

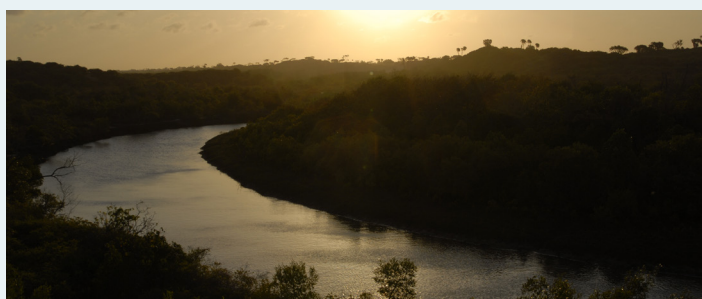


Rights of Wetlands Policy Brief - Kenya

Introduction

Rights of Nature is both old and new. Old in that, at its essence, it is about recognising in law the relationship between natural communities, humans included, and the ecosystems they are a part of much like traditional cultures practiced or are practicing. New in that legal rights of nature are only 20 years in the making: A quite rapid rise in the evolution of lawmaking as pertains to expanding rights (e.g. civil rights).

To date, close to 40 countries have either adopted regional or national policy (some constitutionally) or have had their high courts recognise rights of nature in general, for specific ecosystems or for specific species. Regions like South America, Africa, and Asia continue to bring forward more laws and policy-making validating nature's rights. This includes the recognition of the Rights of Wetlands.



Kenyan context

- In 2020 Kenya's Constitution was promulgated to explicitly recognise environmental rights and fundamental freedoms.
- Kenya has a comprehensive National Wetlands Conservation and Management Policy (2015). However, many other policies and legislation relate to wetlands conservation and management. This has partly led to institutional conflicting mandates and overlaps and consequently degradation of wetlands ecosystems and biodiversity has occurred. An inter-sectoral coordinated approach to achieve sustainable use and management of wetlands in the country is required.

To learn more: www.rightsofwetlands.org

Universal Declaration of the Rights of Wetlands¹



The right to...

1. Exist.
2. Their ecologically determined location in the landscape.
3. Natural, connected, and sustainable hydrological regimes.
4. Ecologically sustainable climatic conditions.
5. Have naturally occurring biodiversity, free of introduced or invasive species that disrupt their ecological integrity.
6. Integrity of structure, function, evolutionary processes, and the ability to fulfill natural ecological roles in the Earth's processes.
7. To be free from pollution and degradation.
8. Regeneration and restoration.

Rights of Nature is transformative as it embeds human societies within ecosystems

Key Messages

- 85% of the world's wetlands have been destroyed and the remaining are being degraded through pollution, alterations to natural water regimes through drainage or dams, invasive species, and over extraction of natural resources including water, plants, and animals. This wetland loss and deterioration is contributing to climate destabilisation and biodiversity declines.
- Achieving the future well-being and sustainability of life on earth requires rapid and transformative change.
- Recognising, implementing and ensuring Rights of Wetlands is a critically important transformative change toward aligning human activities with ecological reality.
- Humans have an ethical duty to recognise the Rights of Nature, including the Rights of Wetlands and other elements of Nature to exist, to have a place to exist, and to fully participate in the Web of Life.
- The 8 Rights of Wetlands are interconnected. Wetlands can't exist without all 8 rights.
- Indigenous Peoples and Local Communities are leaders in recognising these rights and the role and responsibilities of humans as members of the Web of Life.
- Legal structures for applying Rights of Nature exist, and they apply to Rights of Wetlands.
- Local communities can themselves take, and are taking, actions to change their relationship with wetlands.
- Rights of Wetlands can be promoted and supported through cultural, educational, legal, and wetland management strategies.



Principles to consider when including Rights of Nature / Rights of Wetlands into policy and legislation

