

# Unraveling the Implementation of Kenya's Environmental Diplomacy Pillar in Mitigating Air Pollution: A Case of Nairobi City County

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## ABSTRACT

Environmental issues have in recent decades occupied center stage in international politics with increasing adoption of agreements on the environment signifying a shifting focus by states to greater cooperation on environmental matters. Air pollution has attracted the most attention internationally due to its link to climate change which has had devastating effects globally. Different states have therefore adopted international environmental treaties and initiated diverse policies and actions domestically in an attempt to change the trend in air pollution. The implementation of these measures has however been criticized as air pollution continues to rise. Kenya's environmental diplomacy pillar under the foreign policy document of 2014 committed the country to sustainable environmental management as a contribution to international environmental efforts. Evidence however indicates that air pollution continues particularly in Nairobi City County. This study therefore sought to examine the envisioned implementation of the pillar in the context of other existing environmental laws. The areas of focus included establishing the extent to which the pillar has been implemented, the agencies involved and their capacity and the detailed implementation framework. Other areas were the extent of domestication of environmental treaties on air pollution and the envisioned impact of Kenya's environmental diplomacy pillar at the grassroots level. The study employed exploratory research design and targeted 130 key informants from institutions concerned with environmental matters from which a sample of 30% was drawn. It used both primary and secondary data. Data was analyzed using descriptive statistics and conceptual content analysis and the results were presented in a narrative supported by tables. The study recommends formulation and publicization of a detailed implementation framework for the environmental diplomacy pillar to clarify linkages between international and domestic environmental actions and synergize efforts at the different levels. It also calls for adequately resourcing institutions involved in the implementation of the pillar and seeking partnerships to enhance local capacity for air pollution management.

**Keywords:** Air pollution, environment, environmental diplomacy, environmental diplomacy pillar

## 1. INTRODUCTION

Environmental issues have in the last few decades become a major preoccupation of the international community. Carter (2018) noted that environmental discourse exerts a major impact on contemporary

politics. This is evidenced by increasing adoption of treaties and agreements on the environment and recognition that environmental protection is a collective responsibility. Khan and Hou (2021) singled out the last five decades as a period when international environmental agreements significantly multiplied with over 500 agreements on the environment having been signed by states. Dimitrov (2022) recorded that in total, 1,300 multilateral and 2,200 bilateral environmental agreements have been negotiated by governments.

These represent a continuation of efforts on collective environmental protection going back to the United Nations Conference on the Human Environment (UNCHE) in 1972 in Stockholm. The Conference was described as a landmark event in the rise of international environmentalism and was the first in the world to position the environment within organized international cooperation (Borowy, 2019). It also effectively launched dialogue between industrialized and industrializing states on the links between economic activities, pollution and the well-being of populations. The first ever Africa Climate Summit (ACS) held in Nairobi, Kenya in September 2023, more than half a century after the UNCHE, is a testimony of the continuing and urgent need for cooperative actions on environmental issues.

The growing focus on pollution has resulted from the continuing unprecedented global population growth that has led to increased production activities with accompanying devastating impacts on environmental health (Singh, Singh & Srivastava, 2019). This characterizes the current century as socio-economically, scientifically and technologically advanced on the one hand and identifiable by grave air pollution challenges on the other. Human pollution exerts the most pressure on the environment compared to pollution arising from natural causes with air pollution attracting the greatest attention internationally due to its linkage to climate change. Air pollution continues to be driven by rising energy demand, expansion of industrial activities and urbanization.

Molina (2021) observed that most megacities, especially in the developing regions, suffered from severe air pollution arising from transportation, industries, biomass burning and fireworks. With the world population expected to rise to 9.3 billion by 2050 and the urban centers expected to absorb most of it, air pollution and the resultant consequences can only be expected to get worse. Sicard, Agathokleous, De Marco, Paoletti and Calatayud (2021) for example found that despite substantial decrease in emission of several air pollutants, European urban populations were still exposed to some pollutants which significantly exceeded World Health Organization (WHO) safe limits.

Likewise, China continues to experience grave air pollution with about 1.4 million deaths being attributed to air pollution in the country (Liu, Wang, Zhang & Wang, 2022). In Africa, Bauer, Im, Mezuman and Gao (2019) observed that the continent experienced serious air pollution, a situation further complicated by poverty, urbanization, and high population growth. The same challenges were noted in Kenya where Chepkorir, Njogu, Karanja, Presto and Westervelt (2022) found pollution levels beyond WHO limits in Nairobi with the highest concentrations being in industrial areas and during peak transport periods.

## 2. BACKGROUND

In the foregoing context, states have adopted different policy frameworks for cooperation in dealing with air pollution and to guide domestic actions to reduce emissions. The United States of America (USA) is one of the greatest polluters but also has a good standing to propel international diplomatic efforts on environmental protection owing to its current global leadership role. However, Dorsey (2018) observed that while the USA has previously been at the forefront on issues of environmental diplomacy, it has mostly found itself on the outside towards the end of the twentieth century, as multilateral agreements led to treaties that were progressively unwelcome by the government often due to political lobbying by interest groups from emission-heavy industries, including oil firms. President Biden's regime has however been more receptive to discussions about the environment including willingness to work with China to decelerate

climate change and engaging the Congress to increase climate financing.

