



Natural resources governance in Kenya: The assessment of fisheries resources subsector

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Abstract

Fisheries resources are valuable economic as well as political and social resources at all levels in Kenya. The resources are mainly composed of freshwater, coastal and marine and aquaculture. But Fishing is mostly carried out by artisanal fishermen. However, sustainable utilisation of such resources depends greatly on good governance. The objective of this study was to present an in-depth assessment and analysis of fisheries resources governance regimes in Kenya: the legal and policy instruments and institutional frameworks for natural resource governance within the marine/fisheries subsector and whether the institutions entrusted with the responsibility to govern have promoted or undermined governance in the sector. The study largely relied on a participatory assessment involving qualitative methods of data collection. This involved Literature review, Key Informant interviews; targeting government institutions and non-state actors, selected field work, as well as focus group discussion with selected resource users' associations. Generally, the current government policies focuses on the promotion, implementation and monitoring of sustainable management and responsible fishing practices. The policy provides for establishment of Beach Management Units (BMUs), grass root umbrella organisations for the purpose of co-management of the fisheries resources in a collaborative and participatory process. The study findings show that local participation policies have yielded limited benefits for the local people. Most of participatory management approaches of resources give power to local elites by marginalizing the vulnerable groups and in some cases it also re-enforces state control. This is partly rooted because of differences in interest, as well as weak grass root institutions: with limited capabilities, lack of administrative competence, weak planning and control systems and lack of coherent local mobilization at the local level. However, to ensure sustainable fishers and marine resources management, cross cutting issues influencing poverty levels must be considered and addressed.

Keywords: fisheries, governance, policy, legal, institutional framework, beach management unit, Kenya

1. Introduction

1.1 Background

Natural resources in Kenya are vested in the state, where the state has the responsibility to provide an enabling environment that would ensure all resources are effectively governed (GOK 1994)^[28]. Emerging issues affecting natural resources governance (including fisheries) in Kenya include, illegal exploitation, unsustainable resource use practices, ever increasing demand for the resources, other include natural resources subsectors have bureaucratic and lengthy administration procedures, inequity in access, resource use conflicts exacerbated by overburdened legal systems (Agrawal, 2001)^[1].

Governance has profound implications on natural resources management. But the concept of "governance" is as old as human civilization, simply put "governance" means: the process of decision-making and the process by which decisions are implemented or not implemented (Ribot, 2004.)^[62]. It is the exercise of political, economic and administrative authority to manage a resource sector. Governance involving complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and obligations, and mediate their differences (UNDP, 2009). Therefore an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that

have been set in place to arrive at and implement the decision on natural resources management.

In Kenya, the national government is the major actor in the governance of natural resources including fisheries (GOK 1994)^[29]. Other actors involved in governance of natural resources include government agencies, influential land owners, private enterprises, associations of local resource users, cooperatives, CSOs (NGOs, FBO, CBOs) research institutes, religious organisations, finance institutions, political parties, etc. in addition to the above actors, media, international donors, multi-national corporations, etc. may play a role in decision-making or in influencing the decision-making process (GoK, 2007b)^[40].

Good governance has 8 major characteristics; that is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. Good governance is also responsive to the present and future needs of society (Shackleton, *et al.*, 2002)^[61]. It is increasingly apparent that the overly centralised natural resource management may not be the proper institutional arrangement and that local institutions stand a better chance of managing the local environment by overseeing the planning processes, establishing local environmental policies and regulations and enforcing them

(Shackleton and Campbell 2001) ^[60]. This is observable in successful implementation of Community Based Natural Resources Management (CBNRM) projects with legal and policy framework that empowers local communities and grants them responsibility and authority over the use and management of their natural resources, with an acceptable formula defined for the sharing of the benefits and responsibilities arising from such a set up (WWF, 2008) ^[67]. Good governance in resource management ensures priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of natural resources.

Kenya's natural resources policy and legislation are scattered in a multiplicity of resource and sector specific laws and policy papers as well as in the constitution 2010 and in the national short term/midterm development strategies; vision 2030, e.tc. Policies to devolve responsibility for natural resource management to local bodies in Kenya have become widespread in the past 20 years. The principle that all people have the right to benefit equally from the use of natural resources as well as an equal entitlement to a clean and healthy environment are enshrined in article 42 of the Kenya Constitution of Kenya 2010, as well as EMCA, 1999.

