



MARPLASTICCS | Webinar | 28 July 2020

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

Exchange of perspectives to define priorities

Report | IUCN Environmental Law Centre



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1 Context of the webinar

1.1 Background and overview

In the context of the Marine Plastics and Coastal Communities Project (MARPLASTICCs), the International Union for Conservation of Nature (IUCN) Environmental Law Centre (ELC) has conducted a review of the legal, policy and institutional frameworks governing marine plastic pollution in Kenya with the support of a national legal expert. This study is part of a larger framework analysing marine plastic policy in five countries, namely: Kenya, Mozambique, South Africa, Thailand and Viet Nam.

Exchange workshops were scheduled to take place in each of these countries in order to share the findings of the study and gather information to identify priorities with government stakeholders, NGOs, consumer associations and the private sector. However, due to the Covid-19 travel restrictions, the workshops were replaced by a two-stage process: 1) a stakeholders' questionnaire to collect preliminary answers to key questions related to marine plastics governance and validation of the scoping study and 2) a webinar that would allow stakeholders to discuss the results from the questionnaire and get additional insights.

As a result, a webinar was organised on 28 July 2020, co-hosted by the Ministry of Environment and Forestry and the National Environmental Management Agency, which welcomed 37 participants from the above-mentioned stakeholders' categories.

All presentations held during the workshop and relevant documents are available [here](#).

In addition, the webinar can be watched [here](#), (password: 0GOd#=7^)

1.2 Webinar objectives

The webinar aimed at identifying the priorities for an improved governance of plastic in Kenya in order to tackle marine plastic pollution. More specifically:

- ⇒ Enable the participants to have a better understanding of the legal, policy and institutional frameworks and tools related to marine plastics;
- ⇒ Provide opportunity for participants representing different stakeholders' categories to exchange perspectives, experiences and knowledge; and
- ⇒ Identify the most appropriate tools to tackle marine plastic pollution in Kenya from the input of stakeholders and aligned with the hotspot analysis.

2 Webinar proceedings

2.1 Contextualization

In his opening remarks to the workshop Mr. Edward Wabwoto, Senior Legal Officer at the National Environment Management Authority (NEMA), shared experiences from NEMA regarding implementation of various policies to address plastic pollution and challenges encountered.

Mr. Juan Manuel Sabio Morchio, Legal Officer at the IUCN ELC, highlighted the objectives of the webinar, gathering stakeholders to exchange on the topic of marine plastic governance and identify legal tools that would assist in the development of in-depth policy effectiveness assessments.

2.2 Presentation of the update on the hotspot analysis

Mr. Peter Manyara, Regional Project Officer, MARPLASTICCs in IUCN Eastern and Southern Africa Regional office (ESARO) - Coastal and Ocean Programme, presented an update, including preliminary results, of the hotspot analysis conducted by the MARPLASTICCs project in Kenya.

The MARPLASTICCs project is implemented in the Western Indian Ocean (WIO) region, and specifically has activities in Kenya, Mozambique, and South Africa. More recently, IUCN has initiated a national level plastics hotspot assessment in Tanzania to complement a broader regional understanding of the plastic pollution problem in the region. The objective of the project is to assess the dynamics of plastic leakage in the countries followed by a cost-benefit analysis, both of which are intended to inform appropriate policy and other options to address the issue. Beyond that, the project also aims at engaging stakeholders to prioritise areas to address (hotspots), strategic interventions to pursue, and align through a common set of policy and other instruments, as a basis for action and monitoring future progress.

The hotspot methodology was developed by UNEP and IUCN. The methodology is currently applied in seven countries by IUCN, including Kenya. The methodology comprises data collection to define priority hotspots, engaging stakeholders to prioritize the hotspots and determine appropriate interventions and instruments to facilitate swift action within the Kenyan context.

The preliminary results highlight that almost all plastics consumed in Kenya are imported (in products or virgin). About 28% of the plastic waste generated in the country is collected, of which 8% is recycled and 20% disposed of in unsanitary landfills or dumpsites. Currently, Kenya does not have a single sanitary landfill.