China is another major polluter also classified as a developing country. It thus plays significant leverage in multilateral environmental discussions and at the same time enjoys the benefits of a developing country. The exemption of China from emission obligations placed upon developed countries for example has made it largely cooperative on environmental issues including implementation of key environmental agreements like the Kyoto Protocol, the Copenhagen Accord and the Paris Agreement among other initiatives (Karakir, 2018).

Denmark on the other hand has very progressive environmental policies since the 1970s through the green energy transition (Kadmayer, 2022). Denmark being a coastal country is critically vulnerable to environmental challenges which may partially explain its commitment to environmental diplomacy (Prakoso, Ardita & Murtyantoro, 2019). It plays a central role in influencing international environmental regimes, under the auspices of the United Nations (UN), the European Union (EU) and other multilateral bodies. Prakoso, Ardita and Murtyantoro (2019) observed that the country also carries out green diplomacy in various countries to encourage reduction of carbon emission and was instrumental in the establishment of Beyond Oil & Gas Alliance (BOGA) in 2021 as a new diplomatic frontier to phase out global oil and gas production.

In the Sub-Saharan Africa, Nigeria is the most densely populated country and consequently faces substantial environmental challenges which have resulted in heightened domestic and foreign attention (Aidonojie, Anani, Agbale, Olomukoro & Adetunji, 2020). Nigeria is a signatory to most international environmental treaties and conventions though its dualist legal system means that the treaties and conventions must be enacted into domestic law to have national legal effect. It also has numerous domestic laws that address air pollution issues. The country however still suffers complex environmental challenges related to air pollution due to poor implementation, lack of enforcement, poor attitude and widespread corruption in the judicial system coupled with low environmental awareness (Oyebode, 2018).

Kenya also has had a long journey navigating environmental problems aligned to international dispensation with major impetus arising from the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. As a commitment to the Conference, Kenya formulated the National Environment Action Plan (NEAP) in 1994 to galvanize environmental governance in the country which culminated in the promulgation of the Environmental Management and Coordination Act (EMCA) of 1999 (Mallowah, 2022). EMCA would henceforth provide a foundation for environmental policies in Kenya and took responsibility for most Multilateral Environmental Agreements (MEAs) (Muigua, 2023).

EMCA has however suffered slow implementation due to inadequate funding and logistics (Kathambi, 2018). Further, as a coordination mechanism, its implementation is largely left to lead agencies with oversight institutions like National Environmental Management Authority (NEMA) relying on the agencies' goodwill to act. In addition, EMCA lacks implementation frameworks at grassroots levels as the lowest environmental management structures in Kenya are at County level which has significantly reduced the effectiveness of the legislation. In 2014, Kenya achieved a milestone by launching its first ever written foreign policy where its environmental diplomacy pillar commits the country to continue contributing to sustainable environmental management by tackling the grave concerns of modern-day environmental challenges including air pollution, ozone layer depletion and climate change through more comprehensive steps (Government of Kenya, 2014).

While such policies could be indicative of states' commitment towards environmental health, their implementation has been criticized by scholars and practitioners for not translating into changes in the real world as air pollution domestically and climate deterioration globally continue (Li, Zakari & Tawiah, 2020; Ruto, 2022). The UN Secretary General, noting that July 2023 was the hottest month ever in history, warned

that the era of global warming had ended, and the era of global boiling had arrived (UN, 2023). With this disjointedness and evidence necessitating substantive environmental actions by states, it is important to understand how Kenya's environmental diplomacy pillar is being implemented to address the important issue of air pollution and its consequences.

This is critical in order to understand why despite the high level at which the environmental diplomacy pillar was formulated and directed, and its robust objectives, Kenya has not been able to address environmental challenges particularly related to air pollution to the much-anticipated proportions. The country is also facing difficulties meeting the self-set climate targets under the Paris Agreement of 2015 including implementing a Paris-compatible emissions pathway, establishing and adequately resourcing independent institutions to advise on decarbonization efforts and strengthening of environmental institutions (Climate Action Tracker, 2019). In the meantime, environmentally harmful emissions continue with Kenya ranked 83<sup>rd</sup> country with worst air quality in 2022. United Nations Environmental Programme (UNEP) in the same year cited 70% pollution levels in the Kenyan capital, Nairobi.

Failure to meet the respective national environmental commitments at individual states level would put the achievement of the combined international environmental goals into jeopardy. Little research has however been done to interrogate the implementation of Kenya's environmental diplomacy pillar and its place in dealing with air pollution challenges. This study therefore aimed to examine the envisioned implementation of the pillar under the existing environmental laws with a focus on Nairobi City County.

### **3. REVIEW OF LITERATURE**

#### **3.1 Theoretical Review**

##### **3.1.1 Sustainable Development Theory**

Sustainable development theory is a derivative of the concepts sustainable and sustainability which first emerged in the 20<sup>th</sup> century (Shi, Han, Yang & Gao, 2019). The two concepts signify the need to protect the natural environment from human interference by ensuring sustainable use of resources. The 1972 UNCHE marked the molding phase of the theory with growing recognition that developmental activities principally focused on economic progression while leaving serious environmental problems in their wake (Shi *et al.*, 2019). Sustainable development therefore requires that all actors consider the effects of environmental pollution in their development activities (Mensah, 2019).

