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**National Study on Enabling Environment  
(Laws and Policies)**

**For the**

**WWF- EARPO Eastern Africa Coastal Forest  
Ecoregion Programme.**

**By**

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## ACRONYMS

ACTS	African Centre for Technology Studies
AG	Attorney General
AIEs	Authority to Incur Expenditure
AMCEN	African Ministers Conference on Environment
ASALs	Arid and Semi Arid Lands
AU	African Union
C&PFM	Collaborative & Participatory Forest Management
CBD	Convention on Biological diversity
CCA	Common Country Assessment
CCF	Chief Conservator of Forests
CDA	Coast Development Authority
CEPF	Critical Ecosystem Protection Fund
CFE	Coastal Forest Ecosystem
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COMESA	Common Market for Eastern and Southern Africa
DDC	District Development Committee
DEC	District Environment Committee
DEOs	District Environment Officers
DFOs	District Forest Officers
DFRD	District Focus for Rural Development
EAC	East African Community
EACFE	East African Coastal Forest Ecoregion
EAME	East African Marine Ecoregion
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Co-ordination Act
ERSP	Economic Recovery Strategy Paper
ERSWEC	Economic Recovery Strategy for Wealth and Employment Creation
FR	Forest Reserve
GOK	Government of Kenya
HDI	Human Development Index
IGAD	Inter-Governmental Authority on Development
IPR	Intellectual Property Rights
IUCN	World Conservation Union
IUCN- EARO	World Conservation Union– East African Regional Office
IUCN-EAP	World Conservation Union– East Africa Programme
JFM	Joint Forest Management
KARI	Kenya Agricultural Research Institute
KEFRI	Kenya Forest Research Institute
KFS	Kenya Forest Service
KFWG	Kenya Forest Working Group
KWS	Kenya Wildlife Services
KEMFRI	Kenya Marine Fisheries Research Institute
KFDP	Kenya Forestry Development Policy
LASDAP	Local Authority Services Delivery Action Plan
LATF	Local Authority Transfer Fund
MPs	Members of Parliament
M&E	Monitoring and Evaluation
MENR	Ministry of Environment and Natural Resources
MoU	Memorandum of Understanding
MTEF	Medium Term Expenditure Framework
NAP	National Action Plan
NARC	National Rainbow Coalition

NBSAP	National Biodiversity Strategy and Action Plan
NDP	National Development Plan
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NEPAD	New Partnership for Africa's Development
NES	National Environment Secretariat
NGOs	Non-Governmental Organizations
NMK	National Museums of Kenya
NPEP	National Poverty Eradication Plan
NRC	Non-Resident Cultivation
NTFPs	Non Timber Forest Products
OAU	Organization of African Unity
PCs	Provincial Commissioners
PDE	Provincial Director of Environment
PECs	Provincial Environmental Committees
PEI	Poverty-Environment Initiative
PER	Public Expenditure Review
PFM	Participatory Forest Management
PFMP	Participatory Forest Management Plan
PPA	Participatory Poverty Assessment
PPCSWC	Permanent Presidential Commission on Soil and Water Conservation
PRSP	Poverty Reduction Strategy Paper
RDF	Rural Development Fund
SADC	Southern African Development Cooperation
TCMP	Tanzania Coastal Management Partnership
UNCCD	United Nations Convention to Combat Desertification
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WEHAB	Water Environment Habitat and Biodiversity conservation
WSSD	World Summit on Sustainable Development
WWF	World Wide Fund for Nature

## 1.0 INTRODUCTION

This is a report of a study that was carried out on Policy and Policy instruments that will enable the implementation of the envisaged EAFCE activities. It is based on a detailed literature review of existing national policies and laws, regional and international policies, WWF-Coastal Forest Project documents and other relevant government and NGO documents. The report seeks to identify the key policies and laws relevant to EACFE program at the coast. Some of the opportunities and constraints within the existing policy and legal environment are presented together with recommendations on what EACFE program can do as far as policy reforms are concerned.

The specific terms of reference of the study are presented in annex 1.

### 1.1 The EACFE Programme National Sites

The Coastal Forest Mosaic of EAFCE stretches from the border of Kenya with Somalia to the border of Tanzania with Mozambique and corresponds to the WWF Eco-region known as the "Northern Zanzibar -Inhambane Coastal Forest Mosaic. This is one of the 18 distinct bio-geographical regions that White (1983) recognised for Africa. In Kenya, the mosaic is confined to a narrow coastal strip except along the Tana River where it extends inland to include the forests of lower Tana River.

According to Burgess and Clark (2000) and CEPF (2003), the area is considered a major global conservation priority because of the high endemism and severe degree of threats.

Almost all the forest patches are threatened by expanding agriculture, over harvesting of wood material and in some cases urbanization and mining. The total forest area is therefore falling as the remaining forests are increasingly confined to reserves, parks and sacred forest patches. Preventing forest loss is therefore a clear conservation priority in the region.

Most of the forests are fragmented (small patches ranging from three ha to large tracts like Arabuko that cover over 37,000 ha.) The coastal forests are under three categories of ownership: government, trust land or private. Over 80% are under some form of government protection as nature reserves, forest reserves or national parks. The rest are either community forests (Kayas) or private. Over 38 government departments and 77 statutes manage these forests but despite all these efforts the threats still persist.

Mangrove swamps stretch from Kiunga in the north to Vanga in the south and occupy about 54,355 ha distributed along the entire 550 km coastline but with over 60% in Lamu. These ecosystems are important spawning grounds for fish, habitats for crustaceans, birds and other wildlife species. Socio-economic and cultural values include building materials, wood for carving and ecotourism. The mangrove ecosystem is thus an important point of overlap for the EACFE and EAME programmes.

The WWF-EACFE programme was therefore initiated in 2001 to support development of long-term regional programme strategy for the sustainable use of coastal forests in Eastern and Southern Africa. To achieve this, and in view of the above threats facing coastal forests, the programme requires an enabling environment in terms of policies, laws and governance. This report looks at the relevant policies and laws and how they can be applied in the EACFE programme. The report has highlighted the most important national conservation policies and laws, regional initiatives and international agreements that can provide a conducive environment for the success of EACFE Programme.

## 2.0 POLICIES

Forest conservation in Kenya has faced heightened levels of threat over the last three decades and the root causes have been identified as policy and market failure. Conservation policy regimes have failed to reflect stakeholder priorities and values over forest resources. Similarly, market distortions have culminated in the under-valuation of forest resources. As a result, forest development, conservation and management in Kenya has not been responsive enough to stakeholder needs and priorities thus further increasing the poor attitude towards forest conservation.

Kenya's conservation legislation has often taken the "command and control" approach that has made it difficult to achieve environmental sustainability through public participation and cooperation. The problem is further compounded by institutional weakness and failure of coordination. For example, Forest Department (FD) has clear vision and mission statements, but translating them into action has always been the problem. It is worth noting that most of the country's conservation policies have been overtaken by events and need revision/updating, as they no longer reflect the values, aspirations and needs of the society.

Below are some of the key policies that govern the management of natural resources in Kenya and hence relevant to the implementation of EACFE programme. Proposed policies and laws have also been included.

### *2.1 Forest Policy- Sessional Paper no.1 of 1968*

The evolution of forest policy dates back to the documented era of migration and settlement of various ethnic communities in Kenya. The process is exemplified by the observed historical and indigenous people's conservation practices, some of which are still practised to date. For example, the *Mijikendas* of Kenya's coastal region clearly zoned the forests into areas open for utilisation and those for preservation. The preserved zones, known as the Kayas, were only open for cultural and religious rights. These sacred Kayas persist to date and some are now gazetted and managed under the under the Antiques and Monument Act Cap 215 of 1984 by National Museums of Kenya (NMK).

Kenya's first forest policy was formulated in 1957 and revised in 1968 (Sessional paper no.1), which is still in use. This policy concentrated on catchment protection and timber production (plantation forestry).

Key areas of relevance to management of coastal forests include:

- Reservation of forest areas – can address charcoal burning and human settlements through gazettement.
- Conservation of flora and fauna- control agricultural expansion and fires through elevation of conservation status of forests e.g. FR to Nature Reserves.
- Promotion of research and education – to address sustainable logging and mining through monitoring.
- Promotion of recreation/tourism- help reduce pressure on forest products.
- Provision of employment- Through ecotourism, harvesting of mangroves, fisheries, wood carving, controlled mining and logging activities
- Designation of forests to be managed by County Councils – Forests on the 20% of coastal land whose ownership is unknown could be delineated and alienated as county council forests for conservation. This can address the issue of unplanned settlements and expanding agriculture.

The current policy addresses some of the main problems/threats the coastal forests are facing but it has obvious weaknesses like assuming that the government will always provide funds. It has also alienated local communities (private rights) in management of forests and there is not much reference to farm forestry, which is common on private farms bordering the coastal forests. The issue of sustainable use of biodiversity is largely ignored.

This policy is now under review (*Kenya Forestry Development Policy 2003*). The Cabinet approved the policy but it is awaiting publishing as a sessional paper for approval by parliament. The Ministry has proposed a forestry sector reform secretariat with policy review as one of the priority objectives. (It is worth noting that some of the objectives of this policy like PFM concept are already being piloted in some forests). The new policy takes into cognisance existing policies that are related to land use, environment, agriculture, energy and industry among others.