The intention of the assessment is to analyse leakages categorized into five hotspot areas (regional/geographical, waste management value chain, plastic polymer, plastic applications/uses, and economic sectors). In this regard, a complete assessment will be published within the next two months providing a more comprehensive overview, of which stakeholders will be invited to share the results. Once these are assessed, interventions are to be identified, preferably through either a proactive or a reactive approach. Based on the assessment, the interventions were arranged following their impacts in terms of leakage mitigation potential. For instance, increasing the frequency and extent of street sweeping to collect and properly dispose of littered waste is not a difficult intervention, yet it has a very high potential for mitigation.

Prior to this webinar, a preliminary list of interventions had been identified by stakeholders during the preliminary national plastic hot spotting results presentation workshop held in March 2020, though it is appreciated that such feedback is not representative given the small sample size of stakeholders.

The final results of the hotspot analysis will be presented on the occasion of another workshop planned towards the third quarter or fourth quarter of the year.

2.3 Presentation of the legal, policy and institutional frameworks governing marine plastics in Kenya

Mr. Opondo Gerphas, Environmental Lawyer from Kenya, then presented the results of the scoping study that he conducted as part of the policy component of the MARPLASTICCs project, supported by IUCN ELC.

It can be stated that Kenya is highly dependent on its marine resources through the fisheries and agriculture sectors. The plastic sector or industry also contributes to the national economy. In terms of waste management, plastic waste has been a challenge but over the years, the country has taken some steps to address the situation.

Kenya is party to a number of relevant international conventions such as UNCLOS, MARPOL, the Basel Convention and the London Protocol of 1996. Regional conventions include the Nairobi Convention and its specific protocol focused on land-based sources of pollution. The African Union also developed Africa's Integrated Maritime Strategy (2050 AIM Strategy), as well as other instruments that Kenya is party to through its membership of the East Africa Community (EAC).

Domestic legislation comprises a number of legal instruments including overarching policies and strategies such as the National Environment Policy that ensures protection and conservation of the environment. Plastic waste management is, however, regulated under the global waste management regulatory framework.

Kenya's governance framework is divided between the national and the county governments. Waste management responsibility falls within the mandate of the 47 county governments. The Nairobi City county already has a Waste Management Act and several counties are currently developing similar legislation.

The institutional framework is led by the Ministry of Environment and Forestry for policy formulation, NEMA plays a coordination and supervisory role as well as monitoring and enforcement.

The tools for addressing plastic pollution on the production leverage points consist of a ban on the manufacturing of carrier bags and flat bags. In addition, another interesting regulation on the consumer use leverage point is the recent ban on use of plastic bottles and straws in wildlife parks, reserves and conservation areas.

With regards to end-of-life, there are requirements on waste generators, a prohibition of littering and requirements on waste transporters and disposal sites. There is also a prohibition of waste dumping in the ocean and voluntary take-back mechanisms or recycling schemes have been put in place.

PET is not regulated in the country but following the successful implementation of the ban on plastic carrier bags, the government is considering the possibility of extending the ban to PET products.

Finally, Kenya's regulatory framework is facing certain gaps and challenges linked to the design of regulations or their implementation. In this regard, a number of legal reforms are currently being considered by the government including, the Draft Extended Producer Responsibility Regulations and the Draft Plastic Packaging Materials Control and Management Regulations.

2.4 Presentation of the policy questionnaire results

Mr. Juan Manuel Sabio Morchio then presented the results from the survey that was sent to stakeholders ahead of the webinar.

He first presented the process that was followed, including the elaboration of the scoping studies and the alternative tools that were used to determine priorities, namely a policy questionnaire and the webinar. This process will be followed by an in-depth policy assessment focusing on one or two legal tools as identified through the questionnaire and discussions from the webinar.

The questionnaire was sent to 31 stakeholders, of whom 14 responded giving a participation rate of 45.16%. The respondents were mainly from civil society (36%), government (29%), industry (21%) and the least number of contributions were from academia (7%) and local government (7%).