Such consideration could be through implementation and enforcement of relevant environmental legal frameworks such as Kenya's environmental diplomacy pillar and ensuring their objectives are met. Nairobi City County should therefore anchor its development agenda on the pillar to ensure alignment with Kenya's international environmental obligations. The County should ensure that there is a clear implementation framework for the pillar, adequately resource the institutions involved in the implementation and seek partnerships with the national government as well as other local and international partners to boost its environmental management capacity in addressing air pollution.

##### **3.1.2 Institutionalism**

Institutionalism is a theoretical approach in social sciences that emphasizes the central role played by institutions in societies (Bilate & Zou, 2021). Theory has origins in the works of Max Weber and explains the impact of institutional approaches towards environmental governance. New institutionalism which emerged in the early 1980s encompasses the constraining and enabling effects of rules on the behavior of individuals and groups (Amenta & Ramsey, 2010). It can therefore be applied to assess the potential that effective implementation of Kenya's environmental diplomacy pillar has in guiding Nairobi City County's

discourse on environmental matters.

On limiting actions, the theory can explain sanctions that may befall the County and other stakeholders for failure to institute necessary actions to address air pollution. The polluter pays principle is a classic example of this, requiring those who contribute to pollution to bear the burden of managing the adverse effects on the environment through carbon-pricing. Heavy polluters in Nairobi City County such as industries and transporters should for example contribute more to address the effects. On the facilitated actions, institutionalism explains cooperative efforts among actors to address environmental challenges. Nairobi City County could benefit from such joint actions including through sharing information on air pollution, collaboration in research and transfer of environmentally friendly technology as espoused by the objectives of the pillar.

### 3.2 Empirical Review

The context of environmental diplomacy, though relatively new, is quite rich. The 1972 UNCHE was effectively the first time the environment was positioned as a fundamental international issue with a major outcome being the creation of UNEP as the first UN Programme focused only on environmental issues. The 1992 UNCED building up on the UNCHE brought into focus a range of international treaties and agreements formulated to address international environmental problems. The Conference also marked a turning point for international cooperation among states on environmental protection and called on states to rethink economic development and look for approaches to halt environmental pollution within their jurisdictions. Therefore, states were required to institute policies and take actions to ensure sustainability of their developmental activities.

Air pollution is the most widely addressed by international law. The adoption of the United Nations Framework Convention on Climate Change (UNFCCC) during the 1992 Conference obligated state parties to reduce GHG emissions premised on the scientific consensus that global warming was occurring, and it was being driven by human-made carbon dioxide emissions (Azam, 2021). The Kyoto Protocol of 1997 implemented the 1992 UNFCCC objective to decrease GHG atmospheric concentrations and was succeeded by the Paris Agreement in 2015. The Paris Agreement was a major step in environmental multilateralism where for the first time, a binding agreement brought all states together to fight climate change. The COP, which is UNFCCC's supreme decision-making body, holds meetings annually to evaluate progress made in addressing air pollution and climate change.

In the African Continent, issues concerning the environment are anchored within the African Union's (AU's) general legal framework (Ruppel, 2022). The Constitutive Act establishes the environment and its protection as one of the policy areas of responsibility of the Executive Council. The African Economic Community established by the Abuja Treaty of 1991 provides for protection of the environment calling for development that is environment sensitive and which promotes a healthy environment. The African Charter for Human and Peoples' Rights further incorporates environmental issues by elevating the environment as a human right.

Agenda 2063, a 50-year vision from 2013 sets environmentally sustainable climate as a goal. The African Ministerial Conference on the Environment (AMCEN) on the other hand provides a forum for African environment ministers to deliberate on issues relevant to the environment at continental level and it is a platform for advocating for protection of the environment. Other organs and departments within the AU with a focus on the environment include the Peace and Security Council, Departments of Political Affairs, Science and Technology, Trade and Industry and New Partnership for Africa's Development (NEPAD) (Muigua, 2019).

This extensive multilateral framework on environmental protection provides the external context under

which Kenya's environmental diplomacy pillar is being implemented, a role that is bestowed on the individual states (Connaughton, 2019). Notably, in the regulatory chain, effective implementation of environmental laws has been identified as the most common area of weakness owing to the enormous amounts of resources required and lack of organizational and administrative coherence and capacity. Additionally, the success of environmental diplomacy is affected by political factors and political lobbying. Suleiman, Raimi and Sawyerr (2019) for example observed strong political influence in Nigerian environmental efforts while on the other hand the USA failed to ratify the Kyoto Protocol due to political lobbying in the Congress by interest groups.

Further, in implementing international legal provisions, national constitutions influence how international norms are received within the domestic law depending on whether a state follows a monist or dualist legal model. Ogisi and Okumagba (2021) posited that in monist approach, international legal frameworks find direct application in the domestic context as if they were domestic laws. The dualist school, however, treats domestic and international legal regimes as distinct, requiring international legal norms to be enacted to have effect domestically. This is the perspective adopted by Nigeria for example (Aidonojie, *et al.*, 2020).

