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When Punitive Approaches Fail: Insights into Unjust Outcomes of Kenya’s Charcoal Policies

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Key Messages

- In Kenya, there have been frequent policy introductions, amendments, and reversals over the past fifteen years in an attempt to regulate the charcoal sector. This has included outright bans targeting supply-side activities but has lacked corresponding demand-side measures.
- There is concern that strict, punitive legislative measures disproportionately impact poor, rural communities. Due to a lack of alternative options, these actors often continue to participate in the industry illegally but with higher risks and lower rewards. This highlights a need to view charcoal not only as a resource issue but as a complex social challenge.
- For a *just transition*, an inclusive and practical approach is required, which fosters competitive alternative livelihood opportunities to ensure vulnerable actors are *not left behind*.



Charcoal trader in Kibera, Kenya

Introduction and context

Kenya has experienced significant deforestation stemming from land-use change, illegal deforestation, and other anthropogenic activities. The dominant narrative frames the charcoal sector as a key contributor to illegal deforestation. Reflecting the broader picture in sub-Saharan Africa (SSA), demand for charcoal has grown in Kenya, paralleling rapid population growth and urbanisation [1]. To remedy the situation, the Government is working towards achieving 10% forest cover by 2030 in line with wider national sustainability and climate commitments (eg Sustainable Development Goals, Nationally

Determined Contributions). Addressing the charcoal challenge equitably is a significant and complex task.

The charcoal sector is a major GDP contributor and an important source of livelihood, especially for communities in dryland regions. Recent data are difficult to obtain, but in 2013 it was estimated that 700,000 people were directly involved in the charcoal sub-sector in Kenya [2]. These actors carry out various roles across the value chain, with upstream activities (eg subsistence logging, producing, transporting) representing livelihood activities for rural communities (**Figure 1**). Whilst larger commercial charcoal players exist, the sector

is characterised by high levels of informality, creating an additional level of governance complexity. For some, participating in the sector represents a full-time occupation, whereas others only participate intermittently as a financial safety net to satisfy basic needs when other income is tight [3, 4]. In either case, charcoal-related activities are a major economic livelihood in Kenya. An intricate network operates extensively throughout Kenya to primarily satisfy urban demand. Up to 80% of urban households use charcoal, often alongside other energy sources due to fuel stacking behaviours [1, 5].

A large-scale shift from traditional fuels, including charcoal, to modern and clean energy is required. Alongside incentivising the demand-side uptake of alternative energy, there is ongoing debate

about how policy can equitably address supply-side activities [2]. Over the last fifteen years, there has been an influx of top-down policy interventions targeting the sector in Kenya. Although some groups see this as a positive step in terms of environmental protection, there is increasing scepticism regarding the effectiveness of this approach. There are concerns that punitive and inflexible policies disproportionately disadvantage vulnerable, rural communities [3]. Furthermore, frequent policy changes contribute to an increasingly uncertain regime. Notably, in 2018, a nationwide ban was abruptly announced, which effectively outlawed charcoal supply. As new policies are devised, there is a need to consider how those whose livelihoods depend on the sector are impacted to support a just transition.

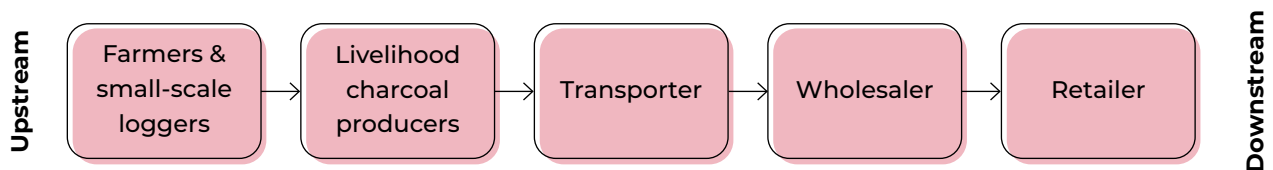


Figure 1: Livelihood charcoal supply-chain

Aims and Methodology

This policy brief summarises a study that explored how the policy landscape around charcoal has developed in Kenya since the landmark Charcoal Rules were introduced in 2009. In doing so, the study sought to ascertain what impact regulatory interventions, such as bans, have on the sector and those involved on the supply-side. This is explored from the perspective of the outcomes in terms of equity, justice, and inclusion of rural, charcoal-dependent communities (ie rather than large-scale, commercial loggers).