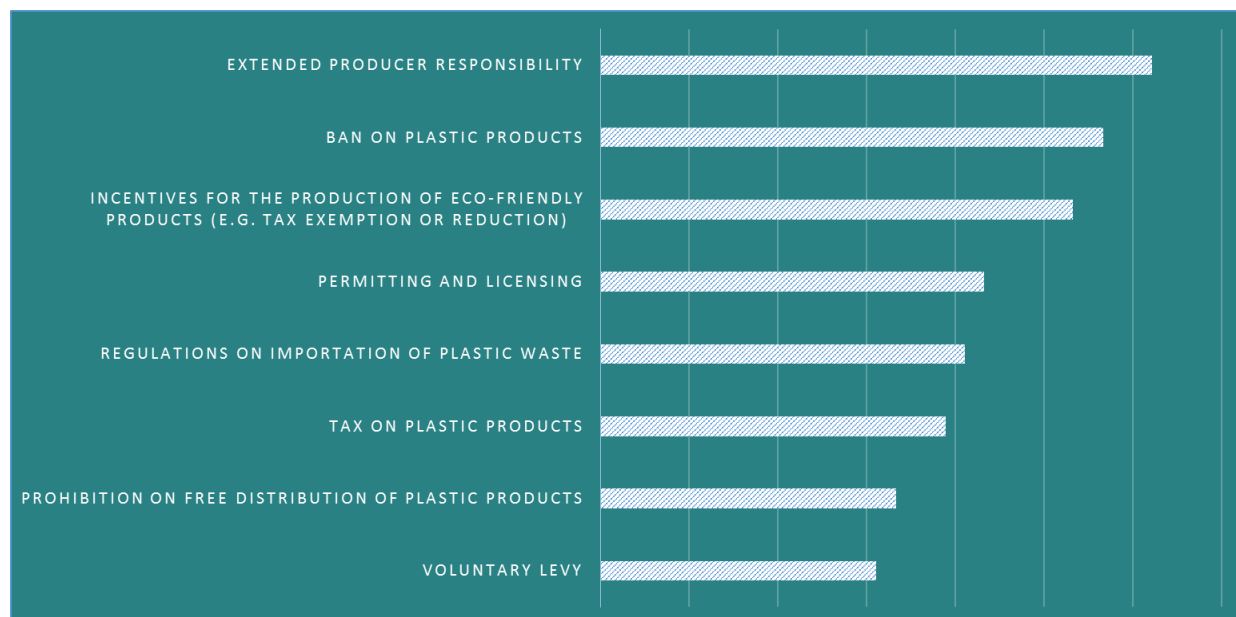
Below are the results from three questions in the survey that were subsequently discussed by participants:

💧 Where is the most appropriate leverage point for addressing plastic waste?

The participants that responded to the survey expressed that the leverage points with the best mitigating impact are production (34%) and end of life (33%), while retail and consumer use (22%) and Trade and Transport (11%) were less favoured.

💧 What legal tools are the most appropriate to tackle marine plastic pollution?

This question aimed at ranking the different legal tools addressing marine plastic pollution from the most appropriate to the least appropriate. The results highlighted that Extended Producer Responsibility (EPR) and the ban on plastic products, like the one in place in Kenya for plastic carrier bags and flat bags, are considered the most appropriate. It is, however, interesting to note that there is, to date, no EPR regulation in Kenya as such regulation is under development. Incentives from the production and use of alternatives also got an encouraging result. On the other hand, voluntary levies are ranked as the least appropriate tool to tackle this issue.



- How could the institutional framework be improved to ensure the proper implementation of such tools? What requirements must be in place for these legal tools to be properly implemented?