With the Constitution of Kenya 2010, it has been argued that the dualist approach is gradually fading, and international law is increasingly acknowledged as a norm that could be applied directly. Uncertainty however remains in the Kenyan legal setting particularly on the nature of interaction between international and domestic law provisions in the 2010 Constitution. An emergent phenomenon is ambiguity in the hierarchical positioning of the two legal regimes. Article 2(1) for example entrenches the principle of constitutional supremacy while Article 2(4) provides that the constitution supersedes any law that is inconsistent with any of its provisions. In addition to this inconsistency, Mutunga (2021) observed that recent jurisprudence seemed to erode the monist treatment of international law in Kenya. This study sought to examine how Kenya's environmental diplomacy pillar was being implemented within this existing politico-legal environment to understand how discussions about the environment at the international level are linked with domestic environmental law to influence local environmental behavior and actions.

## 4. METHODOLOGY

The methodology presents the design, the area of study, target population, sampling techniques and sample size, data collection approaches and data analysis approach.

### 4.1 Research Design

This study adopted exploratory research design. This design was selected for its appropriateness for research in areas where little previous study has been carried out (Sheppard, 2020). Environmental diplomacy in Kenya, unlike the general discipline of diplomacy, has not received much scholarly attention particularly with respect to the envisioned implementation of Kenya's environmental diplomacy pillar.

### 4.2 Study Area

The study was conducted in Nairobi City County because it is the capital city of Kenya and therefore the headquarters of key ministries and other institutions involved in environmental matters and diplomacy. According to UNEP, the County is also the region most affected by air pollution.

### 4.3 Target Population, Sampling Procedure and Sample Size

The study's target population comprised of key informants including diplomats, environmentalists, energy specialists, transport specialists, environmental law specialists and parliamentarians. The distribution of the

target population is shown in table 1 below.

<b>Table 1: Target Population</b>		
<b>Category</b>	<b>Target Population</b>	<b>Percentage</b>
Diplomats	20	15
Environment	20	15
Energy	15	12
Transport	15	12
Environmental law	10	8
Parliament/Senate	5	4
Other key informants	45	34
<b>Total</b>	<b>130</b>	<b>100</b>

Sampling was done using purposive method to seek out respondents who had relevant knowledge with snowballing sampling technique used to identify additional participants. Mugenda and Mugenda (2012) recommendation of 30% was used to draw samples from each population category. The sample sizes by categories are shown in table 2.

<b>Table 2: Sample Size by Categories</b>			
<b>Category</b>	<b>Frequency</b>	<b>Sample Ratio</b>	<b>Sample Size</b>
Diplomats	20	0.3	6
Environment	20	0.3	6
Energy	15	0.3	4
Transport	15	0.3	4
Environmental law	10	0.3	3
Parliament/Senate	5	0.3	2
Other key informants	45	0.3	14
<b>Total</b>	<b>130</b>		<b>39</b>

#### 4.4 Data Collection Procedure

The study collected both primary and secondary data. Primary data was collected using semi-structured questionnaires. Open-ended questions in the questionnaires gave the respondents freedom to provide as much information as possible and in a varied manner. A document review guide was utilized to guide collection of secondary data. This assisted in the review of relevant journals, books, policy documents, MEAs, records and reports.

#### 4.5 Data Analysis and Presentation

Data on background information on the respondents was analyzed using descriptive statistics while that of the substantive sections being qualitative was analyzed using conceptual content analysis. This involved categorizing the data into key themes which allowed the researcher to systematically establish meanings and make interpretations based on related set of ideas as recommended by Glesne (2015). The analyzed data was presented in a narrative supported by tables.

## 5. RESULTS AND DISCUSSIONS

### 5.1 Response Rate

The study sought to collect primary data from 39 respondents. 28 respondents participated in the study representing 72%. However, 4 questionnaires were rejected for being grossly incomplete, reducing the effective response rate to 62%. Mugenda and Mugenda (2003) posited that a response rate of 50% was adequate for data analysis and reporting, a response rate of 60% was good while a rate of 70% and above was excellent. The response rate of 62% for this study was therefore considered suitable for data analysis and reporting.

### 5.2 Background Information of Respondents

The background information of the respondents encompassing sex, age and number of years in the organization is summarized in table.

		<b>Frequency</b>	<b>Percentage</b>
Sex	Male	13	54
	Female	11	46
	<b>Total</b>	<b>24</b>	
Age bracket	20-29 years	1	4
	30-39 years	12	50
	40-49 years	7	29
	50-59 years	4	17
	<b>Total</b>	<b>24</b>	
Years in the organization	Below 5 years	9	38
	6-10 years	9	38
	11-15 years	2	8
	Above 15 years	4	16
	<b>Total</b>	<b>24</b>	

From Table 3, 54% of the respondents were male and 46% female. The study therefore attracted more male participants than female. There was however no variance in the perception either sex had on the study objective. In terms of age, the results showed that 4% of respondents were between 20-29 years, 50% between 30-39 years, 29% between 40-49 years while 17% were between 50-59 years. This indicated a higher spread of respondents in the middle age brackets. However, there was no noticeable variance in responses given across the different age categories and therefore the study concluded that the inter-generational differences among the respondents did not affect the results.