Some of the objectives that are of relevance to EACFE management include:

- To increase forest and tree cover to ensure an increasing supply of forests and services for the present and future generations- Role of forestry in Socio-economic development
- To conserve the natural habitats, wildlife and biological diversity
- To contribute to sustainable land use through soil and water conservation, tree planting and appropriate forest management.
- To contribute to poverty reduction, employment creation and promote equity through community participation.
- To manage forest resources efficiently for maximum sustainable benefits - taking into account all direct and indirect economic and environmental impacts.
- To promote national interests in relation to international environmental and forest related conventions and principles.

Most of the policy objectives are good as they fit in well with the overall objective (vision) and five immediate objectives of the EACFE programme. The only draw back is that the draft policy is yet to be approved by Parliament, but the FD reform secretariat has prioritised this as one of the main activities. EACFE programme can thus lobby through this secretariat for adoption of the new policy.

This programme is starting at the right time when forest policy reforms are ongoing. However, the new forest policy will still need support from other conservation policies:

## ***2.2 National Environment Action Plan (NEAP)***

Kenya started coordinating activities in environmental management quite early probably after the Stockholm Conference on Human and Environment and because of the location of UNEP in Gigiri, Nairobi. The first initiative on the development of a Policy Paper on Environment was in 1989. This paper took into account all known policy statements and their weaknesses as well as highlighting activities that may have contributed to Kenya having a sound environment. After the 1992 Rio Conference, Kenya felt the need to integrate environmental concerns into development planning process. This led to the development of the NEAP and drafting of the Sessional paper on Environment and Development (1996).

NEAP is a comprehensive policy document on the protection and management of the nation's environment and natural resources on a long-term basis. It was drawn way back in 1994 and its biggest challenge by then was to interpret and incorporate the relevant provisions of Agenda 21 into the country's development plans.

NEAP had several proposals:

- Review of land use legislation and planning - to increase productivity, reduce land use conflict and protection of the catchment and fragile ecosystems. Emphasis was on conservation of undamaged resources (indigenous forests and wetlands)
- Biodiversity conservation to include forest areas- Several recommendations were made and key among them are:
  - Integrated forest management with sustainability in forests like Arabuko, Tana River and Shimba hills all forming part of the CFE.
  - Inventory of Kenya's indigenous forests and stoppage of all excisions
  - Mangrove ecosystems managed and conserved for sustainable use
  - Continue biodiversity and socio-economic studies around indigenous forests that were started earlier.
  - Strengthen forest planning to include ecological protection, biodiversity conservation, subsistence use of NTFPs, Ecotourism and Community participation.
  - Take into account global agreements to which Kenya is party to especially those relating to forests, biodiversity or climatic influences.

Some of these proposals, though made over a decade ago, still fit in well with the EACFE vision and objectives.

There are many recommendations under capacity building for both foresters and local communities (Section 3.3) that EACFE programme can implement. For example, enhancing the ability of local community to participate in project development and management. The plan also advocates for the adoption of the KFDP- 2000 and the review of other sectoral policies like agriculture, energy, land use and population.

Some sectoral policies have already been reviewed though forestry is still lagging behind, but now that NEMA is in place, the NEAP process will definitely have to continue. Section 37 of EMCA (1999) provides for the preparation of NEAP every five years for consideration by parliament. NEMA has scheduled several NEAP process consensus building workshops country wide beginning 2004. The EAFCE programme can utilise the forum to push their agenda in terms of targets/output and activities as they appear under each objective.

### ***2.3 Water Policy- Sessional Paper No.1 of 1999***

This is the first such national policy on Water Resources Management and Development. Its main objective is the supply and distribution of water resources throughout Kenya. It recognises the fact that increased human activities in Catchment areas have reduced forest cover and is hence a threat to water availability.

This policy is applicable to river basin management and can therefore be applied in the management of Tana River delta, riverine forests and adjacent catchments. Arabuko Sokoke also has several natural wells and springs that the local community use as water sources so the EAFCE programme can still get support on catchment protection by working with the lead agency implementing this policy.

### ***2.4 Wildlife Policy***

Kenya's wildlife policy is embodied in the "Statement on future wildlife management policy in Kenya" (Sessional paper no.3 of 1975) and the Policy framework and Development Programme, 1991- 1996 that was produced in 1990 (Zebra Book).

Kenya Wildlife Service (KWS) defines its goal in the book as:

- To conserve the natural resources (Flora and Fauna) of Kenya
- To use wildlife resources of Kenya for sustainable economic development
- To protect people and their property against wildlife damage

This policy provides for very restrictive consumptive utilisation of wildlife especially after the hunting ban vide legal notice no. 120 of 1977. In the early 1990s, the compensation scheme was also withdrawn. EACFE programme may not benefit much from this policy given the human/wildlife conflict in Tana, Diani, Shimba and Arabuko that has been difficult to resolve but it can still carry out most of the proposed activities in anticipation that the policy will be revised before the end of project.

### ***2.5 National Food Policy – (Sessional Paper No.2 of 1994)***

This policy summarises the land use situation and the intensity of land use required for self-sufficiency in food. The biggest threat facing coastal forests is agricultural land expansion especially through the short-term shifting cultivation. The policy advocates for stoppage of further destruction of forests in both gazetted and trust land forests. It does support conservation to some extent but fails to address the issue of access to forestland and its allied resources by communities who depend on such resources for survival, especially through subsistence cultivation. However, its emphasis on increased food production has been at the expense of forests. This is evident in Madunguni and Mangea hill where forest quality has been affected by shifting cultivation. It is an important policy to reconcile land use given the stiff competition forestry is facing from agriculture.

### ***2.6 National Energy Policy***

The policy ensures that the relevant ministries, NGOs and other organizations address environmental problems associated with the supply and use of energy (charcoal and fuel wood). Charcoal production has been identified as a major cause of habitat loss along the coastal forests. The problem is further compounded by the fact that

most rural coastal people rely on fuel wood (90% of rural household energy supply) and charcoal (85% of urban household energy supply) for their livelihoods.

Most of the produce comes from unprotected forests and private lands but the supply is dwindling fast hence the threat to the protected forests.

The draft energy policy that was launched on the 12<sup>th</sup> Feb 2003 recognises environmental protection as the biggest challenge. It proposes several policy responses: Enforcing protection of catchment areas, reforestation and afforestation and encouraging agro forestry practices. This will go along way in supporting the EACFE conservation programme.

### ***2.7 Fisheries Policy***

There is no comprehensive policy now but one is being prepared to be ready by June 2004. Emphasis has always been on fish farming, which is compatible with forestry activities. The Forest Act allows fish hatcheries in the forest. Controlled fishing along rivers, lakes and mangroves can help reduce fuel wood demand for smoking fish and reduce vegetation clearing in riverine forests- Tana delta is a good example where the policy is applicable.

The delay in having a new fisheries policy is that the Fisheries department has been shifted to several ministries since its inception. It has moved from the Ministry of Tourism, Regional Development, Environment and Natural Resources, Agriculture and finally to Livestock Development. There has been too much emphasis on fresh water fisheries as opposed to marine fisheries. The EACFE programme can bring this out in its livelihood component i.e. the role of marine fisheries in conservation and food security.

### ***2.8 Land/ Land use Policy (Draft)***

The Land Use Policy relates to systems of laws, rules and regulations that govern rights and obligations. The tenure systems (see land legislation) are not mutually exclusive as they are sometimes competing and at times have far-reaching effects on adaptive strategies and subsequent management of forests.

*The Njonjo Report:* The principles of the national and policy framework as outlined in this report underscore the importance of efficiency, productivity, sustainability, equity, transparency, accountability and participation in the use and management of land and land based resources.

The report gives a succinct overall goal of national land policy and correctly observes that it should be situated within a broader context of the country's national development framework and strategies. More details are covered under legislation.

Recognizing that sound policies, without legal backing is wishful thinking, the next section looks at statutes that can support the existing and proposed policy interventions and thus create an enabling environment for the success of the EACFE programme.

## **3.0 LEGISLATION**

In Kenya, about 80% of the coastal forests are under some form of government protection; a number of relevant policies and laws can therefore be applied in their management. Most of the forests (about 68%) are found in Forest Reserves so FD is the lead agency in management but with weak laws. The locals protect 70% of these forests as sacred forests (Kayas). The forests fall under any of the categories listed below:

- *National Parks*- Managed by KWS for conservation of large mammal species so the forests found within are fully protected.
- *National Reserves*- Sites managed by KWS for mammals and forests within are highly protected
- *National Monuments* - These are sites of historical importance so the level of forest protection is variable

- *A Forest Reserve*- Forest area under the management of FD but the level of protection is variable as shown by too many illegal activities and deforestation.
- *Sacred Forests*- Protection is from the locals (e.g. in Kayas) and management decisions depend on the authority of the Elders.

(See Annex 2 for Details on legal status of each of the forests that form EACFE)

Kenya has about 77 statutes relating to the conservation and management of environment so one can imagine the conflicts before EMCA received Presidential Assent in January 2000 to create a framework for environmental legislation. Despite EMCA and the 77 statutes there has not been proper and comprehensive land-use/environmental planning in Kenya. Squatters/landless numbers have increased and land use planning activities have continued to be addressed at sectoral level with the result being resource use conflict.