Kenya fisheries resources are mainly composed of freshwater (lakes, rivers and dams) and the coastal and marine (Indian Ocean) largely focusing on reef fisheries while aquaculture is still at infancy (Fondo. 2005) ^[12]. Kenya fisheries resources include; Capture fisheries made of marine and inland fisheries and Culture fisheries made of mariculture and fresh water aquaculture (GoK, 1989) ^[27]. The Kenya's Fisheries sub-sector has potential to contribute significantly to the National economy through employment creation, foreign exchange earnings, poverty reduction and food security support.

Fishing effort in Kenyan ocean waters is mostly carried out by artisanal fishermen (with over 8,000 fishers), operating small fishing boats and is primarily directed inside territorial waters (12 nm), almost entirely restricted to the fringing reef and near-shore areas. With few exceptions, high-seas fishing effort is conducted only by foreign licensed large pelagic vessels under license to Kenya and within the IOC region (IOC, 2011).

1.2 The statement of the problem

Despite its economic and social importance, the fisheries sector is faced with a number of challenges. These include uncoordinated development approaches, low investment resulting in inadequate logistical infrastructure, over-exploitation of some water bodies (i.e. overfishing), and under-utilization of some resources, and weak linkages between research, management and other public and private players (GoK, 2008) ^[43]. Other factors affecting fisheries sector include: environmental degradation (lose of biodiversity, water pollution effects etc), destructive fishing methods, climate change associated with the global warming phenomenon and evolving market access issues. The sector has also operated to a larger extend without an overarching policy and legal framework since independence.

Therefore a need to undertake a stake holder situation analysis of the fisheries resource sectors in the county, considering the governance factors affecting fisheries including direct and

indirect threats, opportunities, and enabling conditions. This means understanding the conditions at the local level and then the economic and institutional changes made at national and international levels by government and the private sector that affect those local conditions.

This will provide a better understanding of governance regimes within the fisheries sector in Kenya and to develop a strategic view of the human and institutional landscape, and the relationships between the different stakeholders and the issues they care about most, especially the well-being of the otherwise marginalised majority.

1.3 Objective

The objective of the study was to present an in-depth assessment and analysis of fisheries resources governance regimes in Kenya: the legal and policy instruments and institutional frameworks for natural resource governance within the marine/fisheries subsector and whether the institutions entrusted with the responsibility to govern have promoted or undermined governance in the sector.

Specific objectives of the study

1. Examine the past and ongoing Governance/Policy work by the government and other partners
2. Collect evidence and supporting data of typical governance failure/success in fisheries subsector
3. Identify and recommend areas of policy change in the respective sectors.

2. The study approach and Methodology

2.1 Methodology

The study employed a participatory assessment which involved qualitative methods of data collection. The bulk of the work involved literature review: including existing policy legal and institutional frameworks for natural resource management in Kenya, conservation plan and Strategy. This was supplemented by selected field work. Interviews were done with key stakeholders that included: officials from the key government departments and agencies, resource users associations, community associations and members of CBOS, NGOs. In addition, a community's association (BMU) was understudied intensively to assess the impact of the existing policy, legislation and institutional framework on the management of fisheries resources. The data was then reduced, organized and interpreted on the basis of themes generated from the data analysis and in line with the TORs.

2.2 Study Area

Kenya's coastline is rich in marine resources and biodiversity (including mangroves and other coastal forests; estuaries; coral reefs; marine species; and open sea marine resources etc). The coastal communities mainly depend on the marine and coastal environment and its associated resources for their livelihood (Tunje, 2002). Fisheries resources are valuable economic as well as political and social resources at all levels in Kenya. The resources are mainly composed of freshwater, coastal and marine and aquaculture. The coastal economic fishing zone (EEZ) extends 200 nautical miles and abuts the EEZs of Tanzania and Somalia: only 420 km in length with a total area of the Kenyan EEZ of about 230,000 km² (IOC, 2011).