Further, the results indicated that 38% of the respondents had been in the organizations for less than 5 years, 38% for 6-10 years, 8% for 11-15 years and 16% for above 15 years. Thus, over 60% of the respondents had been in the respective organizations for at least 5 years which meant that they could adequately articulate issues relating to the implementation of Kenya's environmental diplomacy pillar. No variance was noted in the level of informativeness across the different experience categories.



### **5.3 Implementation of Kenya's Environmental Diplomacy Pillar in Mitigating Air Pollution**

To systematically assess the implementation of Kenya's environmental diplomacy pillar in mitigating air pollution in Nairobi City County, 5 thematic areas were examined as follows:

#### **5.3.1 Extent of Implementation of Kenya's Environmental Diplomacy Pillar and Linkage with Existing Environmental Legal Frameworks**

Environmental diplomacy works by integrating international with domestic efforts whereby negotiations at the international realm are expected to link to state-level environmental actions and behavior (Mureithi, 2023). On air pollution, this would encompass deliberate actions to reduce harmful emissions at the national and sub-national levels in line with international objectives, a view that was adopted by the study in analyzing and interpreting the results.

In assessing, how well Kenya's environmental diplomacy pillar had been implemented, the results indicated mixed views among the respondents. 79% of the respondents felt that the pillar had not been implemented at all or had only been implemented partially. Some of the factors given for the poor implementation included lack of political goodwill at the operational level in both national and Nairobi City County governments, inadequate financing, low advocacy by the concerned agencies and insufficient operationalization policies. On the other hand, 21% felt that implementation of the pillar had been successful owing to, among others, programs put in place to support the implementation, legal obligations placed upon key offices and membership to international frameworks.

Notably, while Kenya's standing on climate and environmental matters continued to be energized through international and continental leadership as evidenced by the hosting of the first ever Africa Climate Summit (ACS) in September 2023, there was little evidence that this had translated into overall reduced air pollution in Nairobi City County. This could depict lack of continuum in actions from the multilateral level, through the national to the sub-national levels which risks jeopardizing Kenya's ability to achieve its international environmental obligations. Mureithi (2023) identified this gap by noting a deficiency between many agreements made and the actual implementation and follow-up.

On the linkage between Kenya's environmental diplomacy pillar and existing environmental laws, the study found several possibilities of interactions. These involved the adoption of relevant international environmental agreements to address air pollution issues domestically through ratification. These agreements included the UNFCCC and the Paris Agreement. Here, environmental diplomacy would involve negotiations, agreements, and collaborations between different countries, regions, or cities to address environmental challenges collectively where these diplomatic efforts enhance compliance with agreed-upon environmental standards and influence the development and enforcement of local environmental laws.

86% of the respondents observed that such integration had been achieved through various policy harmonization by aligning domestic environmental laws with international laws and implementation of international agreements or decisions on air pollution through Kenya's laws governing air pollution at national, county and local levels. Further, the integration provided domestic environmental regime an avenue to access diplomatic channels for sharing knowledge, exchange of technologies and best practices to manage air quality.

Secondary data sought by the study however did not establish any direct reference to Kenya's environmental diplomacy pillar in the existing recently formulated environmental legal frameworks in the country. This would signify a lack of conceptual synergy between the pillar and laws on air pollution and agree with Connaughton (2019) who noted challenges in integrating diplomatic aspects into the national context.

Notwithstanding this, the objectives of the environmental diplomacy pillar were identified in several existing legal frameworks.

Kenya's broad environmental objectives were for example found enshrined in the national constitution and further contained in other sector-specific statutes and policies. Article 10 of the constitution for example lays emphasis on development that does not harm the environment while Articles 42 and 70 reiterate the right to a clean and healthy environment (Kenya, 2013). Quite phenomenal is the dedication of entire Chapter V of Kenya Constitution to land and environmental issues. Such provisions invariably encompass aspects of air pollution which have attracted huge international attention in recent decades.

EMCA (1999) on the other hand was identified as Kenya's first operative framework law on issues relating to the environment. It was preceded by a policy-making process that gave rise to Sessional Paper No. 6 of 1999 entitled Environment and Development. Section 78 of the EMCA calls for establishment of standards and processes for the determination of air quality and institution of measures to control air pollution including through minimizing GHG emissions as well as adoption of environmentally friendly technology. The EMCA (Air Quality) Regulations 2014 specifically have provisions on the prevention, control and reduction of air pollution and further prohibit some types of pollution (Mallowah & Oyier, 2023).

The Kenya Environmental Policy, 2013 was identified as one of the documents that informed the conduct of Kenya's foreign relations on environmental matters prior to the launch of the foreign policy document in 2014. The study observed that the policy acknowledged that environmental degradation through air pollution in Kenya directly contributed to global impacts and therefore called for the country's greater participation to promote domestication, coordination, and maximization of benefits from strategic MEAs. It prioritized low carbon development as a national area of focus for Kenya to deliver a clean environment to its citizens while at the same time minimizing the country's contribution to global climate change.