Even though conservation legislation has been piecemeal in nature, there are several statutes that are relevant and therefore provide an enabling environment for policy implementation and success of the EACFE programme. These include:

### **3.1 Forest Act -Cap 385**

The current Act Cap 385 (revised in 1982 and 1992) addresses preservation, protection, management, enforcement and utilisation of forests and forest resources on government land. The Act is very relevant in the management of coastal forests, as 68% are forest reserves, so through FD, the government has exclusive control of activities to be undertaken. It specifically covers:

- Gazettement, alteration of boundaries and degazettment of forest reserves (Section 4)
- Declaration of nature reserves within forest reserves and regulation of activities to be undertaken within them. These areas have extra protection (Section 5)
- Issuance of licenses for activities within forest reserves (section 7)
- Prohibition of activities in forest reserves, except under licence from CCF/Director of Forests (Section 8)
- Enforcement of the provisions of the Act, penalties and powers accorded to enforcing officers (sections 9-14)
- Power of the Minister to make rules with respect to sale and disposal of forest products, use and occupation of land, licensing and entry to the forest (section 15). This is an important section as it was invoked in the PFM piloting that is ongoing in Arabuko forest. The same section can thus be used to extend PFM to other forest like Shimba hills.
- Subsidiary rules under this act granted various communities user rights e.g. The Forest (Kwale) Rules established vide LN 236 of 1964.

The EACFE programme will still be able to achieve most of its objectives under the current forest Act. The remaining 20% of coastal forests can be gazetted as forest reserves and landscape restoration undertaken in the most degraded areas. The Act may be weak on community participation but rules can be made under section 15 to allow for PFM on a pilot basis. Since it does not cover forests on private and trust land, FD has always relied on provincial administration (Chief's Act) and the Agricultural Act for the management and protection of such forests. The EACFE programme can still explore the same avenues but now with additional support from EMCA.

The problem with the act is the low penalties for offenders that have continued to encourage illegal activities. Weak enforcement by serving officers and political interference (like the blanket ban on harvesting of trees) has also contributed to the current state of most of the coastal forests.

The Forest Act has since been reviewed and a new bill (Forest Bill 2003) published by the AG awaiting deliberation in parliament. The new bill proposes the setting up of Kenya Forest Service (KFS), which shall be a corporate body. It also addresses the shortcomings of current act as follows:

- Covers gazetted, private and trust-land forests
- Needs of local communities are addressed plus partnerships in management (See box 1 for details)
- Environmental protection, multiple use forestry, excisions, forest degradation and tourism are also covered.

### Box 1. Forest Bill 2003 Part IV- Community Forest Associations

Section 40 has provisions for members of a forest community to register a community forest association under the Societies Act Cap 108. This association may then apply for permission to the CCF to participate in the conservation and management of state or local authority forest. Section 41 lists the functions of the association. Section 42 is on the termination of agreement with the association while Section 43 is elaborate on assigning forest user rights.

This bill is very relevant to EAFCE programme since it upholds the principle of public participation in natural resource management. It is therefore ideal in the Participatory Forest Management (PFM) process.

Our Parliamentarians have already been sensitised on the new bill (MPs' workshop on forest management - Jan 8<sup>th</sup> -10<sup>th</sup> 2004 in Mombasa) and it is hoped that the Bill will sail through once Parliament resumes in March 2004, as there is currently political goodwill towards forest conservation in the country. FD is undergoing reform and conservation is currently top on the government agenda so EACFE programme is coming in at the right time when the environment is conducive.

FD has developed guidelines for Collaborative and Participatory Forest Management (C&PFM) while Kenya Forests Working Group (KFWG) in consultation with FD is in the process of finalizing a manual for preparing PFMP. The EACFE can lobby and support the development of PFM regulations.

To support the forest legislation and guarantee the country environmentally safe quantities of forests other Acts can be employed. These include:

### ***3.2 Environmental Management and Co-ordination Act 1999***

The ultimate aim of this act is to provide a framework for integrating environmental considerations into the country's overall economic and social development. It specifically aims at harmonising the various sector specific legislations that touch on environment to ensure greater protection of the physical and social environment. (Recall Kenya has 77 statutes relating to environmental management so conflicts are bound to occur but with EMCA, the EACFE is bound to succeed because the Act takes precedence over the other Acts). The implementation of this Act is guided by the principal of public participation in the development of policies, plans and processes for environmental management. It also recognises the cultural and social principles traditionally applied by communities in Kenya for the management of natural resources. This makes the Act quite relevant in the management of coastal forests especially in the Kayas and PFM initiatives in Arabuko Sokoke and Shimba hills. The Act has created District Environmental Committees, (DECs) and Provincial Environmental Committees (PECs) that the EACFE programme can use to implement its activities at district (See box 2) and provincial levels. It can also use the same institutions during the NEAP preparation in the respective districts. (Sections 38 to 41 of EMCA).

### Box 2: Functions of District Environment Committees (DEC)

DECs are the most active level for the lead agencies as far as enforcement is concerned. Their key function is environmental management in the district e.g. locating areas for reforestation, afforestation and performing any other additional function as per the Minister's notice in the Kenya Gazette. This may include identification of areas that require extra protection. Departmental heads who are members are visibly exposed to criticism if they fail in any of these duties so EAFCE programme has an ideal opportunity of using DECs to implement their activities.

Section 50 of the Act addresses issue of biodiversity conservation. NEMA in consultation with the lead agencies prescribes measures to ensure biodiversity is conserved. It requires that conservation be integrated with sustainable utilisation ethics in existing government activities and those of private persons. It goes further to

ensure there is respect of Intellectual Property Rights (IPR) and valuation of resources taking into consideration, contribution to catchment protection, influence on climate, cultural and aesthetic values plus genetic values. *Part XI* of the Act is on international treaties and conventions. NEMA has to ensure Kenya formulates and enacts legislation as part of domestication of treaties it has signed. NEMA also keeps a register of the treaties.

NEMA has staff on board and is finalizing recruitment of district staff. Lamu, Tana River, Malindi, Kilifi, do not have District Environmental Officers (DEOs) but the respective District Forest Officers (DFOs) have been acting but with limitations because of institutional mandates. It is hoped that by the time this programme is in place all the above posts will have been filled and DEC's fully constituted for effective operationalization of EMCA.

### ***3.3 Wildlife (Conservation and Management) Act (Cap 376)***

This act is very close to the forest act but covers mainly National parks, National reserves and Sanctuaries. It was adopted in 1976 but since then 8 amendments and revisions have been done with the latest being in 1990. This shows how important the wildlife sector is to the country. The Act was adopted 3 years after Kenya ratified the CITES so it deliberately inbuilt most of the CITES recommendations.

The Act can be used to create parks. The process of gazettment requires parliamentary approval so the heightened level of decision-making and legitimacy of the whole process ensures no grabbing of protected areas. It can be used to protect coastal forests that are under threat from land grabbers. Game Sanctuaries (Covering not more than 2600 acres) can also be created under this Act. Some of the small forest patches that form the coastal forest ecosystem (CFE) and are rich in biodiversity could be fully protected under this Act.

KWS established a community wildlife programme to manage wildlife outside parks and reserves and involve locals in management. The focus has been to enhance economic benefits of communities living around wildlife areas so the EACFE programme can build on this initiative in Arabuko, Shimba, Diani, Tana etc.

Its limitations are on user rights by landowners and wildlife utilisation. The Act does not support PFM in protected areas.

FD/KWS signed a 25-year Memorandum of Understanding (MoU) in 1991 for the management of selected forests like Arabuko and Shimba hills. NMK joined in 1996 to form a tripartite MoU that is to expire by 2016. Its main objective is biodiversity conservation and fundraising for conservation (Currently the Director KWS has gazetted a gate fee for visitors to Arabuko Sokoke forest and the funds can be used for the management of the forest). Other initiatives include the KWS/ARROCHA Kenya/Community Board walk at Mida Creek where funds raised go to pay school fees for children from poor families and the tour guides' children. (Even though the MoU is not legally binding, the Director KWS can delegate to the Forest Officer powers to carry out duties in the selected forests, as pertains to the Act, so the EACFE can use this goodwill to implement its programme).

The MOU initiative has led to the formation of forest management teams at ecosystem level to manage selected forests like Arabuko and Shimba Hills. The programme can use these teams to improve management of coastal forests.

As mentioned earlier the current Act does not support community based natural resource management (CBNRM) initiatives. There have therefore been suggestions to review the Act to fully embrace community participation through partnerships and benefit sharing. This is a challenge that EACFE programme can support.

### ***3.4 Agriculture Act - Cap 318***

This Act promotes soil conservation and prevents the destruction of vegetation (part VI). It can help address the biggest threat to forest conservation i.e. short term shifting cultivation or the slash/burn agriculture, which is the main force behind forest degradation. The Minister can make rules under this Act, to prohibit, regulate, control clearing of land for cultivation, grazing or watering of livestock thus complementing the Forest Act. It can also address the squatter problem, idle land and absentee landlord situation that is common in coast province by making rules on supervision of unoccupied land.

Enforcement of the Act has been the biggest problem especially on protection of riverbanks resulting in soil erosion and heavy silt load on rivers like Tana and Sabaki and the pollution of Malindi Marine Park. The same can be said of the rules governing afforestation, slope and catchment protection and removal of vegetation, which in most cases conflict with the forest Act.

The defunct Permanent Presidential Commission on Soil and Water Conservation (PPCSWC) was very instrumental in the enforcement of this Act. The commission is now part of NEMA so mechanisms are still in place for enforcement under EMCA and ministry of agriculture.