The survey participants provided a number of requirements and areas for improvement, especially on the institutional and legal aspects, as described below, namely:

Institutional requirements	Legal requirements	Others
Clarification of mandates amongst relevant institutions (especially in light of the roles played by the counties vis-à-vis that played by National Government)	Comprehensive legal provisions	Education and Awareness
Single body comprising stakeholders with mandate to implement the regulations	Adequate monitoring and enforcement capacity and strict penalties for non-compliance	
Enhanced institutional capacity	Harmonization of environmental policies and legislation to avoid loopholes	
Better coordination	Enabling legal framework for proper implementation of the regulations	
Explore innovative solutions, shared visions and technological transfers	A broader instrument such as a plastic usage and management act	

2.5 Breakout groups

Following this presentation, the participants were divided into three breakout groups of 10-12 in order to further discuss the three different questions. Below are the results from these discussions that were conveyed at the end of the session by the groups' respective focal points.

Group 1: Where is the most appropriate leverage point for addressing plastic waste?

Participants showed disagreement on the question as some mentioned that the appropriate leverage point was on 1) manufacture targeting manufacturers while others mentioned 2) consumer use.

- The proponents of the former stated that the Kenya Association of Manufacturers and the Ministry of Trade and Industrialization need to be lobbied on the manufacture of plastics. They also expressed that when acting at the production level, policy intervention is required.
- The proponents of the latter stated that whenever there is a market (in a free market economy) there will be an incentive to produce such type of material. Therefore, consumer awareness minimizing the purchase of plastic product commodities will influence manufacturers and as such, the power of the individual consumer will drive change (bottom-up approach). In this perspective, enhancing awareness of the public (consumers) is key. As manufacturing is mostly consumer driven, consumer/user level and end-of life are critical (disposal to the environment).

Finally, some participants pointed out that there was no favourable point of leverage and that a multi-point approach is required.

In addition, several points that indirectly respond to the question were raised:

- EPR is a controversial discussion that ties producers to responsibility for recycling plastics.
- There is a need to strengthen lead institutions, especially at the county level (e.g. County Environment Management Committees, including through training to develop their skills in order to effectively take up their roles, e.g. development and implementation of county action plans).
- The development of alternatives will arise from putting a stop to plastic production.

Group 2: What legal tools are the most appropriate to tackle marine plastic pollution?

The participants did not reach consensus on answering this question but a number of ideas were mentioned, namely:

- Apart from developing additional legal tools, it is crucial to properly implement the existing legal framework and overcome implementation challenges.
- A number of issues are not fully or appropriately addressed in the current legal framework, such as:
 - o Waste originating from the seas;
 - o The role of the informal sector;
 - o Urban planning; and
 - o Payments for Ecosystem Services
- The ban on plastic bags has been very successful (as observed at the coast and key areas) but acting at the production stage of is very important with tools such as design standards and EPR regulations. Although, it remains to be seen how EPR will work in practice. It would be interesting to extend the ban to include additional products or materials.

Group 3: How could the institutional framework be improved to ensure the proper implementation of such tools? What requirements must be in place for these legal tools to be properly implemented?

The discussion focused on the current gaps and the following were identified:

- There is a lack of coordination as a number of institutions are tasked with managing or enforcing and they are not well coordinated while their responsibilities also overlap.
- There is a need for a multi-stakeholder forum for government institutions, research institutions and civil society to have a common body to streamline law enforcement.
- There is no institution coordinating marine litter from either sea-based or land-based sources.

2.6 Final questions

Is there any information with regards to the Basel Convention Amendment?

Kenya has not begun the process to ratify the Basel Convention Amendment. The country could take the opportunity to fast-track the process as a result of the new policy on solid waste management under development that could include some of these provisions.

Is the Zero waste initiative considered in the hotspot analysis?

There is no prescriptive outline of interventions and instruments. The greatest contribution (of what? by whom? Not clear what or who is being talked about) is to use science to identify and prioritize hotspots. With regards to interventions and instruments, these are unique and require stakeholders' engagement. The plan is to enter into a stakeholders' engagement process to identify what interventions are the most critical and thereafter look at the instruments that are suitable within the specific and unique context of Kenya. There are numerous different instruments which could be explored for consideration in response to which hotspots will be prioritized.

What was the methodology used to measure plastic leakage to the marine environment in Kenya, given the methodological challenges experienced even by KMFRI?