Other frameworks mentioned by the respondents as aligned with Kenya's environmental diplomacy pillar were the National Climate Change Action Plan (NCCAP), the Climate Change Act of 2016, carbon credit policies and various Nairobi City County by-laws on air pollution. NCCAP (2018-2022) is the second 5-year national framework on Kenya's climate change actions that also includes the lowering of GHG emissions. It provides a guide for Kenya to deliver on its Nationally Determined Contributions (NDCs) under the Paris Agreement of the UNFCCC while at the same time encouraging broad participation in air pollution matters including by development partners, the private sector as well as the public.

The Climate Change Act, 2016 on the other hand provides a regulatory mechanism for improved resilience to climate change and promotion of environmentally friendly development. Through the Act, Kenya is one of the states that have taken significant strides to domesticate the Paris Accord and commit to lowering carbon emissions. Kenya was also in the process of enacting the Climate Change (Carbon Markets) Regulations, 2023 whose objective is to provide a regulatory framework for carbon market and carbon credit projects and to support creation of incentives by the Government towards emission reduction according to Kenyan NDCs. The country was also reviewing the NCCAP-3 to revise its NDCs which currently stand at 30% reduction by 2030.

The study also identified other policy frameworks aligned to the environmental diplomacy pillar including the National Adaptation Plan (NAP 2015-2030) which provides for a coordinated approach to vulnerabilities and risks arising from effects of global air pollution including climate change and covers adaptation actions from 2015-2030. It outlines seven priority areas to focus government efforts to ensure economic development which does not result in air pollution and further demonstrates Kenya's commitment to the Paris Agreement (Government of Kenya, 2016). The Energy Act, 2019, is a broad framework covering different energy sources, from fossil fuels to renewables. It promotes development and use of renewable

energy and forms the backbone for transitioning Kenya to a green economy.

From these results, the study concluded that while there is evidence that Kenya had diverse legal frameworks that advance the objectives of its environmental diplomacy pillar, lack of direct reference to the pillar in the frameworks made visualization of how the multilateral environmental actions linked with domestic environmental actions difficult. The fact that 79% of respondents indicated that the pillar had not been implemented at all or had only been implemented partially could be explained by this phenomenon.

### 5.3.2 Lead Implementing Agency and other Agencies Involved

Kenya's Ministry of Environment, Climate Change and Forestry was identified by 58% of the respondents as the leading agency in the implementation of the environmental diplomacy pillar while the Ministry of Foreign and Diaspora Affairs was cited as playing the major supportive role. 21% of the respondents specifically identified NEMA, a semi-autonomous government agency under the Ministry of Environment, as the lead agency while a few others felt that it was the Ministry of Foreign and Diaspora Affairs. Respondents who thought that the Ministry of Environment, Climate Change and Forestry was the lead agency highlighted its functions as *inter alia* coordinating different sectors and being the focal point for UNFCCC. Respondents who indicated that NEMA was the lead implementing agency observed that it offered policy advice on state relations on the environment, shared knowledge and best practices for application in international engagement forums on climate change and further provided inputs for policy framework to the ministry concerned with diplomacy.

Mixed responses, notably from respondents from such key agencies like the Ministry of Environment, Climate Change and Forestry and Ministry of Foreign and Diaspora Affairs pointed to lack of a common understanding on a key implementation aspect of Kenya's environmental diplomacy pillar. The study assessed that this could adversely affect the successful implementation of the pillar. The Kenya foreign policy document, 2014 itself does not expressly identify the lead implementing agency for the pillar hence offers no recourse.

Notably, 75% of the respondents from Kenya's Ministry of Foreign and Diaspora Affairs indicated that the Ministry of Environment, Climate Change and Forestry was the lead implementing agency of the environmental diplomacy pillar in addition to coordinating all other environmental issues in the country. The Ministry of Environment, Climate Change and Forestry in this role oversaw initiation of wide spanning policies on the environment, housed key environmental semi-autonomous government agencies like NEMA and worked with other government institutions that have sector-specific policies on environment in the areas of implementation, enforcement or facilitation. The study, however, established that the Ministry of Foreign and Diaspora Affairs has a Multilateral Directorate for facilitation and follow-up.

Further, the study sought to understand which other agencies were involved in the implementation of the environmental diplomacy pillar or at least some of its objectives. The Ministry of Environment, Climate Change and Forestry, the Ministry of Foreign and Diaspora Affairs as well as NEMA were identified by various respondents depending on their initial choice of the lead agency. Other institutions mentioned included the Ministry of Energy, Kenya Bureau of Standards (KEBS), Energy and Petroleum Regulatory Authority (EPRA), Nairobi City County, Ministry of Tourism and Wildlife, the National Treasury and Economic Planning and Kenyan Mission to the UNEP. The study also identified the Environment and Land Court (ELC) and the National Climate Change Council established by the Climate Change Act, 2016 to harmonize climate change actions by the national and county governments also as having some roles related to the objectives of the environmental diplomacy pillar.