### ***3.5 Antiques and Monument Act (Cap 215)***

The Act has been used for gazettelement of areas of historical importance and threatened heritage e.g. the Kayas at the coast have been protected under this act. Forest management decisions depend on the elders, while other management decisions are vested with NMK thus leaving out FD.

The fear has been that cultural importance of the Kayas is diminishing because of the young generation and immigration by upcountry people who have no attachment to these forests. NMK's mandate does not adequately cover management of forest resources in these sites as most of the Kayas are now under threat from cultivation, charcoal burning and mining. EACFE programme's biggest challenge is building partnerships within the PFM context. A window of opportunity exists in the tripartite MoU between FD/NMK/KWS and the Council of elders. EACFE programme could also strengthen the traditional management system to meet the current challenges.

### ***3.6 Fisheries Act -Cap 378***

The Acts regulates trout fishing in the forests and protects fish breeding areas. It is relevant to mangrove management at the coast but often clashes with the Wildlife Act, especially in the management of marine parks. Marine fisheries depend on mangroves as breeding grounds. Over-utilization of mangroves in Lamu has reduced fishery resources.

In view of the recent lifting of harvesting of mangroves, there is need to monitor mangrove ecosystems to ensure that the breeding grounds of fish and other marine resources are not interfered with. This is an area where the EAME and EACFE can work together. The demand for boat making on some mangroves species and on on-farm trees like mangoes has reached unsustainable levels. The use of immature and low quality timber for boat making has compromised the safety of deep-sea fishermen and results in deaths and losses thus impoverishing the rural poor. Mango trees are now felled for boat making and hence compromising food security.

### ***3.7 Local Authority Act - Cap 265***

This Act empowers County Councils to make by-laws used to control cutting of timber, destruction of trees and shrubs and afforestation. It also authorizes local authorities to take measures necessary to control bush fires, quarrying for minerals, sand, gravel, clay or stones. The Act is applicable in trust lands where resource exploitation needs control. Fires have been listed as major threat to coastal forests so an opportunity is available for control thus meeting second objective of the EACFE plan. The Act will be useful to control the rampant destruction of Mangea Hill and Madunguni trust land forests.

This Act is poorly enforced. Trust lands are prone to encroachment. The county councils have inadequate capacity to manage forests under them. There are two approaches that EACFE can adopt to improve the management of forests currently under local government:

- 1) Lobby for gazettelement of the forests under Forest Act
- 2) Improve the capacity of environmental committee members in the various local authorities. This is inline with the ongoing local government reforms.

### ***3.8 Water Act Cap 372***

Minister may declare an area to be a protected catchment area and order, require, regulate or prohibit certain activities. This Act is ideal for catchment protection and protection of wells and springs that occur in the forest.

The Act supports community involvement in catchment protection. It can also be useful in riverine vegetation protection along the Tana Delta and Sabaki River including other smaller rivers that flow into the ocean. The Act also supports the user-pay principle as proposed in the new Forests Policy.

The EACFE programme can work with water user groups to conserve coastal forests.

### ***3.9 Chiefs' Authority Act (Cap 128)***

The application of the Chiefs' Act is related to law and order but as far as conservation and management of natural resources is concerned; its application has not been very effective, since the trend has been geared towards settlements and agricultural development. These activities have not been in tune with conservation. There is room to create awareness among the community and Provincial Administration on the conservation provision in this Act. The Chiefs have powers that enable them to mobilize community at grass root level. They can be useful to EACFE in mobilizing the community for barazas.

This Act has proved to be useful when dealing with forestry problems outside gazetted forests. The entire Provincial Administration (Chief to PCs) has been able to issue orders aimed at the conservation of forests lying outside gazetted forests. In most cases, it has resulted in conflict especially to farmers who want to harvest their trees on their farms. In response, FD has developed a permit system to control on-farm exploitation of tree resources and movement from source to markets.

The EACFE's programme on capacity building can reinforce FD initiative through improving natural resource governance.

### ***3.10 Land Tenure and Land use Legislation***

Within Kenya, there are three main categories of land, namely government, private and trust land. Coastal forests fall in all the three categories. Land ownership and use is administered and regulated by the constitution (trust lands) and over 50 statutes that include:

Government land Act (Cap 280), Registration of Titles Act (Cap 288), Land (Group Representation) Act (Cap 287), Trust land Act (Cap 288), Mazrui land Trust Act (Cap 291), the Land Acquisition Act (Cap 295), Registered land Act (Cap 300), Land control Act (Cap 302), Land Adjudication Act (Cap 244), Physical planning Act of 1996 and the Mining Act (Cap 306) among others.

Of relevance to EACFE are Acts that protect trust-lands. These are lands that the title is held by local authority for the benefit of persons ordinarily resident on the land.

- *Trust Land Act (Cap 288)* - sets out procedures to be used by local authorities in setting aside land for a variety of uses. Section 65 is concerned with forest and forest produce especially in making of rules for the protection of trees and forest products on land not gazetted as forest reserve. It also addresses licensing and products to be removed. The Act is useful for entering into partnerships (PFM) of trust land forests as the Minister (Local Government) can make rules for general conservation measures i.e. protection and management of trees and forests. EACFE programme can exploit this opportunity by creating more awareness to the locals.
- *Land (Group Representative) Act (Cap 287)* - provides for the registration of communal rights and interests in land e.g. group ranches where subdivision has been going on with massive clearing of vegetation. There is need for awareness of sound forest management. They need to be assisted with technical advice to

develop management plans of their ranches. This is more applicable in large ranches in Tana River and Lamu districts.

- *Registered Lands Act (Cap 300)* -Trust lands that have been demarcated and adjudicated are registered under this act and titles issued. The act confers free hold titles, which is common in coast province with absentee landlords. Most of the land at the coast is not registered or it is registered under absent landowners. The constitution of Kenya protects private property, with restrictions on what the government can compulsorily acquire so there is very little that can be done to the use of idle land. This in turn affects on-farm tree planting. EACFE may use this Act in places like Diani where we have private forests to enter into partnerships in management in order to protect the forests.

Despite the existence of these legal instruments there has not been proper and comprehensive land use planning in Kenya. Instead, the number of squatters/landless is on the increase, while land use planning activities are still addressed at sectoral level. The consequence has been uncoordinated and unsuitable land use that result in conflicts and environmental degradation, inequity in land distribution and loss of biodiversity. Because of this, the government in 1999 formed the Njonjo commission to look at land issues in Kenya. The commission completed its work in 2002 and produced a report whose recommendations are yet to be implemented. Chapter 4 of the report looks at the "Critical land issues that are peculiar to the Coast province". This is a relevant chapter, as the implementation of EACFE programme will have to revolve around some of the land/tree tenure issues raised.

Land issues in coast province have always been referred to as a time bomb, which unless diffused quickly is going to explode. There have been a few explosions, like the land clashes of 1997, that saw many people lose their lives.

In 1972, a special committee comprising five Cabinet Ministers and two Permanent Secretaries was set up by the President to look into land problems in the ten-mile coastal strip. Further, a select committee of parliament was formed in 1976 to:

- Probe origin of these problems including squatters
- Investigate the right to own available land since the Sultan of Zanzibar left
- Recommend on the way forward

The two committees never achieved much hence the formation of the Njonjo Commission. Land problems at the coast still remain and they include:

- "Squatters" on government land. This word squatter is a misnomer in coast province as these people actually reside on their ancestral land. This is so because of the shortcomings of Section 17 of the *Land Title Act (cap 282)*- The locals never laid claim to the land during adjudication hence it is now government land by default. Their pre-existing customary land rights were extinguished without any compensation because they never laid claim on time. Much of this land was later sold or granted in leaseholds to non-indigenous coastal people (Arabs, Europeans, and Asians). The squatter problem is there to stay and it is one of the biggest challenges the EACFE programme will face during its implementation.
- Absentee landlords/Idle land - this is common at the coast as most of the foreigner landlords don't reside there but only collect rent (Ijara). "Squatters" or Tenants occupy this land at will, who in most cases were the original owners under customary laws, but now have no statutory protection. In the event that they are evicted then pressure would shift to forest reserves to practice slash/burn agriculture. Another problem associated with absent landlords is idle land that is not occupied, developed or meaningfully utilised hence tying down resources that would be used for say food production. The land would act as buffers to the forest reserves if owners leased them out. This is a disincentive to on-farm tree growing.
- Other problems are mass evictions (land clashes), landlessness
- Blocked access to the sea- The locals are denied access to fisheries resources and therefore resort to charcoal burning and timber poaching to sustain their livelihoods.

Chapter three of the report looks at other critical land issues. Forest excisions and Allocation of protected areas and other reserved land, which includes; Forests, water catchment areas, riparian land, Kayas and any other

areas gazetted under any Act for a particular or public purpose are of relevance to EACFE programme. Some of the recommendations are that the Commissioner of lands should stop alienation of protected and reserved lands immediately: Government should issue titles to all protected areas or prepare perimeter boundary plans. EACFE can assist in boundary surveys and demarcation of some of the forests especially those that are earmarked for gazettelement.

Other recommendations on Administration and Management of Protected Areas as raised by ordinary Kenyans include:

- Coastal land tenure problems should be treated as a separate problem and should be investigated and resolved in accordance with traditional land practices.
- Forests and other natural resources should be owned and managed by local residents and exploited by and for the benefit of the locals
- Communities bordering parks should share benefits of tourism and reciprocal rights of access to pasture
- Water catchment areas should be gazetted and titled and that the local communities be educated in their conservation
- Review Forest laws and policies to allow communities to manage and conserve forests and have access to revenue and also utilise forests resources for cultural, religious and medicinal purposes.
- Historical sites and monuments should be managed by National Museums of Kenya.