- Recognise the inherent, inalienable legal Rights of Nature and its constituent ecosystems, habitats, and natural communities to exist, flourish, self-organise, evolve, and regenerate, and to restoration, recovery, and preservation when harmed, interpreting these rights in the manner most favourable to the protection of Nature and constituent ecosystems such as wetlands.
- Define Nature and ecosystems so as to convey “a naturally occurring structural, functional, and organizational unit, consisting of a community of organisms and the biotic and abiotic environmental variables that live and interact as a symbiotic whole in a given environment,” or stated differently, “Nature is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains, and reproduces all other beings. The term “being” includes ecosystems, natural communities, species and all other natural entities which exist as part of Nature.” (Article 1, Section 1 of the Ponca Tribal Law of Nature).
- Apply the Rights of Nature and Ecosystems such that “All beings are entitled to all the inherent rights recognised in this law without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status; all beings have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist; and the rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that respects Nature and each being within Nature.” (Article 1, Section 4 of the Ponca Tribal Law of Nature).
- Ensure that the Rights of Nature are free from violation, regulation, and subordination to other laws, legal and financial liabilities, economic priorities, commodification, monetisation, or classification by legal concepts such as “juristic personhood” where financial liabilities or resource valuations are imposed.
- Emancipate Nature, ecosystems, such as wetlands, and living beings from the legal status of “property,” as the status of property allows for the violation of Nature’s rights by giving deference to vested legal claims.

Rights of Wetlands moves us away from a world view that places people outside of and above Nature

- Recognise that Nature includes human beings, when they are present, as a constituency, and that the very existence of humanity is inevitably tied to that of Nature, and that the Rights of Nature necessarily encompass the right of humanity to its existence as a species, and the right of Indigenous People and permanent residents to dwell unmolested in their natural habitat.
- Guarantee the ecosystem has legal standing to appear as the real party of interest in administrative proceedings and legal actions affecting its rights.
- Authorise residents of communities to represent an ecosystem and ensure that they do so in the name of that ecosystem, for the sole purpose of advancing its rights, recognising that they are part of that ecosystem and have legal standing, in any and all legal proceedings, to do so.
- Require full, transparent, understandable, accurate, and timely consultation and the informed consent of the resident human community representing an ecosystem that may be affected regarding proposed industrial, extractive, development, political, and financial activities before any activity begins.
- Apply the precautionary principle and restrictive measures, including locally promulgated prohibitions, for activities that may lead to the extinction of species, the destruction of ecosystems, or the permanent alteration of natural cycles whenever a human community representing an ecosystem declares any action or omission may cause a violation of nature's rights to occur.
- Require that damages derived from administrative, legal, contractual, or other proceedings be used solely and exclusively to protect, repair, and restore Nature in the affected ecosystem to assist in bringing it to its prior natural state.



A Rights of Wetlands approach is concerned with legal recognition, management, and practical action

Ways to apply Rights of Wetlands in Kenya

Build on existing strengths:

- The Kenyan Constitution now recognises environmental rights and the government has undertaken reforms aimed at conservation of the environment including wetlands.
- Two key agencies have the mandate for wetland management and protection: National Environment Management Authority (NEMA); and the Kenya Wildlife Service (KWS). In addition, the Kenya Forest Service (KFS) has the mandate for mangrove forest wetlands.
- Local communities living within and around wetlands have a deep relationship with wetlands and utilise their resources to support their socio-cultural and economic needs.
- Kenya is a signatory of the Ramsar Convention on Wetlands.

Opportunities to advance Rights of Wetlands:

- Rights of Wetlands should be included into Integrated Wetland Management Plans required under The Environment Management and Coordination (Conservation and Management of Wetlands) Amendment Regulations 2017.
- The National Wetlands Conservation and Management Policy (2015) is due for review. Within the context of widespread loss and degradation of wetlands in Kenya there is both a high need (e.g. ecological services of wetlands) and historical inclination of environmental protection to advance higher level protections like the adoption of Rights of Wetlands:
 - Advance options to empower local level governance to defend Rights of Wetlands/Nature;
 - Advance options for expanding decision-making for local communities to advocate for the Rights of Wetlands/Nature;
 - Fill technical/knowledge gaps for those involved in advocacy and eventual implementation (training & resources needs);
 - Develop local advocates and networks (community-building);
 - Build local political support;
 - Acquire funding to address lack of resources.
- It would be beneficial for Kenya's Wetland Restoration Strategy to include Rights of Wetlands, in line with the UN Decade for Ecosystem Restoration, to ensure that restoration activities occur respecting the Rights of Nature.
- Rights of Wetlands should be included within the inter-county protocol and memorandum of understanding among the key counties of the River Tana basin to help fulfil the common shared vision for the sustainable management of water resources and catchment restoration.
- Evaluate current environmental protection laws and regulations in Kenya to see how they can be replaced by or potentially enhanced through the adoption of Rights of Wetlands/Nature laws.
- Rights of Wetlands/Nature constructs could be implemented as decision making models for all levels of government, which could then serve as models for expanding Rights of Nature into the private sector. The effort should include means of supporting local economies in a non-extractive way.

