



Photo by Karsten Würth

## Multi-Level Environmental Governance in Kenya: Emerging Issues

Michael Okok<sup>1</sup>, Joel Onyango<sup>2,3</sup>, Donatos Mengich<sup>1</sup>, Cynthia Muriithi<sup>1</sup>,  
Maureen Kabasa<sup>3</sup> and Martin Wangendo<sup>2</sup>

1. National Environment Trust Fund (NETFUND)
2. African Researchers Consortium (ARC)
3. African Centre for Technology Studies (ACTS)

## Introduction

Kenya's constitution 2010, introduced a devolved system of governance with a central government (National government) and 47 distinct devolved units (County governments). Devolution is defined as a form of decentralisation through which authority to formulate policies and deliver public services in selected areas of public policy is conferred to elected sub-national levels of government, non-governmental organization, community group or business organisation<sup>1</sup>.

Devolution represents a type of multilevel governance system, where there are multiple arrangements that offer leadership and authority over resources. For instance, natural resources and environmental governance provision within the devolved system in Kenya confers some functions to the county governments such as implementation of specific national government policies on natural resources and environmental conservation and forestry and control of air/noise pollution and other public nuisances.

However, some of the conferred functions are still of national interest, where the national government, through its ministries, departments and agencies (MDAs), need to collaborate with the county governments to ensure efficiency and effective governance of resources.

Implemented over the last 9 years, the multilevel governance arrangements in Kenya continue to provoke mixed reactions, with emerging concerns on whether these arrangements are synergistic or antagonistic. The purpose of this policy brief is to elucidate on these emerging issues and to recommend interventions that can be adopted to strengthen the multilevel environmental governance in the country.

The policy brief uses case studies from forest, air pollution, water catchment governance and resources exploitation for development to illustrate the interactions of the nuances and the multilevel environmental governance arrangements. Literature reviews and key informant interviews were employed to gather insights on five key emerging issues discussed in this policy brief.



Photo by veeterzy on Unsplash

## Key Messages

- Multilevel environmental governance in Kenya is experiencing critical challenges that must be addressed if the country is to sustainably manage its environment;
- There is need to strengthen the policy and legal framework for multilevel environmental governance in the country to address emerging issues such as dysfunctional county environmental committees, natural resources benefits sharing and enforcement of environmental laws among others;
- There is need to build technical and enforcement capacity of county governments to effectively deliver on their environmental management related mandate;
- Prioritisation of environmental management and resource allocation at county level is a concern that negatively affects environmental governance;
- County Environmental Committees are critical platforms in facilitating coordination of actors in the multilevel environmental governance context in Kenya and should therefore be strengthened.

## Key Emerging Issues

### 1. The county environmental committees are non-existent in some counties and where they are present, are dysfunctional or not well constituted

The Environmental Management and Coordination Act 1999 (rev. 2015) provided for the establishment of county environment committees with the responsibility of developing county specific strategic environmental plans and coordinate sustainable environmental management within their respective counties. The committee is further responsible for convening and coordinating county and national government agencies and other actors in environmental governance in the county. However, most of the counties have not established these committees and where they exist, they are not active with no meetings and communication among its members. A key national government representative at the county level indicated that:

*“The key platform that should bring actors within the county together for purposes of environmental management is the County Environment Committee. However, this committee was established and had its first and last sitting in 2018. The term of the committee has even expired .....”*

The absence of or dysfunctional committees translates to actors lacking coordination platforms for environmental governance in the county hence fragmentation that undermines joint efforts for collective action and integrated performance.

<sup>1</sup> Brooks, M. R., & Cullinane, K. (Eds.). (2006). Devolution, port governance and port performance (Vol. 17). Elsevier

This also results in observed or common conflicts, duplication and inefficiency in resource use and environmental governance processes as manifested in institutions among other actors<sup>2</sup>.

## **2. In the absence of established guidelines, conflicts of interest arise between county and national governments regarding sharing of benefits accruing from environmental resources**

The benefits, whether financial or non-financial, resulting from environmental resources need to be shared freely, transparently and equitably by the involved actors<sup>3</sup>. For this to be effective, clear guidelines are required to promote transparency and justice. Lack of these is a clear source of conflicts and growing inequalities. For instance, in forest management, the progression of good management tools like the participatory forest management (PFM) has been limited in many forest blocks due to lack of guidelines on how the benefits can be shared among the national and county governments and the forest users<sup>4</sup>. Access to and sharing of benefits emerged strongly in the study especially in forest governance where counties demand inclusivity in exploration and access to a share of the benefits accruing from natural resources within their boundaries. In the case study, county governments feel that they should benefit more from revenue generated by the Kenya Forest Service, which is a national government entity. A key county government respondent remarked that:

*“Kenya Forest Service generates revenue through their mandate of issuing permits for wood products yet the forest is within the county territory. The county government is the one supposed to take charge of such benefits or we share it”*

This is an aspect that may be similar to other natural resources management in the country and thus should be addressed to minimise potential and existing conflicts and enhance collaboration between county and national government in the governance of natural resources.

