



The legal, policy and institutional frameworks governing marine plastics in Kenya



ENVIRONMENTAL LAW PROGRAMME



The legal, policy and institutional frameworks governing marine plastics in Kenya

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Abbreviations

EAC	East African Community
EIA	Environmental Impact Assessment
EPR	Extended Producer Responsibility
MARPOL	International Convention for Prevention of Pollution from Ships
MEAs	Multilateral Environmental Agreements
PET	Polyethylene Terephthalate
PETCO	The Kenyan PET Recycling Company
UNCLOS	United Nations Convention on the Law of the Sea

Summary

Kenya's economy is heavily dependent on its natural resources base that includes marine resources. For this reason, protection of the marine environment and sustainable utilization of marine resources is paramount to the country's well-being.

Kenya's journey towards regulation of plastics has been long and winding, dating back over a decade. Many of the regulatory efforts have come with mixed results. Early interventions focused on regulation of thickness of plastic carrier bags as well as imposition of excise tax on such plastic items. These interventions failed to achieve the intended reductions of plastics leakage into the environment due to various reasons that are discussed in detail in this report. Later efforts which include recent bans on plastics carrier bags and flat bags have achieved some notable success.

There are also new efforts by the Government of Kenya to strengthen the regulatory framework for solid waste management including plastic waste. These include on-going processes for the development of: national solid waste management policy and law; national regulations on plastic packaging; national regulations to provide for mandatory extended producer responsibility schemes; as well as efforts by various county governments to put in place local waste management policies and laws.

Besides the regulatory frameworks, there have also been recent industry efforts at self-regulation. These efforts have seen the establishment of a voluntary take-back and recycling scheme that is gaining traction within the plastics industry (manufacturing companies and major retail outlets) even in the absence of a legally mandated extended producer responsibility scheme.

However, there are still both design as well as implementation challenges with respect to the existing legal and policy frameworks. These challenges are discussed in more detail in this report and include: lack of consensus on the most appropriate legislative design for marine plastics control; lack of clarity on the scope of Kenya's ban on plastic carrier bags as well as the ban on plastic items in wildlife parks, reserves and conservation areas; inadequate waste management capacities by respective county governments; poor coordination among relevant state agencies; inadequate capacity for monitoring and enforcement by relevant government agencies; and low public awareness not only about the importance of environmental conservation and protection but also about the provisions of the existing laws and policies for the protection and conservation of the marine environment.

1 National background

Kenya is located in East Africa and covers an area of 580,367 square kilometres, with Nairobi as its capital city.¹ The country's population is 47.6 million people.² It is a lower middle-income economy with a gross national income per capita of US \$1,620, and is the 5th largest economy in Sub-Saharan Africa behind Nigeria, South Africa, Angola and Sudan.³ Kenya has a coastline on the Indian Ocean of 536 kilometres in length, an extended continental shelf of 103,320 km² and an exclusive economic zone of over 142,000 km².⁴ The country's coastal and marine resources consist of mangroves, coastal riverine and terrestrial forests, seagrass beds, coral reefs and several other marine life, and sandy beaches.⁵ These resources contribute significantly to Kenya's economy through different sectors such as tourism, agriculture and fisheries.⁶ Despite the significant contribution of Kenya's coastal resources to the country's economy, these resources are increasingly facing the threat of pollution from diverse sources, including the threat of plastic waste.

Kenya has, for many years, had a vibrant plastic manufacturing sector with more than 100 plastic manufacturing companies in the country, most of them located in the capital city, Nairobi. These companies manufacture various plastics articles such as PVC pipes and fittings, packaging bags, plastic shoes, crates, bottles, floor tiles, household wares and containers. These products are not only intended for sale and use in the domestic market but are also exported to neighbouring countries in Eastern and Central Africa such as Burundi, Democratic Republic of Congo, Rwanda, South Sudan, Tanzania and Uganda.⁷

Despite the contribution of plastics manufacturing to Kenya's economy through employment creation and foreign exchange earnings, plastics waste has been one of the greatest challenges to solid waste management in the country, especially in major cities and towns.⁸ Most of Kenya's urban areas continue to struggle with the problem of waste management. Other than for major cities and towns such as Nairobi, Mombasa, Kisumu, Nakuru and Eldoret, which currently record waste collection rates of slightly above 50% of total waste generated, the majority of the smaller towns are registering waste collection rates significantly lower than 50%.⁹ Thus, it is not uncommon to find uncollected waste strewn in the streets of some of the major cities and towns, especially in the low-income neighbourhoods.

¹ Brand Kenya (2019). *Facts About Kenya*. Available at <https://brandkenya.go.ke/facts-about-kenya/> (accessed 11 March 2020).

² Kenya National Bureau of Statistics (2019). *Kenya Population and Housing census Volume I: Population by County and Sub-County*.

³ World Bank (2019). *GNI per capita, Atlas method (current US\$)*. Available at <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD> (accessed 11 March 2020).

⁴ International Peace Support Training Centre (2017). *An Assessment of Maritime Insecurity in the Kenya Maritime Domain*. Occasional Paper Series 8 No.1. Nairobi, Kenya.

⁵ Fondo, E. *Marine biodiversity in Kenya - the known and the unknown*. KMFRI.

⁶ Republic of Kenya (2013). *Integrated Coastal Zone Management Policy*.

⁷ Interview with an official of Kenya Association of Manufacturers environment committee. The opinions expressed are in his personal capacity. See also Kenya Association of Manufacturers website. Available at <http://kam.co.ke/sectors/> (accessed 11 March 2020).

⁸ Oyake-Ombis, L. *et al.* (2015). Managing Plastic Waste in East Africa: Niche Innovations in Plastic Production and Solid Waste, *Habitat International* 48:188-197.

⁹ National Environment Management Authority (2015). *The National Waste Management Strategy*.

The main plastic products of concern over the years have been plastic carrier bags, plastic bottles and other plastic packaging materials.¹⁰ Prior to a 2017 ban on plastic carrier bags and flat bags, it was estimated that over 24 million plastic carrier bags were being used in Kenya every month.¹¹ It was also estimated that plastics comprised up to 20.6 per cent of the solid waste generated in Kenyan cities such as Nairobi.¹² Most of the Kenyan cities and towns have inefficient waste management systems and the majority of plastic waste ends up in poorly managed waste dumps or get littered indiscriminately in open public places and are easily blown away by wind. As a result, the plastics get fixed on trees and plant branches while others are deposited in open storm water drains and find their way into water bodies such as rivers, lakes and the sea, posing a serious threat to public health, the environment and marine life.¹³

2 International obligations

Kenya is a party to various Multilateral Environmental Agreements (MEAs) aimed at protecting and safeguarding the environment and natural resources, including those that have a bearing on marine plastic pollution.