A combination of primary and secondary data sources was used:

- **Policy analysis:** Review of relevant documentation (eg government reports; legislation; gazette announcements; grey literature).
- **Expert interviews:** Six semi-structured discussions to obtain insights into the history, policy approach and characteristics of the sector at the national level.
- **Key informant interviews:** Sixteen structured interviews with county-level informants (eg local government officials; community charcoal stakeholders) in Kajiado and Kitui.
- **Focus groups:** Four structured group discussions with charcoal-dependent actors in Kajiado and Kitui.

Findings

Policy Approach: Key Observations

The Kenyan government has implemented various policies to try to regulate the charcoal sector. Notably, in 2009 the Charcoal Rules represented a major top-down attempt to *formalise* activities (**Table 1**).

In February 2018, a national moratorium on logging activities was announced, as a response to extensive illegal deforestation activities, which depleted essential water towers¹ exacerbating drought conditions. This ban was initially in place for a 90-day period but was extended incrementally until it was lifted in July 2023. Bans on transportation were also instigated at the county-level (eg in Kitui county [5]) since forestry is a devolved function. All these interventions focused on the supply-side, without corresponding regulations targeting the demand-side (ie charcoal use remained legal).

The primary data revealed competing views regarding the policy approach, and what *should* be done. For some, formalisation had positive impacts, both socially and environmentally. For instance, the Charcoal Rules were believed to contain features conducive to environmental protection (eg conservation requirements) and socio-economic benefits (eg low-level charcoal producers have improved bargaining power when they negotiate in groups). For others, such policies failed to deliver sufficient progress or triggered opportunist new entrants as charcoal prices increased in response to new regulations. However, when the moratorium was put in place in 2018, it was perceived as reversing some of the benefits of earlier policy efforts.

¹ According to The Kenya Water Towers Agency, a water tower is “an area that acts as a receptacle for rain water, stores water in the aquifers underneath the land surface and gradually releases the water to the river and springs” [7]. There are 18 gazetted water towers in the country.

Table 1: Key national level policies and legislations.

| Policy | Year(s) | Type | Highlights |
|---|---------------------|-------------|--|
| The Bioenergy Strategy | 2020–2027 | Strategy | <ul style="list-style-type: none"> Outlines strategies for transitions to cleaner cooking fuels and technologies. This includes a focus on capacity building for more efficient supply-side processes (eg efficient kilns) in collaboration with relevant groups, such as Charcoal Producer Associations (CPA). |
| Gender Policy in Energy | 2021 | Strategy | <ul style="list-style-type: none"> Provides guidelines and strategies for the mainstreaming of gender perspectives in Kenya's energy framework. |
| The Energy Act | 2019 | Legislation | <ul style="list-style-type: none"> Outlines the division of responsibility between the national and county government regarding charcoal, which is classified as a renewable energy source. The county government is responsible for the regulation and licensing of charcoal production, transportation, and distribution to reflect national-level policy. |
| The Energy Policy | 2018 | Strategy | <ul style="list-style-type: none"> Sets an objective for the government to implement strategies and mechanisms to eliminate the use of charcoal for household energy by 2022. |
| The Forest Conservation and Management Act | Updated 2016 (2005) | Legislation | <ul style="list-style-type: none"> Prohibits the possession of charcoal from public lands and requires permits for community or private forests. |
| The Forest (Charcoal) Regulation ('Charcoal Rules') | Updated 2012 (2009) | Legislation | <ul style="list-style-type: none"> Outlined the regulations for the production, transport, and marketing of sustainable charcoal. Producers must join a CPA to obtain necessary licences and transporters must obtain a permit from the Kenya Forest Service ('KFS'). Retailers can only trade with licensed producers. The CPAs contain various requirements (eg facilitate sustainable production, conservation plan requirements etc). |

Challenges

The primary data illuminated various challenges of the governance approach, with many interviewees reinforcing the concerns raised in other policy and academic analysis [2, 3, 5].

