challenge however many of the counties have not been able to achieve full inclusion as envisaged in the Constitution. Many counties are still unable to provide equal opportunities for the vulnerable groups.⁷⁴



► © John Bundi / Kenya Red Cross

Kenya Red Cross is working with the Government of Kenya to support those affected by floods, delivering emergency relief items and essential supplies like household items and water.



SUGGESTED RECOMMENDATIONS ON ACHIEVING COHERENCE IN CCA – DRR FRAMEWORKS

This chapter sets out suggested recommendations on achieving coherence in CCA – DRR frameworks. The recommendations are derived from suggestions from KIs as well as an assessment of the key findings highlighted in the preceding chapters. Although they are derived from the country's context, they can be applied to the countries with a similar context to Kenya. In national dialogues on review of CCA and DRR frameworks, relevant stakeholders can utilise

these recommendations as a guide to inform efforts to achieve coherence. These recommendations are also expected to complement those consolidated in the wider global research on “Leave No One Behind - Developing Climate-Smart/Disaster Risk Management Laws that Protect People in Vulnerable Situations for a Comprehensive Implementation of the UN Agenda 2030”.



5.1 Recommendations for policy, institutional and resource coherence

- Develop national laws on DRR that are aligned with the national CCA agenda to create functional structures for CCA and DRR coherence in the country.
- These laws should support alignment of responsibilities relating to coordination and implementation of relevant policies at national and county level. They should further place requirements on county governments to legislate on CCA and DRR in line with the national CCA and DRR principles, objectives, and governance structures.
- Create overarching national institutions responsible for CCA and DRR to reduce duplicity of functions and fragmentation of resources across several state departments. These institutions should assign focal points to support inter-ministerial and intergovernmental coordination. Additionally, county governments should assign focal points to coordinate with these national institutions in the development and implementation of CCA/DRR laws and policies.
- National Treasury should map out all DRR and CCA funds available to the state and channel them towards predetermined action plans at both national and county level. Ministries and state departments should be encouraged to adopt cross-sectoral synergies in planning, budgeting, and reporting to ensure optimized use of available resources.
- Establish ex-ante financing plans, including approaches for financial protection that ideally take stock of potential public disaster costs (including future climate impacts) and identify financing options for response, recovery, and rehabilitation.
- Monitoring and evaluation on implementation of CCA and DRR activities should be done jointly by national and county governments. Systems should be developed to allow central collation of data collected by counties to allow for a national outlook on the impact of CCA and DRR strategies. In addition, national and county government agencies should be capacitated to collect disaggregated data on vulnerability, to enhance a wider understanding of vulnerabilities prevalent within communities.
- Comprehensive risk profiles should be developed at county level periodically to better inform cross sectoral actions on CCA and DRR. Where appropriate, similar risk assessment methods should be applied across sectors with emphasis on current and emerging vulnerabilities, and exposure to existing and future hazards.