Table 1: The international conventions related to plastic pollution ratified by Kenya

Agreement	Ratified	Implementing Legislation (each listed legislation is applicable to all the Agreements)
UNCLOS	2 March 1989	<ul style="list-style-type: none"> ● Maritime Zones Act ● Merchant Shipping Act ● Kenya Maritime Authority Act ● Water Act ● Environmental Management and Co-ordination Act ● Environmental Management and Co-ordination (Prevention of Pollution in Coastal Zone and Other Segments of the Environment) Regulations ● Environmental Management and Co-ordination (Waste Management) Regulations ● Environmental Management and Co-ordination (Water Quality) Regulations
MARPOL	7 March 1994	
Basel Convention	1 June 2000	
London Convention 1972	11 November 1974	
London Protocol 1996	14 January 2008	

Kenya is also Party to regional agreements that are relevant to the protection of the marine environment. Kenya is Party to the Amended Nairobi Convention for the Protection,

¹⁰ Ong'unya, R.O. *et al.* (2014). The Plastic Waste Menace in Kenya: A Nairobi City Situation. *International Journal of Current Research* 6(4):6175-6179.

¹¹ *Ibid.*

¹² Kimani, M.W., Njoroge, B.N.K., Ndunge, D. (2014). Review of Municipal Solid Waste Management: A Case Study of Nairobi, Kenya. *Research Inventory: International Journal Of Engineering And Science* 4(2):16-20.

¹³ Nyangena, J. *et.al.* (2017). Ban on Plastic Bags: Plastics ban finally takes effect in Kenya. *Policy Monitor* 9(1). p.8.

Management and Development of the Marine and Coastal Environment of the Western Indian Ocean.¹⁴ The Convention is a partnership between governments, civil society and the private sector, that offers a legal framework for coordination of efforts of the Contracting Parties to protect the marine environment within the Western Indian Ocean Region.¹⁵ Parties agreed upon the Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean from Land-Based Sources and Activities.¹⁶ The Protocol facilitates individual and collective action by member states to tackle the threats to the marine and coastal environment of the Western Indian Ocean from land-based sources and activities, including but not limited to untreated domestic waste and discharges, industrial discharges, agricultural run-off and activities causing physical alterations and destruction of natural habitats. Kenya's maritime and environmental laws have provisions to implement the obligations under the Convention and the Protocol.¹⁷

Kenya is a member of the African Union, a continental organization consisting of 55 member states in the continent of Africa.¹⁸ The Union has developed Africa's Integrated Maritime Strategy 2050 that creates a framework for the protection and sustainable exploitation of Africa's Maritime Domain.¹⁹ Among the actions envisaged in the Strategy is that the member States shall develop mechanisms for protection of the marine environment and for prevention of dumping of toxic waste in the Africa's Maritime Domain. These aspirations augur well for future actions to stem marine plastics pollution.

Kenya is also a member of the East African Community (EAC), a sub-regional treaty-based intergovernmental organisation that comprises of the States of Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.²⁰ Chapter 19 of the Treaty for the Establishment of the EAC obligates member states to cooperate in matters relating to environmental and natural resources management, and urges member States to establish common environmental regulations and standards.²¹ In pursuit of these provisions and in order to address the growing problem of plastics waste within the EAC, the East African Legislative Assembly adopted the East African Community Polythene Materials Control Bill in 2018.²² The Bill seeks to regulate the manufacture, sale, importation and use of polythene materials within the EAC. The Bill is currently awaiting assent of the EAC Heads of State in order to become law. Once assented to, it will be applicable across all the EAC member States. By virtue of its membership of the East African Community, Kenya is a member of the Lake Victoria Basin Commission, a specialized institution of the Community that coordinates sustainable development and

¹⁴ The other Contracting Parties are Comoros, France, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, South Africa and Tanzania.

¹⁵ Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi, 31 March 2010).

¹⁶ *Ibid.* Art. 7 requires the Contracting Parties to take all appropriate measures to prevent, reduce and combat pollution by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures or any other land-based source; Nairobi Convention Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean from Land-Based Sources and Activities (Nairobi, 31 March 2010).

¹⁷ The relevant national laws include: Maritime Zones Act, Merchant Shipping Act, Kenya Maritime Authority Act, Environmental Management and Coordination Act, Environmental Management and Coordination (Prevention of Pollution in Coastal Zone and Other Segments of the Environment) Regulations, Environmental Management and Coordination (Waste Management) Regulations, and Environmental Management and Coordination (Water Quality) Regulations.

¹⁸ For more information, African Union Website. Available at <https://au.int/>.

¹⁹ African Union (2012). *2050 Africa's Integrated Maritime Strategy (2050 Aim Strategy)*.

²⁰ For more information East African Community website. Available at <https://www.eac.int/>.

²¹ Treaty for the establishment of the East African Community (Arusha, 30 November 1999).

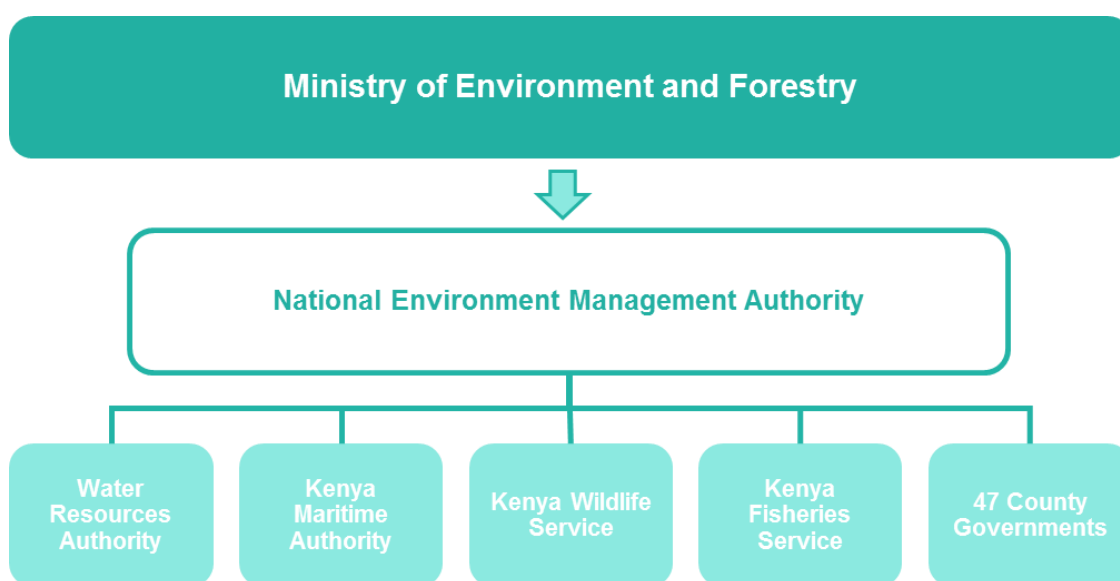
²² East African Community Polythene Materials Control Bill, 2016.

management of the Lake Victoria Basin within the five partner States.²³ In addition, Kenya is a member of the Nile Basin Initiative, an intergovernmental partnership of 10 countries namely: Burundi, DR Congo, Egypt, Ethiopia, Kenya, Rwanda, South Sudan, The Sudan, Tanzania and Uganda; and whose mandate is to coordinate sustainable socio-economic development of the Nile Basin water resources.²⁴

3 Relevant institutions and processes

Kenya’s institutional framework for the sound management of waste is three-tiered – the first tier bearing the responsibility of policy formulation, the second tier bearing the responsibility of supervision and coordination of policy implementation and the third tier having the responsibility of policy implementation, monitoring and enforcement.