(1) Instability and inconsistency

“...you find that there's always a friction between the supply and demand [policies]”
(Expert)

Legislative introductions, amendments, and reversals have caused confusion for stakeholders, even when the rules are believed to be clear on paper. A fast-changing policy dynamic can contribute to low actor awareness, non-compliance, inconsistent enforcement, and corruption. Interviewees suggested that there was limited *meaningful* consultation with stakeholders during the policy formation process. Instead, public participation is often superficial, despite being mandatory under the Constitution of Kenya (2010). For instance, according to our primary research, the 2018 ban appeared to be unexpected for some communities. Whilst initially framed as temporary, the national ban was only reversed in mid-2023 leaving an uncertain situation for stakeholders.

Different ministries (eg Forestry, Energy) and institutions are involved in the charcoal sector at national and county levels, causing horizontal and vertical coordination complexities. Supply-side measures are not always in harmony with the demand-side, which creates inconsistency in the overall policy mix. For instance, production and transportation bans were not matched with outlawing charcoal consumption.

(2) Corruption

“If you are carrying charcoal then you are seen as a source of money” (Expert)

Attempts to formalise the sector through regulation (eg the 2009 Charcoal Rules) were associated with some positive changes (eg sustainable practices through CPAs), but also with unintended negative impacts. Notably, the findings reiterate existing research by highlighting the widespread presence of corrupt actors who exploit the regulatory environment (eg by demanding bribes [4, 5]). This often intensifies when there is a legislative change since inadequately prepared stakeholders are especially vulnerable to extortion (eg powerful rent seekers exploit information asymmetries). It also means that the government misses tax collection opportunities.

Transportation emerged as especially prone to corruption, but the recent national ban expanded criminality elsewhere in the value chain. As such, there was a shared sentiment amongst interviewees that the regulations have failed to meet their objectives; instead, an opportunistic environment for extortion has emerged. It was noted that transporters, although illegally operating under recent bans, continued to move charcoal but faced additional roadblocks as corrupt officials capitalised on the opportunity to receive bribes. The earlier enacted Charcoal Rules required transporters to obtain movement permits and producers to join CPAs. Nonetheless, even then, cumbersome administrative processes, document forgery, and bribery were common issues.

(3) Inequitable Outcomes

“In the past, profit margins from charcoal sales were higher compared to now. The operating costs of the business have risen...”
(Focus group)

The primary and secondary data suggest that the actors targeted by regulations are unequally distributed across the value-chain. There is a skewed regulatory focus towards upstream rather than downstream actors, concentrating the impacts on poor, rural players. Whereas males

dominate the transportation phase, females are heavily involved in upstream activities (eg subsistence charcoal making using earth mound kilns), so there are also gender implications of policy adjustments.

During the ban, participation became higher risk and less profitable for rural charcoal-dependent communities. Roadside rent-seeking increased, so livelihood producers were paid even *less* by intermediaries because pre-empted bribes are absorbed into the cost structure. With an absence of social security, communities can be pushed into extreme poverty, triggering other harms (eg school drop-out, child marriage, poor mental health).

Impacts are felt on the demand-side too: prices increase whilst charcoal quality deteriorates. The poorest consumers, typically those who cannot access affordable alternatives, are disproportionately affected.