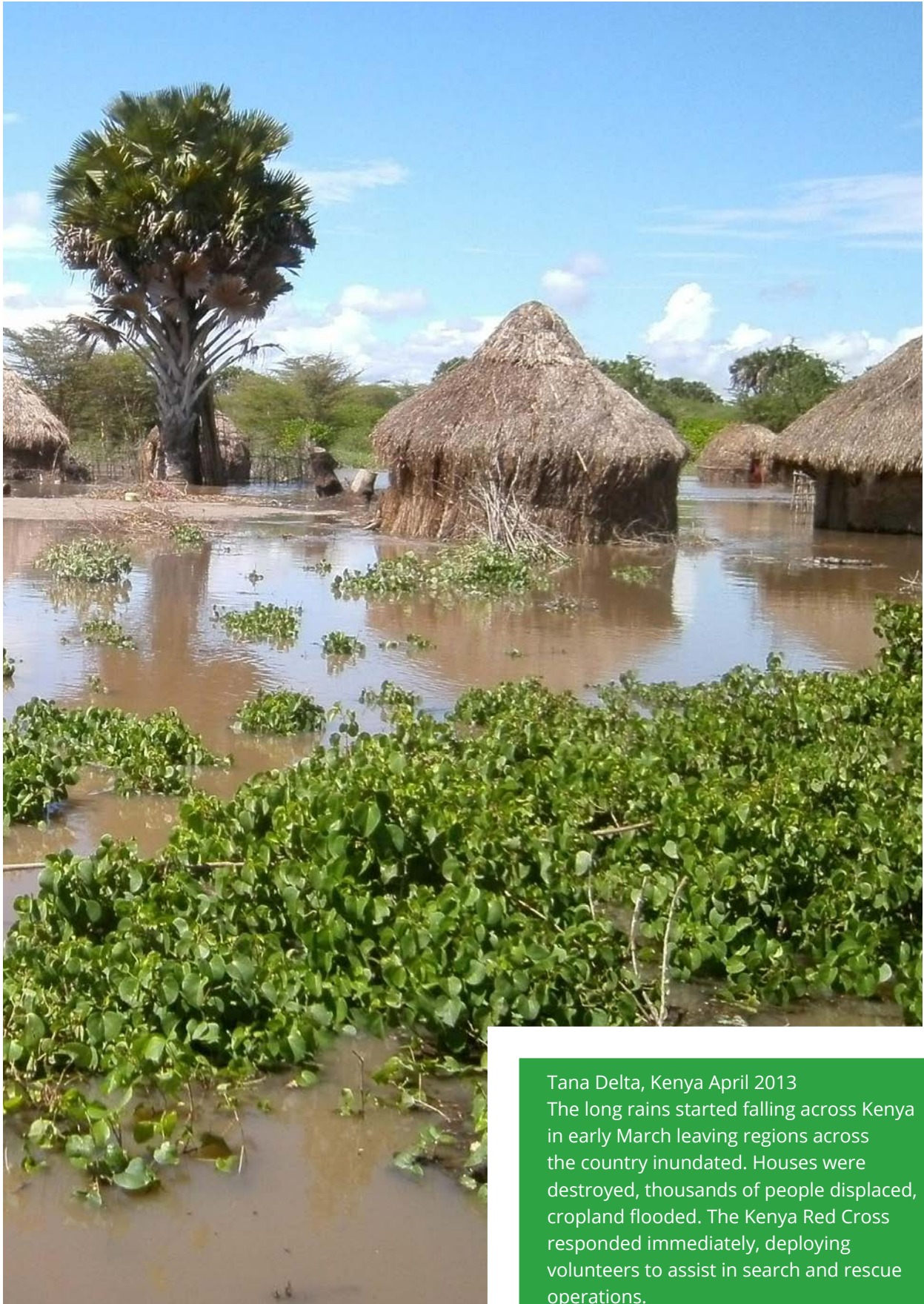
5.2 Recommendations on community participation and engagement

- Public participation forums for CCA and DRR should be done using multiple channels and languages, cognisant of illiterate populations, to ensure a much wider audience is able to engage in these critical policy discussions. In this respect there should also be due consideration of participation of people living far from towns and cities.
- Simplify the language used in laws and policies for the benefit of the communities that they are geared to serve as many do not understand the technical terms frequently used in these laws and policies and cannot adequately address their concerns or needs.
- Concerted efforts should be made to include specific groups or organisations such as the National Society, in the development of DRR and CCA laws and policies, to enhance the inclusion of provisions catered to addressing the needs of vulnerable groups.



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- Suggest that only the words 'Agenda 2063' should be hyperlinked, and not the rest of the sentence.
- Suggest that only the words '2018 Public Participation Bill' should be italicised (and not the word 'The').



Tana Delta, Kenya April 2013
The long rains started falling across Kenya in early March leaving regions across the country inundated. Houses were destroyed, thousands of people displaced, cropland flooded. The Kenya Red Cross responded immediately, deploying volunteers to assist in search and rescue operations.



ENDNOTES

Chapter 1

- 1 See <https://media.ifrc.org/ifrc/what-we-do/disaster-law/leave-no-one-behind/>.
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- 15 Ibid Section 5-7, Section 25.
- 16 Ibid Section 6.
- 17 Ibid Section 6(d).
- 18 Ibid Section 5(5), 9 (2).
- 19 Ibid Section 9.
- 20 Ibid Section 19 requires the county governments to integrate and mainstream climate change actions into interventions and duties including into the County Integrated Development Plans, and the County Sectoral Plans
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- 26 Kenya, Climate Change Act (2016). Section 15 (5) (c) and 19 (3)
- 27 Kenya, Constitution of Kenya (2010) Fourth Schedule.
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- 33 Government of Kenya, National Action Plan on DRR (NAPDRR) (2019-2022).
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- 35 Available at <http://vision2030.go.ke/inc/uploads/2019/01/THIRD-MEDIUM-TERM-PLAN-2018-2022.pdf>
- 36 Third Medium Term Plan (2018 – 2022). 108-112. During the third MTP implementation period the Climate Change programme aims to enhance governance, coordination, and financing of all CCA related activities. It is also expected to 'initiate harmonization of sectoral policies and laws to integrate climate change' as well as 'develop and implement climate change mainstreaming guidelines and indicator.' Additionally, the Disaster Risk Management Programme will entail developing multi-hazard Early Warning System and preparedness; capacity building and civic (formal and informal) education on DRM. It will also involve mainstreaming DRR in other sectors as well as the development of a comprehensive National Disaster Risk Financing Strategy, a national policy for disaster risk management, county DRR policies and finalisation of the Disaster Risk Management Bill.
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- 65 Kenya, National Disaster Management Authority Bill (2019) Article 5 (e), (f).
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