Figure 1: The institutional framework for the governance of marine plastics in Kenya



The Ministry of Environment and Forestry, in consultation with stakeholders, is responsible for the overall formulation of all Government policies relating to the environment in Kenya, including policies for the protection and conservation of the natural environment, and for pollution prevention and control.²⁵ So far the Ministry has not formulated any policies specifically targeted to marine plastic pollution. However, there are general policy frameworks on waste management and protection of the marine environment that, by implication, cover plastic waste.

The National Environment Management Authority is the principal state agency responsible for the general supervision and coordination of implementation of all national government policies relating to the environment.²⁶ The Authority works in close collaboration with other regulatory state agencies (known as lead agencies that include, among others, Water Resources Authority Kenya Maritime Authority, Kenya Wildlife Service, and Kenya Fisheries

²³ For more information, Lake Victoria Basin Commission website. Available at <https://www.lvbcom.org/>.

²⁴ For more information, Nile basin Initiative website. Available at <https://www.nilebasin.org/>.

²⁵ Presidential Executive Order No. 1 of 2018 on the Organization of the Government of the Republic Kenya.

²⁶ Environmental Management and Co-ordination Act, No. 8 of 1999 (Rev. Ed. 2018). Section 9.

Service) and the county governments to ensure effective implementation, monitoring and enforcement of different environmental laws and regulations on general environmental management, waste management and marine resources protection and conservation.

Kenya's water resources law establishes the Water Resources Authority as the lead agency responsible for regulation of the management and use of water resources in the country. Its functions include, among others, formulation and enforcement of standards, procedures and regulations for the management and use of water resources. This mandate includes preventing and controlling pollution and enhancing the quality of the country's water bodies. In discharging its functions, the Water Resources Authority works closely with other state regulatory agencies and the county governments.²⁷

Regarding the marine environment, Kenya's maritime laws establish and designate the Kenya Maritime Authority as the lead agency responsible for, amongst other functions, ensuring the prevention of marine source pollution, protection of the marine environment and response to marine environment incidents.²⁸ The Kenya Maritime Authority works to ensure that threats and risks from ship and offshore installation source pollution as well as pollution from land-based sources are minimized so as to reduce the impact on the marine environment. It is within the mandate of the Kenya Maritime Authority, working in collaboration with other relevant agencies such as the National Environment Management Authority and Water Resources Authority to implement and enforce the existing regulations in order to control and prevent marine pollution from all sources including plastic waste.²⁹

Kenya's fisheries and wildlife laws also have provisions for conservation, management, development and protection of fisheries and wildlife resources within Kenya's maritime zone.³⁰ The lead agencies responsible for fisheries and wildlife, namely Kenya Fisheries Service and Kenya Wildlife Service, work in close collaboration with the agencies responsible for environmental and maritime affairs to monitor and prevent any pollution to the marine environment. This general mandate includes actions to prevent waste dumping (including plastic waste and fishing gear waste) into the marine environment. In this regard, the Kenya Fisheries Service and Kenya Wildlife Service work in collaboration with the Kenya Maritime Authority, National Environment Management Authority, Water Resources Authority, county governments, Beach Management Units established under the fisheries law and other organized community groups, private sector and non-governmental organizations, to monitor and enforce actions against all forms of pollution in the marine environment, including plastics pollution.

Besides the State agencies discussed above, Kenya's 47 county governments have within their responsibilities the function of refuse removal and solid waste disposal.³¹ The county governments may formulate county policies and laws for the efficient discharge of this

²⁷ Water Act, No. 43 of 2016.

²⁸ Kenya Maritime Authority Act, No.5 of 2006; Maritime Zones Act, No.6 of 1989 (Rev. 2012).

²⁹ The Environmental Management and Co-ordination (Prevention of Pollution in Coastal Zone and Other Segments of the Environment) Regulations, 2003 (Legal Notice No. 159/2003) governs marine pollution from ships, whereas the country's waste management regulations govern pollution from land-based sources.

³⁰ Fisheries Management and Development Act, No. 35 of 2016; Wildlife Conservation and Management Act, No. 47 of 2013.

³¹ The Constitution of Kenya (2010). Article 186 and Part 2 of the Fourth Schedule; The County Governments Act, No.17 of 2012 (Rev.2017). Section 5.

function. This function puts the county governments in a pedestal position to play a key role in ensuring that plastic waste and other forms of waste do not find their way into the marine environment. Some of the counties, for example, Nairobi City County, have put in place waste management laws applicable within their respective jurisdictions.³² However, most of the counties have not yet put in place the requisite environmental and waste management laws. Many of the counties are currently at different levels of development of the laws. Kisumu County, for example, has recently developed a draft environmental management bill that has a section dedicated to solid waste management.³³

4 Legal and Policy framework

For many years Kenya has struggled to find the appropriate legal and policy framework to deal effectively with the plastic waste menace. This is further elaborated in the subsequent sections below. The country's dilemma has always been the need to protect the environment and public health on the one hand and the need to promote industrialization and create employment on the other hand. Kenya's existing environmental management policies and laws do not expressly address marine plastic pollution. However, they do cover the topics of marine pollution, plastic waste and waste management in broad and general terms.

4.1 Overarching law or strategy

The Constitution of Kenya is the supreme law of the land. It outlines sustainable development as one of the national principles of governance in Kenya.³⁴ The Constitution guarantees every person in Kenya the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.³⁵ The Constitution also outlines several obligations of the State with respect to the environment including, the duty to "eliminate processes and activities that are likely to endanger the environment".³⁶ Although this obligation is stated in general terms, it can be broadly interpreted to include the duty of the State to ensure sound management of wastes, including plastic wastes, chemicals and other hazardous materials. The Constitution also puts a duty on every person to "cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources".³⁷ This provision implies that citizens are under a duty to cooperate with the State in the carrying out any lawful measures as may be necessary for environmental protection and conservation of natural resources, including measures for efficient waste management.

Kenya's overarching policy on environmental management is the National Environment Policy, adopted by Kenya's Parliament in 2013 as a framework for an integrated approach to planning, environmental protection and sustainable management of natural resources in the country. The Policy recognises that Kenya's coastal and marine ecosystems are under increasing pressure from threats such as poor waste management and pollution from land-

³² Nairobi City County Solid Waste Management Act, No.5 of 2015.

³³ Kisumu County Environmental Management Bill, 2019.

³⁴ Constitution of Kenya, 2010. Art. 10(2)(d).