These are some of the views of ordinary Kenyans that EACFE can translate into action during the implementation of their programme. Effective land reform, tenure reform and institutional reforms will thus greatly contribute directly to increased production, environmental protection and poverty alleviation.

### ***3.11 Mining Act – (Cap 306)***

Salt mining in Malindi and Lamu and the proposed Titanium mining in Arabuko are a threat to both mangroves and coastal forests including the Kayas. Salt mines have replaced big sections of the mangroves in Ngomeni and Kurawa areas of Malindi district and the accompanying biodiversity loss is irreversible. Salt mining companies have been accused of releasing brine into the ocean thereby killing mangroves and biodiversity, which in turn affect the livelihood of locals who rely on marine resources. The mining Act unfortunately has no provision that makes damage to environment a criminal offence. Moreover, there is no obligation of restoration of the environment. Fortunately, the recently enacted EMCA requires that an EIA and Environmental Audit be undertaken before a permit is issued. However, there is need for more awareness creation to the mining companies on EMCA. This task can be undertaken by EACFE programme in conjunction with the EAME.

### ***3.12 Coast Development Authority Act (No.20 of 1990)***

There are four statutes that cover regional development authorities in Kenya but our focus is on the coastal region hence the Coast Development Authority (CDA). The authority did commence work on 18<sup>th</sup> January 1990, as a corporate body but with functions that fall within the overall government objectives. CDA coordinates development and projects in coast province and the exclusive economic zone (EEZ) so its function has international implications because of EEZ. The EACFE programme has an opportunity of scaling up most of CDA activities especially those that touch on livelihoods and poverty reduction. Implementation structures are already in place and EEZ gives CDA an international outlook that may be ideal for sourcing for funds especially for implementing treaties and agreements.

CDA approach to work is through established government line ministries i.e. the integrated management of resources approach. This provides an opportunity for EACFE programme to work through the same arrangement and hence a multidisciplinary team.

#### 4.0 POVERTY REDUCTION STRATEGY INITIATIVES

The overall poverty situation in Kenya is worsening. According to the second UN Common Country Assessment (CCA) of Kenya issued in 2002, the number of poor has increased from 52% in 1997 to 56% in 2002. The Human Development Index (HDI) has been falling since 1990 and Kenya is now ranked 146 out of 173 countries. Population living below poverty line has increased especially in the rural areas where absolute poverty now stands at 90% of the rural population.

Majority of the rural population derive their income from subsistence farming, but the land with production potential is only 18% and it is being used to the maximum hence posing serious challenges to the environment.

Millennium Development Goals (MDG) predict that if the current trends continue then poverty levels will increase to 65% of total Kenyan population by 2015. The majority of Kenyans are rural based so they depend on the environment and natural resources for their livelihood. The 1997 Participatory Poverty Assessment (PPA) linked the main causes of poverty to environmental issues which included: drought, lack of water for irrigation, crop failure due to climatic factors, wildlife menace, floods, livestock diseases to mention a few.

The pressure on environment is high and the resulting environmental degradation is now an economic issue affecting Kenya's economic growth potential. Forest cover has reduced drastically in the last 20 years and it is estimated that about 19,000 ha of forests is felled each year and converted to other uses. With over 80% of the population depending on the biomass as their main source of fuel, then this has a serious implication for the remaining forests.

The government of Kenya has recognised that Environment, Poverty and Economic growth are closely linked. The development of the National Poverty Eradication Plan (NPEP) and the Poverty Reduction Strategy Paper (PRSP) began to highlight these linkages. However, as stated in the 9th National Development Plan (NDP) of 2002 to 2008: the full integration of environmental concerns in development and planning at all levels of decision-making remains a challenge to the country. It also acknowledges that in view of high incidences of poverty in the country, the need to integrate environmental concerns in development activities should be given a high priority.

With NEMA now on board it will oversee the integration of these environmental concerns into national development and planning process. NEMA's biggest challenge is to ensure that effective mechanisms are developed and actually integrated into the government process. (EACFE programme to work closely with NEMA's field officers i.e. the 6 District Environment Officers (DEO) and the Provincial Director of Environment (PDE) Coast, to ensure this is achieved)

With the new National Rainbow Coalition (NARC) government came a new national development plan, the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC). This plan brought together priorities from PRSP and the 9th National Development Plan. It recognised environment as a crosscutting issue with opportunities for economic growth from the productive sectors. However, it falls short in fully integrating these environmental concerns into a strategy as a whole.

The Macro-economic framework provides for resource allocation that is more growth and pro-poor oriented. This is to be achieved through the Medium Term Expenditure Framework (MTEF), implementation and public expenditure management reforms and an annual Public Expenditure Review (PER) to ensure a more effective resource allocation to the government's commitments. MTEF provides an opportunity for ensuring the integration of environment into the ERSWEC in the form of Sector and District plans.

Forest Department (FD) has already embraced the MTEF concept in the implementation of its programmes. This has led to increased funding for the sector especially for its field activities at the districts and provinces. E.g., PFM activities in Arabuko and Shimba have benefited from this initiative with an increase in funding to the respective District Forest Officers (DFO).

EACFE programme can take advantage of MTEF and support the FD five-year strategic plan (2003-2008) whose aim is to increase forest/tree cover by at least 10% of the total land area.

The Government of Kenya together with UNEP has come up with a two-year programme (2004-2005) that aims at "Enhancing the integration of environment into policy and planning processes for poverty reduction and sustainable economic growth". The Poverty-Environment Initiative (PEI) is intended to ultimately contribute to Kenya's progress towards achieving MDGs whose targets include halving the number of people living below the poverty line and reversing loss of environmental resources. The programme also supports the commitment to the government of Kenya to tackle poverty and environment problems as promised during the World Summit on Sustainable Development (WSSD) of Sept 2002 (RIO + 10) held in Johannesburg, South Africa.

In regard to the UNDP- Kenya country programme, the 2-year programme will support the UN- Development Assistance Framework (UNDAF) in the following areas:

- Promotion of good governance and realisation of rights
- Contribute to sustainable livelihoods and the environment

This focus is in tandem with the government's commitment to improve transparency and accountability, by strengthening national institutions as a basis for increasing productivity. This is a necessity for raising economic growth and poverty reduction.

The crosscutting nature of this programme lends itself well to working in partnership with other stakeholders. If the project has to succeed then it will be very important to ensure a wide range of stakeholders is engaged in its implementation. (EACFE can explore this opportunity)

The programme will run for 2 years with two main components (Internalising lessons learnt and capacity building) whose outcome or results can enrich the EACFE programme. (WWF is already a strategic partner to the programme so EACFE programme will help implement some of the lessons learnt on the benefits of integrating environmental concerns into development processes in order to achieve poverty reduction and sustainable economic growth. It is also a strategic partner in institution incentives and capacity building for integration and monitoring of environment)

There are other avenues like the District Focus for Rural Development (DFRD) that was established through a government policy (Blue Book). It has no legal framework but the District Development Committees (DDC) set agendas for development in the districts. Since NGOs do attend DDC meetings, the EACFE programme with the backing of DEC members and EMCA, will definitely get the support it needs.

The Rural Development Fund (RDF) was an approach similar to MTEF at the districts but it ended in 1992 when implementation was found to be wanting.

Below is a brief highlight of relevant sections of PRSP, NARC Manifesto and ERSP or (ERSWEC) that may be useful to the EACFE programme.

#### ***4.1 Poverty Reduction Strategy Paper (PRSP) 2001-2004***

PRSP is at the centre of the long-term vision outlined in the National Poverty Eradication Plan (NPEP). PRSP was a 3-year Plan while the NPEP (Sessional paper no. 3 of 1999) is a 15-year plan and it has adopted the MDGs of reducing poverty by half. It has two main objectives – Poverty reduction and Economic growth that link well with the development of pro-poor and pro-growth MTEF.

Key issues of relevance to EACFE programme are:

- On Environment, poor conservation and management, combined with low standards are addressed. Priorities are implementation of EMCA, enforcement of standards, integration of environment into national plans and harmonization of cross-border biodiversity management.

- On Forestry, it is the lack of sustainable use and management of forests and need for protection of rare, threatened and endangered species and habitats that is addressed. Priorities include streamlining of policy, legal and regulatory framework, Community participation in forest management and mitigation on deforestation and forest excisions.

EACFE programme can translate the priority areas under forestry and environment into actions. EAME has also put emphasis on implementation of PRSP thus creating convergence point for the two programmes.

#### ***4.2 NARC Manifesto-2002***

The ruling party manifesto has poverty reduction on a sustainable basis as one of its immediate goals. It also supports community driven development i.e. bottom up planning that fits well within PFM context. Other key issues addressed include:

- Job creation and poverty alleviation through economic growth as highlighted in ERSP
- Land use policy to protect community rights and land ownership
- Environmental conservation and development

The government is currently reviewing Forest legislation and reforming FD. This shows NARC government's commitment to provide an enabling environment for meaningful conservation to take place. EACFE programme can enjoy the new dispensation that the new government is offering. E.g. Zero tolerance to corruption and participatory approach in forest conservation.