On capacity and resource capability of the implementing agencies which examined sufficiency of policy and

economic frameworks, institutional arrangements, and resource availability, the study established that inadequate resourcing was a major challenge in the implementation of Kenya's environmental diplomacy pillar. Connaughton (2019) had similarly observed weaknesses in the implementation of international environmental laws due to inadequate resourcing and financing. The President of Kenya during COP-27 also decried non-implementation of previous international agreements on the environment for reasons among which was the issue of climate financing.

Several private institutions were also found to play a role in the implementation of Kenya's environmental diplomacy pillar or at least objectives aligned to the pillar. Non-Governmental Organizations (NGOs) like Green Belt Movement, Nature Kenya and Kenya Organization for Environmental Organization, business entities and companies were found to have roles in funding, awareness creation and mobilization, different Civil Society Organizations (CSOs) played a crucial role in advocating for environmental protection and sustainability while UNEP provided technical support and capacity building.

Kenya Private Sector Association and Green Belt movement on the other hand were involved at the policy level, planting trees and participating in events and forums on climate change. Private financiers, NGOs and Community-Based Organizations (CBOs) in addition to other roles also worked with communities affected by air pollution in Nairobi City County and were involved in diffusion of environmentally friendly technologies like green cookers and domestic renewable energy projects.

### **5.3.3 Description of Detailed Implementation Framework for Kenya's Environmental Diplomacy Pillar**

The study sought a detailed and complete description of the envisioned implementation framework of Kenya's environmental diplomacy pillar. It was observed 83% of the respondents were not aware about any structured implementation framework for the pillar. One of the respondents who explained the framework observed that implementation was in multiple steps; international conventions/agreements (entry into party), domestication into law, development of policy, establishment of relevant institutions at national and county levels and finally enactment of county environmental policies and plans and local level environment plans. Such a framework would establish linkage between various levels and create coherence of actions related to air pollution.

Secondary data sought by the study, however, did not yield documentation on the envisioned implementation framework with several respondents indicating that such a framework did not exist. The variations in the few responses obtained by the study suggest a lack of clarity in how the environmental diplomacy pillar was envisaged to be implemented and may explain the missing direct reference to the pillar in most Kenya's domestic environmental actions.

### **5.3.4 Domestication of Environmental Treaties on Air Pollution in Kenya and the Influence of the Kenyan Legal System**

The study established that Kenya had fairly domesticated environmental treaties on air pollution. Kenya's participation in multilateral environmental forums was identified as a great stimulus in the domestication of international environmental treaties on air pollution in various ways. The participation for instance obliged Kenya to accept international obligations with respect to air pollution, the treaties directly influenced domestic policies and actions on air pollution and the engagements provided channels for the international community to fund the environmental cause in the country.

The specific environmental treaties and conventions concerning air pollution that Kenya had domesticated were mentioned as the UNFCCC, the Kyoto Protocol, the Paris Agreement and the Montreal Protocol on substances that deplete the ozone layer. Examination of Kenya's Ministry of Environment, Climate Change

and Forestry database gave the following as the international environmental treaties related to air pollution to which Kenya was a state party to. It also gave the respective obligations for governments and focal point for each.

<b>Table 4. Environmental Treaties and Protocols Domesticated by Kenya</b>			
<b>Treaty/Protocol</b>	<b>Objective</b>	<b>Government Obligation</b>	<b>Focal Point</b>
Vienna Convention for the Protection of the Ozone Layer (1985)	Adopt and implement worldwide measures to eliminate production and use of regulated substances that damage the ozone layer.	Information sharing to protect the ozone layer by taking precautionary measures to control global emissions of harmful substances.	Ministry of Environment, Climate Change and Forestry.
Montreal Protocol on Substances that Deplete Ozone Layer (1987)	Protect the earth's ozone layer by phasing out the chemicals that deplete it.	Phase down the consumption and production of ozone depleting substances in a stepwise manner (different timetables for developed and developing countries).	Ministry of Environment, Climate Change and Forestry.
UNFCCC (1992)	Achieve the stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous interference with the climate system.	Regulate levels of GHG concentration in the atmosphere to avoid the occurrence of climate change at a level that would impend sustainable economic development or compromise initiatives in food production.	Ministry of Environment, Climate Change and Forestry.
Kyoto Protocol to UNFCCC (1997)	Limit and reduce GHG emissions in committed industrialized countries in accordance with the agreed individual targets.	Achieve binding targets for 37 industrialized countries and the European Community for reducing GHG emissions.	Ministry of Environment, Climate Change and Forestry.
Paris Agreement to UNFCCC (2015)	To strengthen the global response to the threat of climate change by keeping the global temperature rise below 2 <sup>0</sup> C and to pursue efforts to limit the temperature increase even further to 1.5 <sup>0</sup> C.	Contribute to global response to climate change through the NDCs which entail adaptation and mitigation actions on climate change.	Ministry of Environment, Climate Change and Forestry.

From Table 4 above, it was evident that Kenya was a state party to key international treaties on issues of air pollution. What then remained was the effective implementation of those treaties to fully realize all the obligations.