³⁵ *Ibid.* Art. 42.

³⁶ *Ibid.* Art. 69(1)(g).

³⁷ *Ibid.* Art. 69(2).

based and maritime activities.³⁸ The Policy also recognises the challenge posed by high and increasing levels of waste generation despite efforts to encourage reuse, recycling and recovery, often resulting in degradation of the environment, including marine ecosystems. It therefore outlines various measures to be undertaken by the Government, including, amongst others, developing an integrated national solid waste management strategy, and promoting sustainable use of marine resources and the conservation of vulnerable coastal ecosystems.³⁹

Kenya also has an overarching national environmental law framework – the Environmental Management and Co-ordination Act – which provides for the management of various segments of the environment and natural resources.⁴⁰ The framework law makes no express reference to marine plastics or plastics in general. However, it has general provisions for measures to control and prevent pollution of the marine environment, as well as measures for sound management of waste. Such measures include, amongst others, the issuance of regulations to prevent, reduce and control pollution or other forms of environmental damage to the marine environment, as well as regulations for the handling, storage, transportation, segregation and destruction of waste.⁴¹ Pursuant to these provisions of the environmental law framework, the Government of Kenya has issued regulations aimed at sound management of waste and protection of the marine environment. These include:

1. Regulations for the prevention of marine pollution that require all ships in the territorial waters of Kenya to off-load all liquid and solid waste (including garbage, plastic waste, fishing gear waste and any other kind of waste) to the certified Port Waste Reception Facility at the Port of Mombasa.⁴²
2. Regulations for the management of all forms of solid waste in Kenya, including plastic waste. The regulations cover all stages of the waste life cycle.⁴³
3. Regulations for the management of wastewater and other effluents discharged into the aquatic/marine environment. The discharge and/or depositing of any polluting matter or effluent into any water bodies such as rivers, lakes or the sea is prohibited and is punishable by law. Effluent from sewage treatment works, industries or other point sources must comply with set standards before discharge into any water body.⁴⁴
4. Ban on manufacture, sale and use of plastic carrier bags and flat bags for domestic and commercial packaging in Kenya, effective 27 August, 2017.⁴⁵

Besides the framework environmental law and the subsidiary legislation made thereunder, Kenya has put in place several other sector-specific legislation for purposes of, not only implementing its international obligations under the various maritime and environmental

³⁸ Government of Kenya (2013). *National Environment Policy*. Part. 4.3.

³⁹ *Ibid.*

⁴⁰ Environmental Management and Co-ordination Act, No. 8 of 1999 (Rev. Ed. 2018).

⁴¹ *Ibid.* Sections 55(7) and 86(4).

⁴² Environmental Management and Co-ordination (Prevention of Pollution in Coastal Zone and other Segments of the Environment) Regulations, 2003 (Legal Notice No. 159/2003).

⁴³ Environmental Management and Co-ordination (Waste Management) Regulations, 2006 (Legal Notice No. 121/2006).

⁴⁴ Environmental Management and Co-ordination (Water Quality) Regulations, 2006 (Legal Notice No. 120/2006, Legal Notice No. 85/2012).

⁴⁵ Gazette Notice No. 2334/2017, 28 February 2017.

treaties and conventions that it is party to, but also for purposes of meeting domestic environmental objectives relating to marine pollution prevention and control.⁴⁶ Kenya's waste management, water, maritime, wildlife and fisheries management laws provide the framework for implementation of measures for prevention and control of pollution to the marine environment and response to marine environment incidents.

The Government of Kenya is also undertaking various policy and legislative reforms with a view to strengthening the governance framework for solid waste management in the country. As at the time of writing this report, there are on-going processes for the development of various policy and legal interventions including the draft Extended Producer Responsibility Regulations that aim at establishing mandatory extended producer responsibility schemes for different products including plastics.⁴⁷ Various county governments are also taking steps to put in place local waste management policies and laws. All these initiatives once concluded will have a bearing on how plastic materials and wastes are managed in the country with the potential of reducing plastic leakage into the marine environment.

4.2 Production

Over the years, the only plastic items for which Kenya has attempted to regulate or control the production are plastic carrier bags and flat bags. This is because plastic carrier bags have, for many decades, posed the greatest challenge to solid waste management in the country, with serious environmental and public health threats.⁴⁸ The regulation and control of production of these items has taken various forms, from ban on manufacture of carrier bags of thickness of less than 30 microns and imposition of hefty excise tax on plastic carrier bags, to total ban on manufacture of plastic carrier bags and flat bags. These measures have been implemented with mixed successes. In addition, new standards have recently been adopted for recycled plastic packaging materials. All these measures are discussed in more detail below. Ban on manufacture of plastic carrier bags of thickness of less than 30 microns and imposition of hefty excise tax on plastic carrier bags.

One of the earliest legislative interventions on plastic waste management in Kenya dates back to the year 2008 when the country banned the importation, manufacture and distribution of plastic carrier bags of thickness of less than 30 microns and, simultaneously, imposed excise tax of 120 per cent on plastic carrier bags.⁴⁹ This double intervention was meant to: ensure that any plastic materials in the Kenyan market would be recyclable; make plastic carrier bags more costly hence reduce demand for carrier bags, thereby reducing the amount of plastic waste leaking into the environment; and raise additional revenue to be channelled towards plastic waste management. However, the tax intervention was very short-lived, lasting only about three months, as the plastics manufacturers' lobby under the auspices of the Kenya Association of Manufacturers managed to convince the Government to reduce the same to 50 per cent in order to protect local manufacturing companies and avoid job losses. The

⁴⁶ The relevant sector-specific national laws include: Maritime Zones Act (No. 6 of 1989), Merchant Shipping Act (No.4 of 2009), Kenya Maritime Authority Act (No.5 of 2006), Water Act (No.43 of 2016), Wildlife Conservation and Management Act (No.47 of 2013), and Fisheries Management and Development Act (No. 35 of 2016).

⁴⁷ Ministry of Environment and Forestry (2020). Public Notice, Extended Producer Responsibility (EPR) Regulations 2020.

⁴⁸ Oyake-Ombis, L. *et al.* (2015). Managing Plastic Waste in East Africa: Niche Innovations in Plastic Production and Solid Waste, *Habitat International* 48:188-197.