3. Results and Discussion

3.1 The History of Management of Fishery Resources in Kenya

During the colonial times, emphasis on fisheries management was mainly based on sport fishing. This led to the enactment of Fish Protection Act (Cap 379 of the Laws of Kenya) in 1902, and the Trout Ordinance (CAP 380) in 1948. The Trout ordinance act prohibited local communities from catching trout. To enforce this, a Division of Fisheries headed by a Fisheries Warden was established under the Game Department in 1954. Later the posts of the Chief Fisheries Officer and finally the Director of Fisheries were established under the Fisheries Protection Act (CAP 379) in the Department of fisheries.

Since 1963, fishery as a sub-sector has been managed by over 12 Ministries at different times. These includes: Ministries of Information and Tourism; Natural Resources; Tourism and Wildlife; Environment and Natural resources; Regional Development; Water, Irrigation and land Reclamation; Agriculture and Rural development; Livestock and Fisheries Development (Oceans & Fisheries Policy of 2008).

Prior to 2008, the fisheries sector operated without a comprehensive policy and legal framework since 1963. Therefore fisheries management frameworks were scattered in various sectoral policy statements and guidelines such as National Development Plans, the National Food Policy (1981 and 1994), the District Focus for Rural Development Policy (1985), the Poverty Reduction Strategy Paper (PRSP) of 2001, the Environmental Management and Co-ordination Act (EMCA) of 1999 and the Economic Recovery Strategy (ERS) for Wealth and Employment Creation (2003) among others. None of these documents adequately articulate the overall policy and legal framework so as to be effective, efficient in management and development to harness the potential of the fisheries sector.

3.2 Legislations and Policies Governing the Management Fisheries Resources in Kenya

The principal statutes that regulate and govern fisheries are the Fisheries Act (Cap 378) of 1989 and Regulations (1991) and the Maritimes Zones Act (CAP 371) of 1989. To augment these legislations, the government enacted the Oceans and Fisheries Policy of 2008. The overall objective of this Policy is: "to enhance the fisheries sector's contribution to wealth creation, increased employment for youth and women, food security, and revenue generation through effective private, public and community partnerships".

This policy focuses on the promotion, implementation and monitoring of sustainable management and responsible fishing practices. It also focuses on the promotion of fish consumption as a means increasing food security, employment, income, foreign exchange earnings, arising from trade and related activities. The policy also aims at securing the rights of vulnerable and traditional fisher communities. The Government is in the process of reviewing the Fisheries Act (Cap 378) and the Maritime Zones Act (CAP 371) and other related Statutes to create a harmonized framework law to guide the management coordination and regulation of the fisheries and oceans sector. This will allow for an effective implementation of the fisheries policy 2008.

3.3 Institutional and Regulatory Framework Governing the Fisheries Subsector

The management of fisheries in Kenya is led and co-ordinated by the central Ministry of Fisheries and Development. The Ministry is made up of two departments: Fisheries Department and, Kenya Marine and Fisheries Research Institute (KMFRI). Kenya has yet to institute the wide-ranging decentralisation of powers and as such the fisheries officers continue to be firmly controlled and facilitated by the central fisheries department. This could be attributed to the limited attention and funding given to the ministry of fisheries, compared to other ministries that have achieved decentralisation such as ministry of water and irrigation. The government has undertaken a collaborative approach as principle of resources management and it is enshrined in national fisheries policy and is implemented with partners in industry, the NGO sector, local governments, international donor community and the fishers and resource users themselves. As such, the Beach Management Units (BMUs) are important partners in fisheries in both coastal and inland environments they are mainly concerned with strengthening the management of the fish landing station, fisheries resources and the aquatic environment, for sustainable development of the fisheries sector at the local level. While Marine Protected Areas (MPAs) and Monitoring Control and Surveillance (MCS) are agreed approaches for marine fisheries management.

BMUs are organizations registered as associations under the Societies Act for fisher-folks recognised by the Department of Fisheries as the beach (boat crew/baria, boat owners, manager's chatterers, fish processors, fish mongers, local gear makers or repairers and fishing equipment dealers) within a fishing community. BMU is composed of a BMU assembly, a BMU executive committee and various sub-committees. It is headed by an executive committee that is composed of a Chairman/Vice-Chairman, Secretary, Assistant Secretary, Treasurer and committee members.

