

MAINSTREAMING CLIMATE CHANGE (ADAPTATION & MITIGATION) AND DISASTER RISK REDUCTION PRIORITIES IN COUNTY SPATIAL PLANNING FRAMEWORKS

Briefing Note 2: Legal and Policy Frameworks for County Spatial Planning

1. Introduction

Pursuant to the County Government Act, 2012, counties are obliged to prepare GIS based County Spatial Plans (CSP) to guide their long-term development agenda. United Nations Development Fund (UNDP) Kenya, through the Kenya Devolution Support Programme,¹ in collaboration with the Council of Governors (CoG) is spearheading the institutionalisation of the County Spatial Plan Framework, including mainstreaming of Climate Change (adaptation and mitigation) and Disaster Risk Reduction (DRR) priorities and opportunities across the County Spatial Planning Framework and the resultant County Spatial Plans.

This briefing note, based on review of existing legal and policy frameworks for county spatial planning, highlights the constitutional provisions for planning, the planning frameworks as legislated in the County Government Act, and the Physical Planning Act, provisions of other legislations and policies of climate change and DRR, which create opportunity for their mainstreaming in the CSP.

2. The Constitution of Kenya 2010

Chapter Five of the Constitution deals with Land and Environment; Part 1 deals with Land and Part 2 with the Environment. Section 66 specifically engages regulation

¹ Is a four-year project funded by UKAID's DFID

² *ibid*, Fourth Schedule

of land use and property. In the Fourth schedule of the Constitution titled: “Distribution of Roles Between National and County Governments”, roles relating to planning, climate change and DRR are distributed. ²National government has the following responsibilities:

- General principles of land planning and the co-ordination of planning by the counties;
- Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development;
- Disaster management; and
- Capacity building and technical assistance to the counties.

³Functions of counties include, *inter alia*:

- Agriculture;
- County planning and development, including— statistics; land survey and mapping; boundaries and fencing; and housing; amongst others;
- Implementation of specific national government policies on natural resources and environmental conservation; and
- Disaster management.

⁴To operationalize these functions, the Constitution requires enactment of the following legislation:

- Legislation on land (Article 68);
- Legislation on Community land (Article 63);
- Legislation regulating land use and property (Article 66);
- Agreements relating to natural resource (Article 71); and
- Legislation on environment (Article 72).

3. National Policy Frameworks for Planning

2.1. Kenya Vision 2030

³ *ibid*, Fourth Schedule

⁴ *ibid*, Fifth Schedule

Vision 2030 is Kenya's long-term national planning strategy. The vision is organized around Social, Economic and political Pillars. It highlights flagship projects to be achieved in the medium term period. The vision is implemented in successive five year Medium Term Plans. The Economic pillar identifies six key sectors of focus, which are key to CSP: Tourism, Value addition in Agriculture; Wholesale and retail trade; Manufacturing for regional market; business process offshoring and financial services.

The social pillar focuses on the following: education and training; health; water and sanitation; environment; housing and urbanization; gender, youth and vulnerable groups; equity and poverty elimination; science technology and innovation.

Vision 2030 considers poor planning as a key inhibition for realization of socio-economic potential of the country. Most of the visions flagship projects require prudent spatial planning.

2.2. Second Medium Term Plan (MTP2)

⁵The Medium Term Plans are implementation frameworks for the long-term socio-economic and political vision of the country, Vision 2030. MTP2's theme is Transforming Kenya: Pathway to Devolution, Socio-Economic Development, Equity And National Unity". The government's desire was that "*Harmonising this MTP with County Integrated Development Plans and Urban Plans will ensure faster delivery of the promises by the government as a whole*". The MTP 2 envisages that county governments will prepare County Integrated Development Plans (CIDPs) as required under the Constitution and under the Public Finance Management Act (2012), so as to meet legal requirements that county budgeting is to be guided by the CIDPs⁶.

⁵ See Republic of Kenya (2007) Vision 2030. Nairobi: Ministry of Planning and National Development.

⁶ Government of the Republic of Kenya (2013) Second Medium Term Development Plan (2013-2017)

MTP highlights many spatial areas targeted for transformation, including land, infrastructure, tourism, agriculture, livestock and fisheries, trade, manufacturing, Business Process Outsourcing and IT enabled services. Other areas that require spatialisation include social services, namely: education and training; health; environment, water and sanitation, Population, Urbanisation and Housing, Gender, vulnerable Groups and Youth, sports and culture.