⁴⁹ Finance Act, No. 8 of 2008.

restriction on thickness also did not have much impact due to inefficient monitoring and enforcement capacity within the relevant state agencies such as the National Environment Management Authority and Kenya Bureau of Standards, coupled with a severely underdeveloped recycling sector in the country.⁵⁰

Despite the previous failed attempt at regulating and controlling the production of plastic carrier bags, Kenya has recently banned the use, manufacturing or importation of plastic carrier bags and flat bags used for domestic and commercial packaging. In order to effectively deal with the menace caused by plastic carrier bags, the Cabinet Secretary (Minister), responsible for matters relating to the environment and natural resources, banned, with effect from 28th August 2017, the use, manufacture and importation of all plastic carrier bags and flat bags used for commercial and household packaging.⁵¹

Whereas the Notice outlining the ban does not contain much detail on the scope of the ban, the National Environment Management Authority and the Ministry of Environment have published guidelines to give effect to the same – a set of answers to Frequently Asked Questions – that explains the scope of the ban, among other issues. For example, the guidelines specify that plastic materials used for industrial primary packaging are exempted as long as they are used for industrial primary packaging at the source of the product and are not available on sale at the counter or given freely outside the industrial setting. Disposal bags for handling of biomedical and hazardous waste and garbage bin liners are also exempted from the ban, subject to clearance by National Environment Management Authority, and provided that they are clearly labelled with the name of the entity manufacturing the product and the end-user. Also exempted are plastic carrier bags in duty free shops as long as they are only available for use within the duty free shops and not available for sale or use within the Kenyan market.⁵²

On sanctions for violations, the Notice banning plastic carrier bags and flat bags does not specify the penalty for contravention of the provisions thereof. However, in line with provisions of the framework environmental law, the general penalty prescribed for violation of any measure prescribed under the Act applies, i.e., upon conviction by a court of law, to imprisonment for a term of not less than one year but not more than four years, or to a fine of not less than two million Kenyan shillings (approximately USD 20,000) but not more than four million Kenyan shillings (approximately USD 40,000), or to both such fine and imprisonment.⁵³ So far several offenders have been arrested in different parts of the country, prosecuted under Kenya's criminal law system, convicted and imprisoned or fined for violation of the ban.⁵⁴ This situation has created a high level of deterrence among the general public resulting in notable success of the ban. This success is evident on the ground as no business outlet currently publicly dispenses plastic carrier bags, whether for free or for sale. Streets and public places are also now cleaner, evidently free of plastic carrier bags litter. Media reports have also

⁵⁰ National Environment Management Authority (2011). *Kenya State of Environment and Outlook, 2010*.

⁵¹ Gazette Notice No. 2334/2017, 28 February 2017.

⁵² National Environment Management Authority. *Effecting the gazette notice on the ban on plastic bags*.

⁵³ Environmental Management and Co-ordination Act, No. 8 of 1999 (Rev. Ed. 2018). Sections 140(b) and 144.

⁵⁴ See, for example, *D O v Republic* [2018] eKLR (HC). In this case the accused person was convicted, on a guilty plea, of the offence of being in possession of flat plastic bags contrary to the law and was sentenced to serve one year in prison. He served 3 months in prison but successfully applied for review in the High Court and was placed on probation for 6 months from the date of release.

highlighted the issue on numerous occasions.⁵⁵ However, there are still some pockets of illegal imports of carrier bags from Kenya's neighbours such as Somalia, Tanzania and Uganda.⁵⁶

Kenya has also recently, in 2019, adopted various standards for recycled plastic packaging materials with a view to not only protecting public safety and health but also to ensure environmental protection.⁵⁷

4.3 Trade and transport

The notice on the ban of plastic carrier bags and flat bags in Kenya specifically prohibits the use, manufacture and importation of all such bags used for commercial and household packaging. Even though the notice is silent on the trade in and transportation of such bags, the implementation of the ban was extended to these aspects of trade and transportation of the plastic carrier bags and flat bags. Other than the ban on plastic carrier bags and flat bags, there are no regulations regarding trade or transportation of other types of plastic items.

4.4 Retail and consumer use

Currently, the regulation and control of retail and consumer use of plastic items only covers plastic carrier bags and flat bags, and plastic bottles and straws as described in more detail below.

4.4.1 *Ban on sale and use of plastic carrier bags and flat bags*

The notice on the ban of plastic carrier bags and flat bags in Kenya specifically prohibits the use, manufacture and importation of all such bags used for commercial and household packaging. Although the notice is silent on retail or sale of such bags, the implementation of the ban was extended to cover retail or sale of such bags throughout Kenya. This wide interpretation by the enforcers is intended to ensure that the plastics bags menace in Kenya is comprehensively dealt with despite the shortcoming in the text of the ban.⁵⁸

4.4.2 *Ban on use of plastic bottles and straws in wildlife parks, reserves and conservation areas*

Kenya's wildlife law - Wildlife Conservation and Management Act - designates national parks, reserves and conservation areas for purposes of protection, conservation, sustainable use

⁵⁵ See, for example, Kimani, S. (22 August 2018). *Looking back on success of Kenya's ban on plastic bags*. Available at <http://www.sabcnews.com/sabcnews/looking-back-on-success-of-kenyas-ban-on-plastic-bags/> (accessed 11 March 2020); Koizumi, H. (5 August 2018). *Kenya's strict law banning onetime use plastic bags sees some success*. Available at <https://mainichi.jp/english/articles/20180804/p2a/00m/0na/032000c> (accessed 11 March 2020).

⁵⁶ Interview with Robert Orina, NEMA-Kenya Chief Environmental Enforcement Officer, 3 February 2020.

⁵⁷ These Standards include: KS ISO 16103:2005 Kenya Standard — Packaging — Transport packaging for dangerous goods — Recycled plastics material, First Edition; KS ISO 16495:2013 Kenya Standard — Packaging — Transport packaging for dangerous goods — Test methods, First Edition; KS ISO 18616-1:2016 Kenya Standard — Transport packaging — Reusable, rigid plastic distribution boxes — General purpose application, First Edition; KS ISO 18616-2:2016 Kenya Standard — Transport packaging — Reusable, rigid plastic distribution boxes — General specifications for testing, First Edition.

⁵⁸ *Ibid.*

and management of wildlife resources, both inland and within Kenya's maritime zone.⁵⁹ In exercise of the powers conferred under the Act, the Cabinet Secretary (Minister) in charge of wildlife has recently banned the use of plastic bottles, straws and related products in all national parks, national reserves, conservation areas and any other wildlife designated areas. The ban will take effect on the 4th of June 2020.⁶⁰ Whereas the ban is clear on plastic bottles and straws, it is not clear what is covered under "related products".

4.5 End of life (including recycling, waste management and clean-up)

End of life is the most regulated segment of the plastics life cycle in Kenya as, at this point, plastics are essentially waste. This tight regulation is intended to ensure that waste transporters and waste disposal facilities operate in an environmentally friendly manner, and that all regulatory conditions imposed in that regard are monitored and complied with. Below is a detailed description of the existing controls on waste plastics.

In order to implement the measures on solid waste management outlined in the National Environment Policy, Kenya developed the National Solid Waste Management Strategy in 2015. The objective of the Strategy is to guide sustainable solid waste management in the country so as to ensure a healthy, safe and secure environment for all. The Strategy has adopted the principle of integrated solid waste management with the hierarchy of waste management options being, from the least preferred to the most preferred: landfills, waste treatment, and waste to energy, recycling and composting, reuse and reduction. The long term goal of the strategy is to achieve, by 2030, at least 80 per cent waste recovery (recycling, composting and waste to energy) and 20 per cent disposal of inert materials in a sanitary landfill. Achieving this goal would result in a significant reduction of plastic waste that enters the environment.⁶¹ The Strategy places key responsibilities for implementation upon the respective 47 county governments. However, the majority of the counties are faced with challenges ranging from absence of relevant legislation for solid waste management to lack of capacity and resources to implement sound waste management practices. The challenges of implementation are discussed in more detail in section 5 of this report. As a result of these challenges, implementation of the National Solid Waste Management Strategy is very slow.