The BMUs, roles have evolved from being localized and welfare-based to networked and harmonized roles so as to meet the changing environmental, political and socio-economic changes of the fishery subsector. The roles are more defined and focused towards sustainable management of the fishery resources. These roles include: enforcement of the fisheries regulations, conflict resolution, providing security, preparation of by-laws, ensuring beach sanitation and hygiene, collecting fisheries data/information; registering of fishers and fishing gears, vetting of boat owners for licensing, ensuring development of beaches and catering for welfare issues. Different BMUs have other few varying roles which are specific to meet their needs GoK (2008) ^[44].

The fisheries policy (2008) indicates the intension of the government to create a new institutional framework through the establishment of Kenya Oceans and Fisheries Council (KOFCC) to advice and review on oceans and fisheries sector. The Kenya Oceans and Fisheries Services (KOFSS) to harmonize the fisheries extension, development management and marketing and to restructure Kenya Marine and Fisheries Research Institute (KMFRI) and link it to KOFSS to offer effective and timely research to guide KOFSS. The Government will also seek the

Collaboration of all relevant parties and stakeholders in a bid to ensure clear and legitimate decision making for efficient and effective service delivery.

The full potential of the sub-sector has not been realized probably due to low prioritization of the sector by the policy makers, perhaps due to the poor knowledge of the sector's potential. The current top-down policy decision-making processes, which do not involve stakeholders, lack of coherent development plan, and the low priority given to the sector in terms of resource allocation, has adversely affected its growth conservation and sustainable development.

3.4 Policies and legislative provisions for Local Community Participation in governance.

The department of fisheries adopted the concept of participatory management of fisheries resources. This is entrenched in the Ocean and fisheries Policy of 2008 which underscores this concept, by mandating the government to promote the role of Beach management units. Co-management is introduced as a collaborative and participatory process of regulatory decision making between representatives of user groups. A key aspect of co-management is the incorporation of community participation, and establishment of local co-management institutions, represented through the BMUs, defined as organization of fishers who have traditionally depended on fisheries for their livelihoods. BMU are formed so as to manage resources on behalf of the fisheries department. The policy encourages women and the youth to participate in aquaculture as employment and income generation enterprise. The policy further provides for the promotion of public awareness and active participation of all stakeholders in the management and development of fisheries and the ecosystem.

Field observation and KII interviews show that in practice the BMU is an umbrella organisation with broad membership of resource user groups with interests ranging from fishing and associated activities, mangrove and coral reef conservation, ecotourism and utilization of the beach resources (Handcrafts, river slides, Bird watching, swimming and diving etc). This is because Fisheries and ocean activities are undertaken in dynamic systems where physical, ecological and economic processes interact; so in this respect the department of fisheries is required to coordinate with other agencies on all cross cutting issues. The BMUs evolved from Fishermen cooperative organisations. Each BMU has by-laws developed in conformity with the fisheries act cap.378 and the fisheries beach management units regulations 2007.

The BMUs are supposed to draw their own beach management plan but the enforcement operations must strictly follow the legal procedures set out in the fisheries Act and other regulations and will show due regard to the safety of all parties. The BMUs are considered effective according to the key informants interviewed, because they are legally recognized by the law and registered with the ministry of culture and social services. They participate in the identification of user's right during the BMU assembly meetings and have agreements with Fisheries department to access, manage and utilize the fisheries and beach resources as outlined in their bylaws.

The constitution and bylaws of the BMU provides for compulsory participation of the marginalized groups according to

KIIs interviewed, satisfactory results have been achieved in this frontier as the marginalized groups and youths are given prominent roles in the conservation and managing BMU activities.

The BMUs democratically elect their own officials; in case of anomalies there are follow-up mechanism. The members are also encouraged to participate in development of their bylaws and are also represented in the national BMU deliberations. It was also observed that resource access and utilization has been devolved to the community level hence there is sense of inclusivity and ownership.