3. County Government Act

The County Spatial Plan (CSP) is a GIS based database plan that covers the whole county and guides development for ten years⁷. It is a component of the County Integrated Development Plan ⁸. It gives the spatial depiction of socio-economic development of the county as expressed in the CIDP and shows linkages with regional, national and other counties spatial plans.

The County Government Act, 2012, Section 110, parts 2, spells out the roles of CSP as the county's spatial development framework as follows⁹:

- It sets out policies and strategies for achieving the desired spatial form of the county;
- It spells out the land use patterns of the county;
- It sets out capital investment framework for the county;
- It sets out strategic assessment of environmental impact of spatial development;
- It identifies programmes and projects for development of land within the county;
- It indicates where public and private land development and infrastructure should take place;
- It shall delineate urban edges and rural urban linkages; and

⁷ County Government Act, 2012, Section 110.

⁸ *ibid*

⁹ *ibid*

- It shall delineate areas for conservation and recreation.

We note that counties should not incur expenditure outside of a planning framework; including: Sector Plans; ISUDPs; CSP and CIDP. Planning is expected to be integrated, strategic and focused on sustainable development.

4. Physical Planning Act

Physical planning Act 2010 (cap 286) revised edition 2012 spells out details of preparation of various plans:

- It provides guidelines for preparation of regional physical development plans and local physical development plans;
- It gives guidance on realisation of urban development control;
- It outlines in the schedules, matters to be dealt with in regional and local physical development plans;
- It provides guidance on renewal and redevelopment permission and approval of development permission¹⁰.

5. Gazetted Guidelines

5.1. Ministry of Land, Housing and Urban Development, Directorate of Physical Planning (2013) Manual for Preparing County Integrated Development Plans

The manual introduces the County Spatial Development Plan. In the Second Part it focuses on methodology of preparation of the plan, including: the preliminary phase; data collection; situational analysis; and stakeholder consultation. It then spells out plan formulation; financing strategy; draft plan review and plan approval process.

The guidelines highlight various planning outputs, which include: maps and graphics, situational analysis content, plan proposals, action plans and content maps. Part Four of the guidelines outline public participation process.

The Directorate has also issued the following complementary guidelines:

- The Directorate of Physical Planning (2013) Local Physical Development Planning Manual; and
- The Directorate of Physical Planning (2013) *Development Control Manual*

5.2. The National Land Commission (2016) County Spatial Planning: Monitoring and oversight Guidelines

The NLC guidelines outline the constitutional and legal context of planning. Part 2 details the planning process, including: pre-planning, visioning and objective setting, research and mapping, situational analysis, development scenarios, formulation of the plan proposals, packaging, presenting and publishing the Draft County Spatial plan, approval and launching of the county spatial plan.

It highlights the planning deliverables, including: Vision Report; situational analysis; GIS data base; base maps; thematic maps; preferred scenario plan; draft CSP; GIS Lab; digital maps; and expected impacts of county spatial plan.

Part 3 elaborates public participation issues including stakeholders engagement and levels of engagement. The section also highlights institutional framework for plan preparation and implementation.

The guidelines also spell out issues of procurement and funding and contract administration.

¹⁰ Republic of Kenya (2010) Physical planning Act 2010 (cap 286) revised edition 2012. Nairobi: Government of Kenya.

6. Climate Change, DRR Mainstreaming in CSP

6.1. The National Environment Policy (2013)

¹¹While the National Environment Policy (2013) document engages environmental conservation generally, it attempts also explore climate change. It mentions climate impacts, low carbon development and climate variability; but does not overtly engage the issue of mitigation and adaptation.

The document discusses “emergency preparedness and disaster management”. In this area it focuses more on disaster response than prevention. In the policy statements disaster risk management and early warning are captured. Section 9.1. talks about integration / mainstreaming of environmental issues into National and County Development and Sectoral plans.

6.2. National Climate Response Strategy (2010)

¹²This strategy was launched to enhance based on enhanced understanding of global climate change regime and impacts of climate change in Kenya. It was Kenya’s first climate change agenda guide and provides a basis for strengthening and focusing nationwide action towards climate change adaptation and mitigation.

6.3. National Climate Action Plan (2013)

¹³This document attempts, indirectly to domesticate, UNFCCC agreements. It covers climate change impacts, institutional framework, legal and policy

¹¹ Government of the Republic of Kenya, Ministry of Environment and Natural Resources (2013) The National Environment Policy. Nairobi: Government of Kenya.