#### ***4.3 Economic Recovery Strategy for Wealth and Employment Creation – (2003-2008)***

This document takes into account existing government policy documents like PRSP, NARC Manifesto among others and defines key policy measures and programmes, which if implemented, will ensure rapid economic growth, creation of wealth and employment to reduce poverty.

The plan considers forestry as one of the most important productive sectors to Kenyan economy, but it goes ahead to identify lack of information/inventories, weak legislation and lack of involvement of locals in management as some of the drawbacks. Mitigation measures include repossession of excised forestland, review policies and promotion of PFM. (Most of these measures like PFM; forest inventory can be supported by EACFE programme. Survey and Boundary marking of repossessed forestland can also be supported under this programme).

Other initiatives like the Local government reform process, as reflected in the Local Authority Transfer Fund (LATF) and the Local Government Services Delivery Action Plan (LASDAP) are trying to ensure a more and integrated resource allocation process so as to spur economic growth and reduce poverty. EACFE can explore this opportunity especially in the coastal forests that fall under trust lands and support activities that are line with their targets/outputs.

#### ***4.4 Challenges to Poverty Reduction Initiatives***

- *Weak institutional structures and arrangements-* MTEF provides a logical mechanism for integrating environmental considerations into the planning process but this is yet to be fully rolled out in the districts. (Even in FD-, the DFOs and Foresters are yet to embrace MTEF during the preparation of annual work plans). Sectoral budgeting is still done thus not addressing cross cutting issues i.e. Authority to Incur Expenditures (AIEs) are allocated for different sectors so the role of these departments in DDCs is to compile district plans rather than overseeing the development of a coordinated plan. The existence of parallel county council planning systems (LATF, LASDAP) also results in duplication of resource allocation at district level. The situation is further complicated by the Constituency Development Funds that are under the control of MPs.
- *Insufficient information base-* there is lack of an effective M&E system to inform policy/programme development, few indicators on poverty-environment linkages, limited economic understanding of the joint benefits from coordinated planning and budgeting and lack of understanding of synergies between sectors.

- *Inadequate capacities*- most ministries and institutions have experts to address sectoral needs, but might be lacking in the new social and environmental dimensions. Areas like environmental economics and skills in social sectors will help in development of indicators and relevant databases for M&E.
- *Need for stronger partnerships* – at the moment public/private partnerships around environmental management are far and few between yet the demand is there e.g. WWF Corporate Club.

EACFE can translate the challenges into actions that address forest conservation.

In addition to the above challenges, there are three broad lessons that EACFE can build on:

- Poor people must be seen as part of the solution rather than part of the problem (In Kenya 90% of the rural poor are in absolute poverty)
- The spatial and temporal trade offs and competing economic and political interests that often underlie environmental management decisions and practices need to be addressed in ways that involve and benefit the poor (A case in point is the non-resident cultivation (NRC) debate, the pending eviction of farmers and its impact on food security and livelihood)
- Environmental management cannot be treated separately from other development concerns, but it requires integration into poverty reduction and sustainable development efforts. ( Forestry is normally put under Agriculture and rural development sector so it ends up with less funds)

Given the complex and multi-dimensional nature of poverty-environment linkages, it is inevitable that this encompasses a broad agenda for policy and institutional changes across many sectors. EACFE can contribute towards this end.

## 5.0 REGIONAL AGREEMENTS

Kenya is a member of several regional organizations like EAC, COMESA, AU and NEPAD. It has tried to implement some of the requirements a member country is obliged to. Below are some of the advancements made and how they are relevant to EACFE programme.

### *5.1 East African Community –EAC*

This is an intergovernmental organization with the mandate of promoting regional integration and development among member states (Kenya, Uganda and Tanzania). Its overriding goal is to promote a people-centred economic, political, social and cultural development based on balance, equity and mutual benefit of member states.

EAC's focus has been policy harmonization and development of economic infrastructure. As per its development strategy, EAC justifies that for sustainable development to be achieved, there is need to manage well our natural resources and also protect the environment. This includes; management of coastal and marine environment, combating desertification, management and conservation of forest resources and harmonization of environmental policies.

Several articles of the EAC Treaty that are of relevance to forest management and the EACFE programmes include:

- Article 120 on Environmental issues and natural resources-objective is to ensure sustainable utilization of natural resources plus preservation, protection and good quality environment.
- Article 121 on the management of the environment – advocates for policy harmonization and community involvement in management of natural resources (PFM)
- Article 123 on management of natural resources- talks of conserving natural resources and protection of shared aquatic and terrestrial resources, which fits in well with EACFE programme.

In the EAC document, Annex 4 has a list of 34 priority policies, laws, agreements and conventions that are considered ideal for environmental conservation in East Africa. Most of these are covered elsewhere in this report.

Kenya has integrated the management of shared ecosystems into some of the policy processes developed and some are under implementation. The case in point is the Sessional paper no.6 of 1999 on Environment and Development. This policy paper recognises the need for international cooperation and collaboration in the management of environmental resources shared by two or more states. This therefore makes it easier to achieve policy harmonization for natural resource management. (Fits in well with EAC objectives and EACFE programme vision).

Article 5 of the treaty did recognize National Environment Secretariat (NES) as the focal point but now we have NEMA so Kenya's focal point for EAC has not been lost.

EMCA, 1999, provides for the management of trans-national natural resources and protection of environment through regional and bilateral cooperation. Kenya therefore has institutional framework for managing natural resources within its boundaries and for shared ecosystems in the region. EACFE programme fits in well within this framework given the importance attached to coastal forests.

Other initiatives like the UNEP/UNDP/DUTCH –East African sub-regional project on environmental law and institutions (1995-1998) goes a long way in supporting the EAC initiatives especially in the management of shared resources. The project aimed at harmonizing legal frameworks for shared resources and its key activities like development and harmonization of forest and wildlife laws fits in well with some of the EACFE programme objectives. Kenya is still lagging behind in the forestry sector reforms as compared to other EAC member states so the EACFE programme can pick up this challenge and act as a framework to address coastal forests as a trans-boundary resource.

There are a number of Trans-boundary issues affecting coastal forests that need to be addressed like ban on harvesting of mangroves and ban on harvesting of indigenous trees in Kenya and their impact on Tanzania forests. EAC natural resource committee has concentrated on fresh water on Lake Victoria basin as opposed to the coastal and marine ecosystems. Trans-boundary Natural Resource Management guidelines to be developed by EAC member states with support from EACFE.

## 5.2 The New Partnership for Africa's Development (NEPAD)

African countries have developed a collective will to address environmental and related issues and they have created institutions to translate that will into concrete results. Some of the milestones include:

- In 1968, African governments signed the Algiers Convention on the conservation of nature and natural resources –(Kenya is party to it)
- Efforts to use and manage natural resources in a sustainable manner doubled up after the 1972 UN-Stockholm Conference on Human and Environment.
- In 1980, under the auspices of OAU an extra ordinary summit of African heads of State and governments led to the adoption of the Lagos plan of Action – Africa's blue print for economic development that helped highlight the challenges facing Africa.
- In 1985 African countries established AMCEN, which over the past 15 years has made concrete achievements in providing region-wide leadership, awareness arising and consensus building on global and regional environmental issues. However, they have realised that environmental challenges facing Africa are immense and are becoming more complex. There is need for more human and financial resource, which must be combined with a strong political will, commitment and good governance. (Kenya fulfils most of these requirements hence leading to an enabling environment for the success of EACFE programme).
- During the 55<sup>th</sup> Session of the UN-General Assembly (Sept-2000) African governments endorsed the six fundamental values that should underpin international relations in the 21<sup>st</sup> Century- namely: freedom, equality of nations, solidarity, tolerance, respect for nature (very relevant for EACFE programme) and shared responsibilities.
- In 2001, African heads of state agreed to transform the Organization of African Unity (OAU) into African Union (AU). They also agreed on the New African Initiative- the recovery plan for NEPAD.

NEPAD is envisaged as a long-term vision of an African owned and African led development programme. Its objective is to give impetus to Africa's development by bridging existing gaps in priority sectors in order for the continent to catch up with the rest of the world. The long-term objective is poverty eradication, while the goal is to achieve and sustain a GDP growth rate of 7% per annum for the next 15 years and achieve the MDG by 2015. Several sectoral priorities have been highlighted in the document but of relevance to the EACFE programme include:

- Energy – the objective is to reverse environmental degradation that is associated with use of traditional fuel in rural areas
- Water – systematically address and sustain ecosystem, biodiversity and wildlife
- Poverty reduction – reduction of poverty among women
- Agriculture -urgent need is to achieve food security by maximising on production
- Environment – the core objective is to combat poverty and contribute to the socio-economic development of Africa. It is the most relevant priority as it has been divided into smaller sub-themes that can be implemented by programmes like the EACFE. The sub-themes include combating desertification, Wetland conservation, Invasive alien species, Coastal management, Global warming, Cross border conservation areas, Environmental governance and Financing. The environment priorities have been translated into an action plan.