3.5 Challenges to Effective Governance

The BMUs are faced with some challenges that are critical to the participatory and sustainable management of the fisheries and beach resources. The challenges observed include:

- Comparing the mandate and functionality of BMUs, they have limited capacity (human, financial and technological) to execute their activities, for example monitoring of illegal fishing, monitoring vessels, use of illegal fishing methods and gears, yet they do not own equipment appropriate such as speed boats among others. There are rear arrests on fishermen who use illegal fishing methods or gears due to corruption.
- Limited capacity of the artisanal fishermen to effectively participate in negotiations for a fair and sustainable share of the resources. Fishermen have different capacities for fishing and yet they share the same resource and fishing sites.
- The fishermen are given more preference than any other stakeholder and yet as already recognized Fisheries and ocean activities are multipronged where physical, ecological and economic processes interact with a myriad of resource users and stakeholders.
- The privatizing of some of the beaches at the coast and on islands has meant that such areas are no longer treated as public land. Fishermen have borne the brunt of such moves-most of them lacking adequate and convenient landing sites as a result.
- Traditional gender roles have inhibited the participation of women and youth in Fisheries development. This was mainly due to the nature of traditional fisheries industry where fishermen went deep into the lake or ocean at night to fish. However, with the advent of fish farming, this is rapidly changing as more women and youths are being involved in fish farming.
- The law has failed to adequately address the issue of over exploitation of fisheries resources that has seen the fishermen experience dwindling stocks and thus face economic challenges.
- The fresh water fishermen have faced key challenges caused by environmental degradation, in terms of the ever growing menace of water hyacinth, which has threatened their livelihoods. There is no mechanism under the existing fisheries act to address such challenges.
- Due to low funding and under staffing in the institutions (Fisheries department and the BMUs) the law has failed to initiate a comprehensive extension strategy, and technology transfer has been very low leading to same old fishing methods and technologies against the ever dwindling resources and increasing competition.

- The *Maritime Zones Act, Cap 371*, is weak and lacks a clear and concrete action plan to achieve some of its objectives, such as safeguarding the Exclusive Economic Zone (EEZ) (20 nm). The EEZ lacks proper surveillance, monitoring and protection; hence long distance fishing vessels continue to illegally use Kenya's territorial waters. In addition, although the country has a very huge fishing potential, fishing is restricted to only 5nm.

4. Conclusion and Recommendation

4.1 Conclusion

The government has good intension but must enhance and continue to recognize the role of Community Based groups, Associations of producers, Non-Governmental Organizations, and other stakeholders in the development of the fisheries sector. All should be encouraged to participate in marketing, financing and conservation with a view to creating an enabling environment for investment, improved production, trade and commerce. Regular consultations with these groups are important and should be legitimized as the best decision making process by being incorporated it in a revised Fisheries Act. The existing regulatory framework has also failed short of addressing the fishers' capacity and interest with regard to self-regulation and co-management to enhance legitimacy of fishing regulations. Instead, a major emphasis has been on command and- control (CAC) where the regulatory agency (the Government), determines efficient levels for a specified fishery and then enforces rules to ensure this level mainly through BMUs.

5. Recommendation

To enhance fisheries resource governance, measures should be taken to address the identified (existing and potential) governance challenges. Some of the recommended measures are:

1. The BMUs capacity (human, financial and technological) should be strengthened to enable the institution to undertake her mandate and functionality for an effectively participative co-management of the fisheries resources.
2. Governments need to enable a situation where resource users of the beach resources have the rights and power to bring about a fair division of control, responsibility and benefits between government and the BMUs.
3. There is need for harmonization of beach management guidelines especially for shared resources or neighboring BMUs. The guidelines need to address the issue of the resources use/beneficiaries, conflict resolution, conservation, multifaceted use of the beach resource, the role of various user groups and membership. The guidelines should be ecologically thought out.
4. Government, development partners, and CSOs should provide technical and financial assistance to help the BMUs negotiate fair and pro-development contracts with investors: where environmental, social and revenue distribution is an integral part of the management of beach resources.
5. The privatizing or change of use decisions at the beaches should be undertaken in a participatory manner with a strong engagement of the locals.
6. There is also a need to safeguard the EEZ, with proper surveillance, monitoring and protection mechanism, for the benefit of the local communities.

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