¹² Government of the Republic of Kenya, Ministry of Environment and Natural Resources. National Climate Response Strategy (2010). Nairobi: GoK.

¹³ Government of the Republic of Kenya, Ministry of Environment and Natural Resources. National Climate Action Plan (2013). Nairobi: GoK.

frameworks, mitigation, adaptation, technology transfer, finance (means of implementation) and mirrors UNFCCC negotiations.

It spells out very broad institutions involved in climate change action; although in many instances it is not clear whether the interpretation of the roles are unanimous. For example, the document states: “Environment and climate change is a function of the national and county government; and requires concurrent jurisdiction across both levels”¹⁴.

*The document suggests various ways of dealing with the various components of climate change, but key link to mainstream planning is integration into the Medium Term Plan (MTP)*¹⁵. Further the document addresses low carbon development across many sectors such as: electricity, transportation, manufacturing, population, urbanisation and housing, environment water and sanitation, health, agriculture and disaster preparedness¹⁶.

It discusses adaptation in the context of the national adaptation plan¹⁷; mitigation is anchored on UNFCCC requirements of Nationally Appropriate Mitigation Actions (NAMAs) and Reducing Emissions from Deforestation and Forest Degradation (REDD+). It then explores low carbon development opportunities¹⁸. The rest of the document explores means of implementation, including legal frameworks, finance and technology.

6.4. Climate Change Act

Government of the Republic of Kenya (2016) Climate change Act, No. Nairobi: GoK. Part 2 Section two engages the issues of climate change plans and requires both national government and county governments to establish climate change action plans (part 2(i)). part three requires that climate issues in various sectors be

¹⁴ *Ibid pp 15*

¹⁵ *ibid pp 22*

¹⁶ *ibid pp 22-42*

¹⁷ *ibid pp 43-61*

¹⁸ *ibid pp66-76*

addressed. Part IV requires establishment of a climate change fund (Part 4 Section 26).

6.5. Kenya Green Economy Assessment Report, 2014

¹⁹This document focuses on greening of Kenya's economy. It focuses on four the sectors of Agriculture, Manufacturing, Energy and Transport. It explores untapped potential in pursuing green development pathways and creation of green jobs. It indicates that 42% of Kenya's GDP is derived from natural resource sectors such as: agriculture, mining, forestry, fishing and tourism.

Under the Green Economy, an investment in agriculture sector will lead to economic growth, increase in GDP per capita and job creation²⁰.

On climate change mitigation While CO₂ emissions are projected to increase from 12 million tonnes per year in 2012 to 24.35 million tonnes per year in 2030 in the agriculture and energy sector alone, under a green economy scenario, emissions would be approximately nine per cent lower than business as usual scenario investment scenario (26.7 million tonnes). Green energy and renewables will result in reduction of energy consumption and GHG emissions. This will also be the case in the sectors of manufacturing and transport.

The Physical Planning Act is considered key to green economy, as it is the act that enables reserving all land planned for open spaces, parks, urban forests and greening. Likewise the Agriculture Act that seeks to promotes and maintains stable agriculture and provides for conservation of soil and its fertility; aims to stimulate the development of agricultural land in accordance with the accepted practices of good land management and good husbandry²¹.

The National Climate Change Response Strategy (NCCRS) is key since it outlines adaptation and mitigation measures to enhance climate resilience. The National Climate Change Action Plan (NCCAP) sets out how the NCCRS will be implemented. The Forests Act and the Kenya Forestry Master Plan both help in conservation,

¹⁹ United Nations Environmental Programme (UNEP)(2014) *Green Economy Assessment Report – Kenya*. Nairobi: UNEP.

²⁰ *Ibid pp2*

protection and sustainable exploitation of forests. The Environmental Management and Coordination Act provide the legal and institutional framework for environmental management²².

7. Conclusions

- The legal and policy framework for spatial planning, though fragmented has detailed provisions for spatial planning and detailed requirements for mainstreaming of DRR and climate change into spatial plans.
- Spatial planning policies, legislation, and guidelines should spell out how to deal with cross cutting issues, which may not be found in the planning legislation but are required for mainstreaming from other – non planning policies and legislation.
- The consultants will highlight how cross cutting issues generally, and climate change and DRR get incorporated into planning frameworks.

²¹ *ibid pp14*

²² *ibid pp 15*