### *Action Plan of the Environment Initiative for NEPAD*

This is a strategic and long-term programme of action for Africa's sustainable development. It takes full consideration of economic growth, income distribution, poverty eradication, social equity and better governance as part of Africa's environmental stability agenda. Its overall objective is to complement other processes like AMCEN and build Africa's capacity to implement regional and international environmental agreements. Several

specific objectives and programmatic areas are provided in the plan so EACFE programme can select some of these activities for implementation. The programmatic areas have been developed from the sub-themes under the environmental sector priorities. They include:

- Combating land degradation, drought and desertification (UNCCD)
- Conserving Africa's wetlands (Ramsar)
- Preventing, control and management of invasive, alien species (CBD)
- Conservation and sustainable use of marine, coastal and freshwater resources
- Combating climate change in Africa (UNFCCC)
- Cross-border conservation or management of natural resource (CBD). It is worth noting that forests have been given special status as a cross-border resource (9<sup>th</sup> AMCEN meeting – July 2002 –Uganda). This was followed by a thematic (forestry) workshop in Yaoundé, Cameroon (Feb 2003), where in partnership with WWF- Africa section, a list of project activities was prepared. EACFE programme can contribute towards implementing some of the listed activities like carrying out inventories, policy and law revision and preparation of participatory management plans

The environment action plan will need review on a regular basis by AMCEN so EACFE can still take up this challenge given that forests have now been recognised by NEPAD for the important role they play in sustaining rural poor livelihoods and their contribution to national economies.

EACFE and NEPAD have similar objectives and this presents an opportunity for pooling resources and building synergies.

## 6.0 INTERNATIONAL ENVIRONMENTAL AGREEMENTS

International environmental laws govern matters of global or regional environmental concerns and rights and duties in trans-boundary matters. Kenya is party to a number of treaties that can be applied in the management of coastal forests. Treaty/Convention/Agreement/Pact/Covenant are the same thing as they can be used to address issues and matters of mutual benefits between states as is the case with EACFE in the 3 countries. They help create rights and duties of states so unless a country gives consent it is not bound by the treaty. States may also be bound by part of a treaty.

Kenya is party to several treaties concerning the management of environment and key among them that could be of relevance to EACFE programme include:

### 6.1 Convention on Biological Diversity- CBD

Kenya has ratified this convention and followed up with NEAP in 1994 that brought all institutions in management and conservation together. Some of the achievement made so far include:

- The country prepared a National Biodiversity Strategy and Action Plan (NBSAP) that covers conservation of biodiversity, sustainable utilization and equitable benefit sharing, intellectual property rights (IPR) and indigenous knowledge
- Kenya as a country has tried to review and harmonize sectoral policies, laws and regulations as outlined in the NEAP document but forestry sector is yet to reform.
- Some challenges as far as CBD is concerned include:
  - Reducing wide spread poverty, its impact on biological resources and increasing population
  - Mobilization of resources for effective implementation of NBSAP
  - Recognition of indigenous value of biological resources
  - To ensure there is fair and equitable sharing of benefits accruing from use of biological resources.

Livelihood interventions and biodiversity conservations challenges outlined in the convention, especially the poverty issues and some of the NBSAP content, can be translated into actions for coastal forest conservation.

### 6.2 Ramsar Convention

The Convention on Wetlands of international importance especially as waterfowl habitat (Ramsar) was signed in 1990. In Kenya, wetlands include the inshore marine waters, coral reefs, estuaries, mangroves and coastal forests that run for almost 550 km along the coastline.

KWS was identified as the National organ to internalise and operationalise the Ramsar objectives. Its overall aim is to conserve wetlands by promoting the wise use concept through support to Research/Monitoring, Education/Awareness, Infrastructural development and Policy and Technical guidelines development. The EACFE programme together with EAME can support any of these activities.

- Kenya has four designated Ramsar sites and plans are under way to have Tana Delta (Kenya's largest delta ecosystem) also designated as the fifth site.
- EACFE programme can build on the lessons learnt by KWS on Community participation in management of resources. It takes time to build confidence. A lot of work has also been done by CBOs like Tana Delta Community Organization (TADECO), which is a local NGO, so there is a high potential of listing Tana Delta as a Ramsar site.
- The biggest challenge to our wetlands is human encroachment and land reclamation for agriculture. KWS has prepared a wetland policy that programmes like EACFE and EAME can lobby for publication into a Sessional paper.

### 6.3 Convention on International Trade in Endangered Species –CITES

The Convention on international trade in endangered species of wild fauna and flora was signed in 1979. It regulates international trade in all species listed in the Appendices.

- KWS is the Management and Implementing authority while NMK is the scientific authority.
- Most stakeholders have always associated CITES with KWS and Elephants but all this is now changing. The two institutions have now incorporated other key stakeholders and strengthened the implementing committee.
- The biggest task ahead of CITES implementing committee is the domestication of the model law into wildlife Act that is under revision. EACFE programme can support this initiative.

### 6.4 United Nations Framework Convention on Climate Change - UNFCCC

The Convention on Climate Change was signed and ratified by Kenya in ----? It established the National coordinating climate change committee whose functions include:

- Translation of UNFCCC objectives and related protocols into national development priorities
- Hosting the drought monitoring centre for IGAD sub-region in Nairobi
- It is housed in NEMA

Some of the challenges Kenya faces in trying to implement UNFCCC include:

- Harnessing and mobilizing resources to address impacts on climate change
- Building an effective network for exchange and sharing of information at the national, sub regional and international level.

### 6.5 United Nations Convention to Combat Desertification- UNCCD

Kenya signed this convention in 1994 and ratified it in 1997. Some of the achievements so far include:

- Preparation of the National Action Plan (NAP) to combat desertification in 1997
- Established the National desertification community trust fund to support initiatives on combating desertification
- Established an NGO coordinating committee on desertification in Kenya, which implements various activities
- Established a framework for the management of integrated programmes of ASALs (lessons to be learnt from the Coastal ASAL programme)
- Established drought mitigation mechanisms and early warning systems

The biggest challenge in implementation of UNCCD is lack of land use policy and inadequate funding. EACFE programme can avail some resources to support implementation of NAP and the NGO forum.

### 6.6 Other Relevant Conventions

1. Nairobi Convention for the protection, management and development of marine and coastal environment of East African region
2. Lusaka Agreement on illegal trade in wild fauna and flora
3. African convention on the conservation of nature and natural resources
4. Convention concerning the protection of the World Cultural and Natural Heritage
5. Convention on the prevention of marine pollution by dumping of wastes and other matter
6. International convention for the prevention of pollution by ships
7. Bonn convention on the conservation of migratory species of wild animals
8. United Nations convention of the laws of the Sea

The EACFE programme is important, as it will help consolidate synergies between the conventions and avoid duplication through coordinated implementation by key or relevant stakeholders. As an example, the widespread deforestation converts trees into CO<sub>2</sub> and reduces vegetation cover for CO<sub>2</sub> storage. It also alters local and regional climate in addition to the increase in soil erosion, clogging of wetlands and loss of biodiversity. The

conservation of forests is therefore an important element for climate change and extremely critical for sustaining biodiversity.

The relationship between desertification and climate is like a chain reaction. The chain of impacts of climate change on land and the implication of degraded land surface for the climate system is very extensive. The local populations e.g. in Malindi, Marafa and Samburu divisions are aware of the various manifestation of desertification in their locality and they are eager to find remedies and eliminate its causes by combating desertification. However, they may not be averse to the concept of sustainable use and conservation of biological diversity, and its linkages to climate change.

The EACFE programme is therefore ideal in demonstrating these linkages especially under JFM/PFM concepts where locals are involved in forest management. It is hoped that this programme will help develop broader mechanisms of collaborating activities at local levels of government ministries (FD, KWS, NMK) scientific institutions (KEFRI, KEMFRI, KARI), Local communities (Mijikenda people) and NGOs through establishing joint programmes and in the process achieve policy harmonization.

NEMA can also supplement this initiative as per the EMCA provisions and in consultation with the lead agencies (FD, KWS, Local Authorities etc) to initiate legislative proposals to the Attorney General (AG) to give legislative effect to the provisions of the various treaties.

It can also identify other appropriate measures necessary for the national implementation of the treaties.

It can rightly be concluded that mechanisms are in place for the implementation of international treaties and conventions in as far as the management of coastal forests is concerned. The fact that Kenya has ratified most of these conventions shows the government commitment towards resolving environmental problems. This presents an opportunity for EACFE programme to access resources for its activities.

## 7.0 EACFE and EAME PROGRAMME- LINKAGES

WWF- EARPO has developed a twenty year East African Marine Ecoregion (EAME) strategic framework (2004-2024). To meet its overall conservation goal the programme has developed several strategic components. Key among the components that are relevant to the EACFE programme include:

- Enhancing the Enabling Policy and Legal Environment – EAME programme has recognised the need for effective set of policies and laws at national, regional and international levels for any meaningful conservation to take place. Most of the laws and policies that provide an enabling environment for the EAME are the same for EACFE programme. This provides an opportunity for the two programmes to work together in terms of lobbying and advocacy for policy reforms.
- Promoting Sustainable livelihoods and Economic development – The EAME and EACFE have same stakeholders(local communities who derive their livelihood from both marine and terrestrial resources).The two programmes can work together to develop policy inputs into PRSP and ERSP and initiate pilot projects in priority areas to demonstrate that sustainable livelihood can work .
- Regional action to address trans-national threats and conserve wide-ranging species. EAME has identified four priority areas in Kenya; Lamu, Archipelago and Mida Creek are given global recognition while Tana River and Msambweni are recognised as ecoregional priority areas. In each of these priority area communities based management programmes and development and implementation of management plans have been singled out as key interventions. EACFE can support the implementation of these activities.
- Monitoring, innovating and building capacity. The activities identified under EAME management research and information is relevant to EACFE programme. Developing the capacity of the local communities to monitor ecological change is a key activity that both programmes can jointly implement.
- Priority seascapes and marine protected areas-EAME programme has proposed management planning of priority seascapes with all key stakeholders including local community. Lamu Archipelago has been selected as a pilot area to test the seascape planning approach. The adjoining coastal forests can also be used as pilot area for PFM under EACFE.