On the nature of Kenyan legal system and how it affected domestication of treaties on air pollution, mixed results were recorded with 54% of the respondents indicating that the legal system was dualist. The study however noted inconsistency among 46% of respondents who indicated that the Kenyan legal system was dualist and at the same time indicated that treaties focusing on air pollution were directly incorporated into Kenyan domestic laws through ratification as opposed to transposition which is a requirement under dualist regime. Secondary data established that Article 2(5) of the Kenyan Constitution 2010 provides that general rules of international law like the principles of international environmental law form part of Kenyan law

(Kenya, 2013). These results were supported by the observations of Bett and Itegi (2022) about the nature of Kenyan legal system.

### **5.3.5 Envisioned Impact of Kenya's Environmental Diplomacy Pillar at the Grassroots Level**

In concluding the study, an understanding was sought about how the objectives of Kenya's environmental diplomacy pillar were envisioned to impact environmental behavior at the grassroots level. The results revealed that there was a general lack of awareness about the link between international and local environmental actions. Secondary data revealed existence of policy actions by Nairobi City County which while aligned with Kenya's international obligations on environmental matters do not explicitly refer to the environmental diplomacy pillar.

The county, for example, in May 2022 enacted the Nairobi City County Air Quality Act to provide a legal framework for the prevention of air pollution. The Act has wide application in governing harmful emissions that include industrial, transportation and domestic activities. It provides for licensing and establishment of emission limits and further requires installation of air pollution control systems (Nairobi City County, 2022). Further, the County in June 2022 launched its Climate Action Plan 2020-2050 making it the first city in Kenya to adopt such a plan. The policy aims to create green jobs, restore parks, open spaces that will improve mobility options for citizens, enhance air point's management and embrace clean energy options.

## **6. CONCLUSIONS AND POLICY RECOMMENDATIONS**

### **6.1 Conclusions**

Kenya's environmental diplomacy pillar is one of the five interlinked pillars of the 2014 foreign policy publication that underscores the country's strong orientation towards contemporary environmental challenges including air pollution and its repercussions. The spirit of the pillar is to create a link between discussions about the environment at the international level with domestic environmental actions for Kenya's effective contribution to global environmental objectives. Air pollution has attracted major attention among states due to its potential negative effects, notably global climate change. Despite the potential that the pillar offers in synergizing environmental actions at various levels to reduce air pollution as a contribution to international targets, it was established by the study that further effort is required to ensure that the environmental diplomacy pillar is fully and effectively implemented for Nairobi City County to benefit.

### **6.2 Policy Recommendations**

The study recommends that both the Government of Kenya and that of Nairobi City County formulate a detailed implementation framework for the environmental diplomacy pillar to clearly identify and define the policy, structural and organizational linkages between the international realm environmental discussions and environmental actions and behavior at the national and grassroots level. The two governments should also adequately resource all the institutions involved in the implementation as well as seek relevant partnerships to boost their capacity to effectively implement and operationalize the pillar and its objectives.

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## APPENDIX I: QUESTIONNAIRE

### Section A: General Information

1. Please indicate your sex. Male  Female
2. Please indicate your age bracket.  

20-29 years <input type="checkbox"/>	30-39 years <input type="checkbox"/>
40-49 years <input type="checkbox"/>	50-59 years <input type="checkbox"/>
Above 59 years <input type="checkbox"/>	
3. Which organization/institution do you belong to?.....
4. Number of years in the organization/institution.  

Below 5 years <input type="checkbox"/>	6-10 years <input type="checkbox"/>
11-15 years <input type="checkbox"/>	above 15 years <input type="checkbox"/>

### Section B: Envisioned Implementation of Kenya’s Environmental Diplomacy Pillar under the Existing Environmental Laws in Nairobi City County

5. To what extent would you say Kenya’s environmental diplomacy pillar has been implemented? What factors have influenced the implementation?.....
6. How has Kenya’s environmental diplomacy pillar been linked with existing environmental laws on air pollution? Please describe in detail.....
7. What additional policy frameworks have been formulated to support implementation of Kenya’s environmental diplomacy pillar? .....
8. Identify the lead government institution in the implementation of Kenya’s environmental diplomacy pillar and how it interacts with the other institutions?.....
9. Which other public institutions are involved in the implementation of Kenya’s environmental diplomacy pillar?.....
10. What is the capacity and resource capability of the public institutions involved in the implementation of Kenya’s environmental diplomacy pillar?.....
11. Are private institutions involved in the implementation of Kenya’s environmental diplomacy pillar? Yes  No
12. If yes, which are these institutions and what is their role in the implementation of Kenya’s environmental diplomacy pillar? If no, what are the reasons for non-involvement?.....
13. Please describe in detail the entire implementation framework for the Kenya’s environmental

diplomacy

pillar?.....

14. To which degree has Kenya implemented international environmental treaties on air pollution?.....

.....

15. Does Kenya's environmental diplomacy pillar play a role in the domestication of international environmental treaties on air pollution? Please describe in detail.....

16. Which specific international environmental laws on air pollution have been domesticated in Kenya?.....

.....

17. Would you assess Kenya legal system as dualist or monist in its approach to international environmental law?.....

.....

18. Has the above affected the implementation of the objectives of Kenya's environmental diplomacy pillar? Please elaborate your answer.....

.....

19. What is the envisioned impact of Kenya's environmental diplomacy pillar at the grassroots level?.....

.....

Thank you!