(4) Limited Alternative Livelihood Opportunities

“The ban has disrupted my only source of livelihood; if I stop charcoal production, life shall be unbearable” (Focus group)

The findings reveal that financially competitive and readily available alternative livelihood opportunities are sparse. This has not been adequately addressed in the policy, especially during the recent ban. Up to 60% of households in Kitui county have some dependency on the charcoal sector, so punitive approaches seriously disrupt the financial standing of these communities. Other vocations were argued to not deliver comparable incomes or lack the flexibility offered by the charcoal sector. It was claimed that agriculture activities (eg vegetable farming) requires new skillsets, whilst there are concerns that yields are uncertain. In Kajiado, for instance, the latter concern has been exacerbated by prolonged and severe droughts, which has pushed more people away from agriculture

into charcoal. As such, the alternative livelihood opportunities often presented are not always appealing. Some experts and insights from the literature [6] suggest the opportunity of bioethanol production, which could tackle both demand and supply-side challenges. However, given ongoing food insecurity concerns in Kenya, this could place additional constraints on resources and create unfavourable competition between food crops and fuel production, and hence requires further research.

Access to finance for technologies to support new ventures, such as solar water pumps for agriculture, is also an obstacle. Considering these constraints, many opt to continue working with charcoal, even when it is illegal to do so.

(5) Overlooking sustainable approaches

“...if you have charcoal made out of branches and twigs... you don't cut the whole tree down” (Expert)

The findings reveal that bans and strict legislative approaches often fail to produce transformative environmental outcomes. An often-overlooked factor is that charcoal production is often a co-process of other activities (eg agro-conversion) [5], which was recognised by interviewees but is currently not captured by the policies. In essence, charcoal is not always the main driver behind deforestation, rather it is a by-product of another forest clearance activity. Furthermore, regulations prior to the ban encompassed operating conditions that could support a sustainable approach. For example, CPAs needed to have a tree replanting plan to replenish the area. Such requirements were superseded by the 2018 ban. Those who continued illicitly had no incentive to adhere to earlier sustainability guidelines. As such, outright bans can discourage the application of more sustainable, or even regenerative, approaches (eg sustainable harvesting techniques, replanting, using efficient kilns).

Recommendations

The findings reveal various challenges that ultimately reduce the credibility and efficacy of the current policy regime. However, in identifying these challenges, there are corresponding opportunities for policy improvement.

- **An inclusive approach:** To produce positive societal outcomes, legislation should be inclusive and not penalise the most marginalised communities. This includes ensuring communities are empowered during policy formation and implementation through substantive rather than superficial consultation processes. In the future, a genuinely participatory approach can be applied to ensure the voices of marginalised communities are heard.
- **Supportive rather than punitive:** The evidence implies that bans have generated unjust impacts on charcoal-dependent communities and created opportunities for corruption by powerful officials whilst also failing to produce transformative environmental impacts. Hence, a punitive approach appears to be unsuccessful under the political, social, and economic operating conditions in Kenya. There is opportunity to revisit the successful features of the Charcoal Rules (eg CPAs) and strengthen them to develop a *supportive* approach.
- **Supply- and demand-side harmony:** Policies should be consistent and mutually reinforcing

between the supply- and demand-side. Without this, supply-side policies may fail and, possibly induce further illicit activities as demand persists. It is also important to reduce final demand for charcoal, for instance by encouraging the uptake of alternative energy sources through various policies (eg incentives, education, etc).

- **Competitive alternative livelihood opportunities:** Future policy can provide additional assistance to support viable and appealing alternative livelihood opportunities for charcoal-dependent communities. For instance, efforts to encourage participation in agriculture, instead of charcoal, will only be successful if farmers can generate comparable levels of income. This likely requires specialist skill development through training in climate-smart agriculture and access to supportive technologies to ensure productivity, even during droughts.
- **Research and data needed:** Many publications exploring the Kenyan charcoal landscape are relying on outdated assumptions. As an overarching recommendation, up-to-date data can help policymakers to better understand the current situation on the ground, at a county and national level. Accurate and reliable data (eg relating to numbers participating in the sector, income generated etc) can support robust evidence-based decision making.

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