From the above analysis, there is a strong linkage between the two programmes. This provides room for both programmes to build synergies and lobby for policy and law reforms so as to create an enabling environment for forest conservation.

## 8.0 LESSONS/CONCLUSIONS and RECOMMENDATIONS

### 8.1 Lessons Learnt

- Conservation of forests on private land, farms, and community land was given low priority leading to rapid loss of biodiversity on these areas.
- The link between poverty and forest degradation and conservation has not been addressed well.
- Institutional arrangements on the ground are ideal for EACFE implementation- CDA, DEC, ASFMT, FADA, Kaya Council of Elders, Shimba Hills Management Team.
- PRSP is convergence point for EACFE and EAME programmes
- There is political will to reposes excised forest land
- There are glaring gaps in information that would be used to improve resource management such as resource inventories, use of NTFPs, boundary alignment, and guidelines on PFM.
- EACFE and NEPAD have similar objectives and this presents an opportunity for pooling resources and building synergies.
- NEMA is the focal point for all international treaties that Kenya has ratified.
- International conventions provide an opportunity for mobilizing resources

### 8.2 Recommendation

- The EACFE programme should be part of the NEAP process at the districts and coast province
- There is need to create awareness among salt mining companies and other stakeholders on environmental Audit and EIA as stipulated in EMCA.
- EACFE should work together with EAME to contribute towards formulation of policies to link conservation with improved livelihoods. This potential needs to be more fully explored in both policy and implementation including piloting projects in priority areas to demonstrate that sustainable livelihoods activities can work. There is need to lobby to direct PRSP activities in areas prone
- EACFE programme should take advantage of NARC Government commitment to zero tolerance to corruption, Enactment of Anticorruption and Public Ethics Acts to NRM governance.
- The programme should take advantage of the political good will (Repossession of excised forest land) to support boundary and lobby for gazettelement of trustland and private land
- The programme should assist in resource inventories, boundary surveys, and PFM (lobby for gazettelement of regulations) outlined in ERSWEC.
- EAC member states with support from EACFE should develop Transboundary Natural Resource Management guidelines including marine and coastal resources.
- Some of the proposed activities in the NEPAD Environmental Action Plan that are relevant to this programme should be adopted for implementation.
- EACFE should support NEMA in the domestication of international agreements that are relevant to the management of coastal forests.
- The programme should capitalize on the window of opportunity presented by Kenya being party to several international conventions and agreements to harness and mobilize resources for forest conservation.

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## Annex 1: Terms of Reference

The specific terms of reference were to review and integrate the following into the report:

- Existing policy instruments including guidelines and legislation. The policies to be reviewed include those of Environment, Forestry, Agriculture, Wildlife, Fisheries, Bee-keeping, Community development, Land and Land-use and linking all these to Socio- economic issues.
- Poverty reduction strategy initiatives. This will include the review of existing poverty reduction strategies and status of their implementation, with specific reference to EACFE and related areas.
- International and Regional agreements including global conventions. EAC, SADC, NEPAD, WEHAB and the link to EACFE. This is to include a review of the national activities and available reports that have been initiated and co-ordinated nationally as a result of these agreements. This should have a specific focus on EAFCE contribution to the above agreements and conventions
- Link to international agreements and implications to EACFE. This is to include a review of the national contribution to global agreements, which may be enhanced by implementing the EAFCE programme. Relevant agreements to include CBD, CITES, Ramsar, UNFCCC and Desertification
- Linking policy issues as they are captured in the EAME, Miombo and other national initiatives such as the TCMP (in Tanzania)
- Review relevant sections in the UNEP/UNDP/Dutch joint project on Environment and Institutions in Africa with a focus on "Development and Harmonization of Environmental Laws"
- Produce a national report of some 20 pages with annexes as additions

## Annex 2: Legal Status of Coastal Forests

### Annex 2(a): Mijikenda Kaya Forests and Sacred Groves of Coast Province

District	Kaya/ Forest	Status	Year Gazetted	Area (ha)	Vegetation	Ownership
Kilifi	Chonyi	FR	1994	194	Degraded Forest	Government
Kilifi	Jibana	FR	1994	140	Forest	Government
Kilifi	Kambe	FR	1994	57	Forest	Government
Kilifi	Ribe	FR	1994	36	Forest	Government
Kwale	Gongoni	FR	1932	824	Forest	Government
Kilifi	Bedida (SG)	NM	2001	35	Forest	Government
Kilifi	Bomu/ Fimboni Rabai	NM	1999	409	Forest	Government
Kilifi	Fungo	NM	1996	204	Woodland	Government
Kilifi	Kauma	NM	1996	75	Forest	Government
Kilifi	Kivara	NM	1996	87	Woodland	Government
Kilifi	Mudzimuiru Rabai	NM	1997	147	Degraded forest	Government
Kilifi	Midzimuvya Rabai	NM	1998	171	Forest	Government
Kilifi	Mzizima	NM	1999	29	Forest	Government
Kwale	Bogowa	NM	1992	10	Thicket/Grass	Government
Kwale	Bombo	NM	1992	10	Forest	Government
Kwale	Chale	NM	1992	14	Degraded forest	Private
Kwale	Chombo	NM	1999	30	Forest	Government
Kwale	Chonyi/Kwale	NM	1998	114	Woodland	Government
Kwale	Diani	NM	1992	20	Forest	Private
Kwale	Dzombo	NM	1992	907	Forest	Government
Kwale	Gandini	NM	1992	150	Forest/Woodland	Government
Kwale	Ganzoni/Galu	NM	1992	3	Degraded forest	Private
Kwale	Gonja	NM	1992	842	Forest	Government
Kwale	Jego	NM	1992	10	Forest/Woodland	Government
Kwale	Kinondo	NM	1992	30	Forest	Government
Kwale	Kiteje	NM	1992	10	Bush land/Thicket	Government
Kwale	Kwale (in NR)	NM	1992	Not defined	Forest	Government
Kwale	Lunguma	NM	1998	155	Degraded forest	Government
Kwale	Mrima	NM	1992	377	Forest	Government
Kwale	Mtae	NM	1992	Not defined	Woodland	Government
Kwale	Mtswakara	NM	1997	248	Forest	Government
Kwale	Muhaka	NM	1992	150	Forest	Private
Kwale	Sega	NM	1992	21	Forest/Woodland	Government
Kwale	Shimoni Caves	NM	1992	Not defined	Degraded forest	Government
Kwale	Teleza	NM	1992	67	Forest	Government
Kwale	Tiwi	NM	1992	10	Forest	Private
Kwale	Ukunda	NM	1992	25	Forest	Government
Kwale	Waa	NM	1992	30	Degraded forest	Private
Malindi	Bate	NM	1997	5	Woodland	Government
Malindi	Bura	NM	1997	11	Woodland	Government
Malindi	Dagamura	NM	1997	32	Woodland	Government
Malindi	Mayowe	NM	1997	6	Woodland	Government
Malindi	Singawaya	NM	1997	47	Woodland	Government
Mombasa	Shonda	NM	1992	10	Degraded	Government
Mombasa	Similani Caves (SG)	NM	1992	10	Forest/Thicket	Government
Kilifi	Chasimba	None		5	Limestone quarry	Private

	(SG)					
Kilifi	Pangani (SG)	None		10	Limestone quarry	Private
Kilifi	Mwarakaya (SG)	None		2	Limestone quarry	Private
Kilifi	Kizingo Hill	None		10	Degraded forest	Private
Kwale	Chitsanze	None		10	Forest	Private
Kwale	Miungoni	None		30	Forest	Private
Kwale	Miyani	None		25	Destroyed	Private
Kwale	Mvumoni	None		10	Bush land/Thicket	Private
Kwale	Nagende	None		No data	Thicket	Government
Kwale	Puma	None		No data	Woodland	County Council
Kwale	Timbwa	None		15	Forest	Government
Mombasa	Mlele	None		3	Degraded forest	Not known

**Key;**

SG: Sacred Grove

NM: National Monument

FR: Forest Reserve

Source: NMK and FD- Kilifi District, 2002

**Annex 2(b): List of other Gazetted Forest at the Coast (Status is FR as defined by L.N. Number 174 of 1964)**

District	Forest	Area (Ha)	Original Proclamation or Legal Notice Number/Year
Kwale	Buda	667.7	44/1932
Kwale	Gogoni	824.3	44/1932
Kwale	Mailuganji	1,714.7	107/1941
Kwale	Mangrove Swamp	6,345	44/1932
Kwale	Marenk	1,528.5	50/1957
Kwale	Mkongani North	1,113.3	406/1956
Kwale	Mkongani West	1,365.8	406/1956
Kwale	Mrima	376.8	304/1961
Kwale	Mwachi	417.2	104/1938
Kwale	Shimba	19,242.8	401/1956
Mombasa	Mangrove Swamps	3,000	44/1932
Kilifi/Malindi	Arabuko Sokoke	41,763.5	44/1932
Kilifi Malindi	Mangrove Swamps	6,378	44/1932
Tana River	Mangrove Swamps	369	44/1932
Lamu and Tana River	Witu	4,639.1	454/1962
Lamu	Mangrove Swamps	46,229	44/1932

Source: Survey Section – Forest Department, Karura