Another relevant policy is Kenya's Integrated Coastal Zone Management Policy that was adopted by Parliament in 2014.⁶² The Policy aims at providing a framework for conservation of the country's coastal and marine resources and environment for sustainable development. The Policy not only recognises the significant contribution of coastal and marine resources to the country's economy but also acknowledges that high densities of plastic waste threaten the coastal and marine ecology, hence the need for policy interventions to address the same.⁶³ The interventions proposed in the Policy include actions by the national government to empower county (local) governments to effectively manage waste and mitigate environmental pollution.⁶⁴ The national government has also committed in the Policy to prevent all forms of pollution to the marine environment, including marine plastics pollution, by effectively

⁵⁹ Wildlife Conservation and Management Act, No. 47 of 2013.

⁶⁰ Gazette Notice No. 4858, 5 June 2019.

⁶¹ National Environment Management Authority (2015). *The National Solid Waste Management Strategy*.

⁶² Government of Kenya (2014). *Integrated Coastal Zone Management Policy*.

⁶³ *Ibid.* Part. 4.3.5.

⁶⁴ *Ibid.*

managing waste, promoting public awareness on good waste management practices, and enforcing existing waste management and pollution prevention regulations.⁶⁵ The Policy complements Kenya's Shoreline Management Strategy which divides the country's ocean coastline into 29 sedimentation cells for purposes of putting in place targeted management measures to reduce risks of flooding, erosion, accretion, pollution by waste deposition (including plastic waste), and costal destabilization.⁶⁶ The Policy is yet to be fully implemented and most of its proposed interventions are yet to be realized due to various factors that are discussed in more detail in section 5 under the 'implementation challenges'.

4.5.1 Requirements on waste generators

Kenya's framework environmental law and waste management regulations place the primary responsibility for waste management upon the waste generator, that is, any person whose activities or activities under whose direction produces waste or, if that person is not known, the person who is in possession or control of the waste.⁶⁷ This definition of 'waste generator' covers not only individuals but also households, institutions, business and industrial enterprises, which generate any form of waste.

Under the framework environmental law, all persons whose activities generate waste, i.e. manufacturers and users, are required to put in place necessary measures to minimize such waste through treatment, reclamation and recycling.⁶⁸ Similar obligations are outlined under the waste management regulations whereby every owner or operator of a facility that generates waste is required to adopt cleaner production principles such as improvement of production processes and monitoring the product cycle from beginning to end – all with a view to reducing toxic waste emissions and enabling waste recovery, reclamation, re-use and recycling. In addition, all waste generators are required to segregate the waste as either hazardous or non-hazardous, and to dispose of the same in designated waste receptacles.⁶⁹ Other relevant laws at county government level, for example the waste management law of the Nairobi City County, require further waste segregation in terms of the following categories: organic, plastics, paper, or metals.⁷⁰

Contravention of any obligation placed upon waste generators constitutes an offence that attracts criminal sanctions under the relevant laws. In the case of the framework environmental law and national waste management regulations, for example, any person who violates the requirements is guilty of an offence and is liable, upon conviction by a court of law, to imprisonment for a term of not more than two years or to a fine of not more than one million Kenyan Shillings (approximately USD 10,000) or both such imprisonment and fine.⁷¹ Under the Nairobi City County law, however, the punishment prescribed is either imprisonment for a term not exceeding 3 years or a fine not exceeding three hundred thousand Kenyan Shillings (approximately USD 3,000), or both such fine and imprisonment.⁷²

⁶⁵ *Ibid.*

⁶⁶ National Environment Management Authority (2010). *Kenya Shoreline Management Strategy*.

⁶⁷ Waste Management Regulations, 2006 (Legal Notice No. 121/2006). Regulation 2.

⁶⁸ Environmental Management and Co-ordination Act, No. 8 of 1999 (Rev. Ed. 2018). Section 87(4).

⁶⁹ Waste Management Regulations, 2006 (Legal Notice No. 121/2006). Regulations 5 and 6.

⁷⁰ Nairobi City County Solid Waste Management Act, No. 5 of 2015. Section 25(1).

⁷¹ Environmental Management and Co-ordination Act, No. 8 of 1999 (Rev. Ed. 2018). Section 87(5).

⁷² Nairobi City County Solid Waste Management Act, No. 5 of 2015. Section 25 (4).

In practice, however, waste segregation is only implemented to a large extent by business enterprises such as manufacturing companies and institutions such as hospitals that usually separate their waste as either hazardous or non-hazardous. The author is of the view that in those cases, monitoring and enforcement is fairly strong due to the relative ease of targeting and reaching these sectors by the regulatory agencies. But at household level, in all the counties, waste is largely not segregated as only one bin is provided by the waste collectors/transporters in instances where collection services exist, especially in the middle and upmarket residential areas in cities towns. In yet other instances, no bins are provided by the waste collectors/transporters and households have to provide one by themselves where all forms of waste are disposed. In low-income settlements in the cities and towns, collection services are mostly non-existent and residents either burn their waste in the open or dump the waste on streets, roadsides, storm drains, rivers/riverbanks and other open spaces. But in a few instances, waste collection in these low income settlements is carried out by organized groups such as youth groups and other community based organizations that use carts to remove the waste from the settlements to collection points where they are either burnt in the open or picked by county government waste service providers. In the rural areas, the predominant means of waste disposal are open burning, dumping in pits and composting. In all these instances, enforcement of the waste segregation requirements at household level is virtually lacking. In the few instances where households segregate the waste at source, it is either not done properly or, even if properly done, the waste collectors still mix up all the different types of waste at the point of collection/transportation thus beating the purpose of segregation. For this reason, recyclable waste materials such as plastics, paper, glass and metals end up in the same bin and at the same disposal site as compostable materials such as garden waste and food waste.

4.5.2 *Prohibition of littering*

Littering is prohibited in Kenya and is punishable by law. Even before the enactment of Kenya's framework environmental law in 1999, many local authorities (now defunct since the enactment of a new Constitution in 2010) had in place some by-laws that prohibited littering. Today, the framework environmental law, as well as the national waste management regulations prohibit the disposal of any kind of waste on any public highway, street, road, recreational area, land or in any public place not approved for such disposal.⁷³ Violation of the littering provisions constitute a criminal offence that attracts, upon conviction by a court of law, a fine not exceeding two hundred thousand Kenyan Shillings (approximately USD 2,000) or imprisonment for a period not exceeding two years, or both such fine and imprisonment.⁷⁴ Some county governments have also put in place anti-littering provisions in their respective waste management laws. For example, Nairobi City County's waste management law prohibits the dumping of any solid waste in any place other than a designated waste disposal receptacle.⁷⁵ As already mentioned in the preceding sections, many of the remaining 46 counties are currently in the process of developing their environmental/waste management laws that have equivalent prohibitions on littering. Kisumu County's draft environmental

⁷³ Environmental Management and Co-ordination Act, No. 8 of 1999 (Rev. Ed. 2018). Section 87(1); Waste Management Regulations, 2006 (Legal Notice No. 121/2006). Regulation 4(1).