Time did not allow for a comprehensive response to this question, but the UNEP/IUCN methodology used is comprehensive and detailed enough and will be presented on another occasion. Numerous data sets were analysed from published as well as unpublished sources and expert interviews, including results from studies implemented by KMFRI. A workshop is planned in September for the presentation of the

results of the national plastics hotspotting assessment, where there will be more detailed discussion to fully address this question.

3 Webinar outcomes

3.1 Increasing legal capacity

The participants developed their capacity thanks to the presentation and input from Mr. Opondo Gerphas, who presented the different legal aspects of plastic management in Kenya at the different leverage points and detailed the institutional framework. Specific gaps and challenges were also highlighted to enable participants to acknowledge them and reflect on potential solutions.

3.2 Information and experience sharing

The participants took part in group activities where they shared their experiences, perspectives and knowledge on different topics regarding plastic regulations and management.

3.3 Identifying appropriate policy tools

The results from the discussions will enable the IUCN ELC to identify the most appropriate legal tools to be assessed in the framework of an in-depth policy effectiveness assessment that will result in recommendations to further strengthen the regulatory and institutional framework in Kenya.

4 Annex 1 – Webinar agenda

11:30 - 11:40	Welcome remarks from the National Environmental Management Authority (NEMA)
11:40 - 11:45	Presentation of the objectives
11:45 - 11:55	Update on the National plastic pollution hotspotting and shaping action assessment
11:55 - 12:10	Presentation of the scoping study <i>The legal, policy and institutional frameworks governing marine plastics in Kenya</i>
12:10 - 12:50	Discussions based on survey results <ul style="list-style-type: none">• Where is the most appropriate leverage point for addressing plastic waste?• What legal tools are the most appropriate to tackle marine plastic pollution?• How could the institutional framework be improved to ensure the proper implementation of such tools? What requirements must be in place for these legal tools to be properly implemented?
12:50 - 13:00	Wrap up

5 Annex 2 – List of participants

Name	Organisation
Brenda Gwada	KMFRI
Brian Muthoka	Council of Governors
Celestine Chemorkok	IUCN ESARO
Charlotte Mousnier	IUCN ELC
Daniel Ngotho	Kisiwani Conservation Network
David Marquis	RWA Group
Dorothy Adhiambo	Centre for Environment Justice and Development
Edward Wabwoto	NEMA
Eric Okuku	KMFRI
Eunice Njau	Sidinyu Njau & Co Advocates
Florence Bet	Kenya Port Authority
Fred Nyongesa	Water Resources Authority
Gilbert Atuga	KMFRI
Gilbert Owato	KMFRI
Griffins Ochieng	Centre for Environment Justice and Development
Jacqueline Mogeni	Council of Governors
Juan Manuel Sabio Morchio	IUCN ELC
Judith Nyunja	Kenya Wildlife Service
Julie Myra Alego	Watamu Marine Association
Karen Njue	Watamu Marine Association
Kenneth Otieno	KMFRI
Léa Badoz	IUCN ELC
Lenice Ojwang	Coastal Oceans Research and Development Indian Ocean (CORDIO East Africa)
Lilian Mulupi	KMFRI
Linet Kiteresi Imbayi	KMFRI
Lynn Sorrentino	IUCN GMPP
Mary Mbuiche Chiphatsi	KMFRI
Michael Mbaru	Marine Technology Cooperation Centre
Mike Izava	CI/Nature Blue
Opondo Gerphas	Environmental Lawyer
Patricia Akinyi K'Omudho	Nairobi Metropolitan Services
Peter Manyara	IUCN ESARO
Peter Mwandikwa	Principal Fisheries and Blue Economy Officer, State Department for Fisheries, Aquaculture and Blue Economy
Prof Mwakio Tole	Pwani University
Randall Mabwa	Coastal Oceans Research and Development Indian Ocean (CORDIO East Africa)
Tracy Lane	Cardno Emerging Markets (East Africa) Ltd.
Veronica Wanjeri	KMFRI
Zipporah Muthama	Council of Governors