⁷⁴ Nairobi City County Solid Waste Management Act, No. 5 of 2015. Sections 36 (2) and (3).

⁷⁵ *Ibid.*

management law, for example, has provisions that, if passed by the County Assembly, will prohibit littering.⁷⁶

The littering prohibition is an important tool for controlling the proliferation of plastic waste in public streets, wastewater drains and other public places, and goes a long way in controlling plastic waste that enters the marine environment. However, enforcement of this prohibition still remains a challenge throughout the country and it is not uncommon to see litter strewn on streets and roadsides in major cities, towns, market centres and other public places.

4.5.3 Requirements on waste transporters and waste disposal sites

All waste transporters in Kenya must be licenced by the National Environment Management Authority to operate. The waste transportation vehicle must also be approved by the Authority as meeting the purpose for the type of waste to be transported. In the case of municipal waste which includes plastics, for example, the vehicle must be constructed in such a way as to prevent waste scattering/littering during transportation.⁷⁷

All sites and facilities for treatment, recycling or disposal of waste must also obtain a licence to operate from the National Environment Management Authority, in addition to any other relevant licence that may be required under any relevant county government laws. Prior to setting up, such facilities must also undertake an Environmental Impact Assessment (EIA) and obtain an EIA licence from the Authority. Such facilities must also submit to the Authority annual environmental audits on their operations.⁷⁸ These provisions apply to all facilities including, for example, those established for the recycling of plastic waste.

4.5.4 Prohibition of waste dumping in the ocean/sea

Kenya's maritime laws, wildlife law and fisheries law have provisions for conservation, management, development and protection of marine, fisheries and wildlife resources within Kenya's maritime zone.⁷⁹ The laws prohibit any form of pollution of the marine environment. This general prohibition can be broadly interpreted to include prohibitions on waste dumping (including plastic waste and fishing gear waste) into the marine environment.

4.5.5 Voluntary take-back and recycling scheme

Following the ban on plastic carrier bags and flat bags, the government made public pronouncements to the effect that it was considering to build on the momentum and public support created by the ban to also regulate the use of polyethylene terephthalate (PET) bottles. The prospect of such regulation and its potential implications on the manufacturing sector led to the establishment of a joint framework of intervention for PET bottles that brought together the Kenya Association of Manufacturers and Ministry of Environment and Forestry. The result of this intervention was the incorporation in 2018 of the Kenyan PET Recycling

⁷⁶ Kisumu County Environmental Management Bill, 2019.

⁷⁷ Environmental Management and Co-ordination (Waste Management) Regulations, 2006 (Legal Notice No. 121/2006). Regulations 7 and 8.

⁷⁸ *Ibid.*; Environmental Management and Co-ordination (Impact Assessment and Audit) Regulations, 2003 (Legal Notice No. 101 of 2003).

⁷⁹ Fisheries Management and Development Act, No. 35 of 2016; Wildlife Conservation and Management Act, No. 47 of 2013; Kenya Maritime Authority Act, No. 5 of 2006; Maritime Zones Act, No. 6 of 1989.

Company (trading as PETCO) as the plastic industry's joint effort to self-regulate post-consumer PET recycling. The company is projecting itself as Kenya's industry body for manufacturers and retailers of plastic bottled goods to come together to raise awareness on and promote the recycling of PET bottles. PETCO has so far established five drop-off points for PET bottles in major shopping malls in Nairobi city where consumers can drop off used PET for recycling, with near term plans to set up more of such drop-off points at other major retail outlets, fuel stations and in residential areas in the city.⁸⁰

PETCO is a voluntary industry-led self-regulation scheme. Kenya currently does not have any law on extended producer responsibility (EPR) that would compel producers to take back end of life products such as PET. However, there are on-going efforts by the Ministry of Environment and Forestry to put in place regulations that will create mandatory extended producer responsibility schemes for all products and packaging (including plastic products and packaging) in all phases of their life cycle to enhance environmental sustainability. The draft Extended Producer Responsibility Regulations were published by the Ministry on 4th May 2020 for public review and comments until 6th June 2020.⁸¹ After incorporating the received comments, it is expected that the draft regulations will be submitted to the State Law Office for further processing and onward transmission to Parliament for possible legislation.

The Kenya Association of Manufacturers has also published, in November 2019, an industry led Kenya Plastic Action Plan whose focus is to promote a circular economy. The Action Plan proposes the establishment of an Extended Producer Responsibility scheme that is fully financed through mandatory membership of all enterprises in Kenya that use plastic packaging materials.⁸²

5 Gaps and challenges

There are both design and implementation gaps and challenges in the various laws relating to plastic pollution in Kenya.

5.1 Design gaps and challenges

5.1.1 Lack of consensus on legislative design for marine plastics control

Kenya's current environmental, natural resources, waste management and maritime laws contain general and broad provisions on solid waste management and other measures for preventing pollution of the marine environment. Marine plastics are an emerging yet important component within the broader waste management domain but there is generally no consensus among key players in Kenya today on whether or not the broad solid waste management and marine pollution prevention provisions are adequate to effectively address the threat of plastics. One side of the argument, fronted mainly by environmentalists and regulatory agencies, is that having regulations and/or clauses within the law that target plastics specifically would single out and elevate the plastic waste issue to higher attention for better

⁸⁰ For more information PETCO website. Available at <https://www.petco.co.ke/>.

⁸¹ See Draft Environmental Management And Co-Ordination (Extended Producer Responsibility) Regulations, 2020.

⁸² Kenya Association of manufacturers (2019) . Kenya Plastic Action Plan: Accelerating a Circular Economy in Kenya.

management and enforcement. The other side, fronted mainly by the Kenya Association of Manufacturers, however, argues that plastics are already covered within the broad provisions of the existing legal frameworks and that effective implementation and enforcement of current laws and regulations would deliver sufficient results to prevent plastics from entering the marine environment. These arguments have been at play in recent months following proposals by National Environment Management Authority to have standalone regulations on plastic bags control and management. The draft regulations have been published and are now open to public comments.⁸³ But the Kenya Association of Manufacturers is advancing a self-regulation mechanism instead of government regulation. The Association's, working with other stakeholders has seen the establishment of the Kenyan PET Recycling Company (PETCO), and development of the Kenya Plastic Action Plan as already discussed in more detail in section 4.5.5.

5.1.2 Lack of clarity on the scope of the ban on plastic carrier bags

The notice in the Kenya Gazette banning, with effect from the 28th of August 2017, the use, manufacture and importation of all plastic bags used for commercial and household packaging remains, to date, Kenya's single most radical measure to tackle the menace of plastics pollution. However, the notice lacks of clarity on the scope of the ban.

Whereas the ban does not provide for any exemptions to any kinds of plastic carrier and flat bags, the National Environment Management Authority has issued guidelines published on its website, the effect of which has been to grant conditional exemptions to the following types of plastic packaging: plastic bags used for primary industrial packaging, plastic bags used in duty free shops, bio-medical waste and hazardous waste liners, garbage liners, and cling / stretch films used for wrappings.⁸⁴ Considering the poor state of waste management in the country and the lack of a legally mandated Extended Producer Responsibility scheme, the exemption on primary packaging, waste bin liners and cling/stretch films creates a gap for leakage of these types of plastics into the environment.

Whereas the notice bans the use, manufacture and importation of all plastic carrier bags and flat bags used for commercial and household packaging, it is silent on possession, transportation, distribution, retail/sale and exportation of such bags. Despite this shortcoming, the implementing and enforcement agencies have interpreted the ban to include all these elements. There is no guiding document in place for this blanket interpretation, yet individuals have been arrested, prosecuted, convicted and punished for 'violation' of all these elements that are not provided for in the notice.⁸⁵ This interpretation has so far not been challenged, but it may be open to legal challenge in a court of law where, for example, an aggrieved party (e.g. an accused person/defendant) may seek the interpretation of the High Court as to whether the additional elements outside of the notice constitute an offence or not. Should the High Court rule in the negative, this will have far-reaching implications on the ban.

⁸³ See Draft Environmental Management and Co-ordination (Plastics Bags Control and Management) Regulations, 2018.

⁸⁴ See National Environment Management Authority website Plastic Bags Ban portal. Available at https://www.nema.go.ke/index.php?option=com_content&view=article&id=102&Itemid=121 (accessed 11 March 2020); National Environment Management Authority. *Effecting the gazette notice on the ban on plastic bags*.

⁸⁵ See *D O v Republic* [2018] eKLR (HC). The offence in question was possession of flat plastic bags contrary to the law.

The above stated challenges could be addressed by better legislative and regulatory design and drafting that comprehensively captures all the intended elements of the ban in a way that ensures certainty of expectations, compliance and enforcement. Alternative approaches to the solving the problem such as through education and incentive schemes rather than through bans also ought to be considered and, where a ban is deemed to be most viable option, availability and cost of sustainable alternatives to the banned products should be taken into account in order minimize resistance by the affected stakeholders.

5.1.3 *Lack of clarity on the scope of the ban on plastic items in wildlife parks, reserves and conservation areas*

The notice in the Kenya Gazette banning, effective from the 4th of June 2020, the use of plastic bottles, straws and related products in all national parks, national reserves, conservation areas and any other wildlife designated areas, does not specify which plastic items are covered by the phrase “and related products”. This lack of clarity will definitely pose some implementation and enforcement challenges once the ban takes effect. In particular, the difficulty of enforcement will be with respect to plastic items other than plastic bottles and straws – which ones will be allowed and which ones will not? How far will the interpretation go? And what guiding principles will apply? All these questions require answers in order to make the ban more easily enforceable.

5.2 Implementation gaps and challenges

5.2.1 *Inadequate waste management capacities*

Under Kenya’s constitutional framework, waste management, especially with respect to collection and disposal, is a function of the respective County Governments.⁸⁶ However, all the counties have serious capacity challenges to deliver this mandate. In all the counties including the capital city, Nairobi, the systems for waste collection and disposal are very inefficient due to various factors such as inadequate facilities for waste collection, transportation and disposal, and low public awareness on good waste management practices.⁸⁷ The bulk of the waste generated thus remains uncollected, finding its way into wastewater drains, streams and rivers, and eventually into lakes and the ocean. As already discussed in more detail in this report, waste separation at source is generally not practiced save for the case of large business enterprises such as manufacturing companies and institutions such as hospitals despite the existing legal requirement for this.⁸⁸ In addition, Kenya’s counties do not have sanitary landfills – what they have are open dumpsites that are often very poorly managed. Nairobi, for example, has the Dandora dumpsite as the designated solid waste disposal area for all waste other than hazardous waste.⁸⁹ There are also differential – sometimes discriminatory – waste collection regimes especially in urban areas where the county governments and licenced commercial waste collectors provide services to

⁸⁶ The Constitution of Kenya (2010). Part 2 of Fourth Schedule.

⁸⁷ Ong’unya, R.O. *et al.* (2014). The Plastic Waste Menace in Kenya: A Nairobi City Situation. *International Journal of Current Research* 6(4):6175-6179.

⁸⁸ *Ibid.*

⁸⁹ Kimani, M.W., Njoroge, B.N.K., Ndunge, D. (2014). Review of Municipal Solid Waste Management: A Case Study of Nairobi, Kenya. *Research Inventory: International Journal Of Engineering And Science* 4(2):16-20.

the affluent neighbourhoods while poorer areas, especially the slums are left without any structured service.⁹⁰

5.2.2 *Poor coordination among relevant state agencies*

The author is of the opinion that despite the existing legally mandated institutional framework for marine pollution prevention and control envisaging inter-agency cooperation, there are still challenges with respect to delineation of roles, especially in instances requiring response to given marine pollution incidents. Often, competition among responsible institutions sets in, while in other instances institutions sit back, waiting for the other complimentary institutions to respond to the incident.

5.2.3 *Inadequate capacity for monitoring and enforcement*

Most of the national and county government agencies and departments responsible for waste management and/or prevention of marine plastics pollution lack sufficient resources to enable them effectively discharge their legal mandates. Most of these agencies and departments are lowly funded hence lack sufficient human resources, monitoring and surveillance equipment and techniques as well as funds for general operations. As such, many of these institutions undertake reactive enforcement – responding to reported pollution incidents – rather than preventive interventions.

5.2.4 *Low public awareness*

Enhanced public awareness can generate positive behaviour change regarding plastic waste management. . The majority of Kenyans are not aware of the country's environmental laws and their obligations to protect and safeguard the environment. Because large segments of the population are not aware of the law and the perils associated with plastic materials and waste, their attitude towards effective management of the same is often unreceptive. The plastics carrier bags ban, for example, initially received strong opposition from not only the plastics manufacturers and traders but also from large sections of the citizenry. It is only due to the persistence of the government, backed by a judiciary that stood up for the environment, that the ban was eventually able to take effect.⁹¹

⁹⁰ *Ibid.*

⁹¹ See, for example, *Kenya Association of Manufacturers & 3 others v Cabinet secretary, Ministry of Environment and Natural Resources & 3 others* [2018] eKLR. The court upheld the plastics bags ban despite strong opposition from Kenya Association of Manufacturers.



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