## **3. Effective delivery of devolved environmental functions require adequate technical capacities and legal enforcement mandate at both county and national governments**

Effective environmental governance at both levels of government require unprecedented levels of knowledge sharing, acquisition of technical skills and expertise across all governance levels<sup>5</sup>. While devolution in Kenya transfers some level of authority and decision making on environmental governance to the county governments, there has been concerns on their capabilities and capacities to effectively plan, finance and manage the new responsibilities<sup>6</sup>. It has been argued that devolution in Kenya has created new roles and responsibilities to local governments on environmental governance with limited plans and actions on development of local capacities<sup>7</sup>. This was evident as the study noted dependence of the county governments on the national government's intervention in management and governance of environmental hazards, forest management and

enforcement due to lack of adequate technical, administrative and human capacity. This tends to significantly affect the delivery of devolved environmental management functions. Additionally, the counties' lack of adequate legal mandate to enforce environmental policies and laws limits their capacity to effectively deliver on their mandates in environmental governance. For instance, while counties are expected to control and manage air pollution in their jurisdiction, they do not have the mandate to arrest and punish air polluters and have to rely on the National Environment Management Authority (NEMA) which is a national government agency. A county government respondent observed:

*“...County government feels the inability to arrest is affecting their ability to enforce air pollution control. They measure air pollution but only to educate and sensitise but have no powers to arrest...”*

There is therefore a need to determine the most effective ways to build and enhance the capacity and empower county governments by equipping them with the necessary skills, knowledge, competencies and enforcement authority. This will ensure they can influence change, adopt new technologies and approaches necessary for the delivery of devolved functions.

## **4. Need-based collaborations are efficient ways of providing informal support for sustainable multilevel environmental governance**

Collaboration in multi-level governance is critical as it enables actors to build synergies, exchange information and complement competencies<sup>8</sup>. Collaborative actions are usually preceded by a negative environmental event, and are based on needs. It emerges that these collaborations are necessitated by the collective agency of actors. In effective water catchment management, the collaborations of the various stakeholders including water use associations, water resource authorities, forest management bodies and environmental management authorities is manifest and need to be strengthened and enhanced. While formal collaborative action may be time bound, the persistence of environmental management needs multilevel, multisector and cross boundary collaborations that might include informal arrangements.

2. Raju, E. and Becker, P. 2013. Multi-organisational coordination for disaster recovery: The story of post-tsunami Tamil Nadu, India. *International Journal of Disaster Risk Reduction*, 4 pp. 82-91.

3. Soliev, I., & Theesfeld, I. (2017). Reframing for sustainability: exploring transformative power of benefit sharing. *Sustainability*, 9(8), 1486.

4. Makindi, S. M. Community Lessons on Participatory Forest Management (PFM) Performance within the Mau Forest Complex, Kenya. (2019).

5. Multilevel Emergency Governance: Enabling Adaptive and Agile Responses. *Emergency Governance for Cities and Regions* (2021). Available at: [https://www.uclg.org/sites/default/files/egi\\_-\\_policy\\_brief\\_04.pdf](https://www.uclg.org/sites/default/files/egi_-_policy_brief_04.pdf) (Accessed: 4 February 2022)

6. Administrative Decentralization (2019) Worldbank.org. Available at: <http://www1.worldbank.org/publicsector/decentralization/admin.htm>.

7. UNCDF, 2005, 'Capacity Building', in *Delivering the Goods: Building Local Government Capacity to Achieve the Millennium Development Goals: A Practitioner's Guide from UNCDF Experience in Least Development Countries*, United Nations Capital Development Fund, New York, Ch. 5.

8. Armitage, D., Berkes, F., & Doubleday, N. (Eds.). (2010). *Adaptive co-management: collaboration, learning, and multi-level governance*. UBC Press.

This means that need-based collaborations would be more efficient to tackle the often transboundary nature of environmental resources. However, recognition of these informal settings is limiting their agency to support formalised and constitutionally mandated actors in environmental governance. Implicitly, having frameworks or guidelines that recognise and on-board the need-based collaborative arrangements within the formal arrangements would be strategic to ensure the success of multilevel environmental governance outcomes.

### **5. Miss-match on contextual prioritisation and allocation of environmental responsive financial resources**

Environmental financial responsiveness needs to cater for emergent issues affecting different multilevel governance of environmental resources. While the counties face the challenge of failure to prioritise environmental management and conservation, which adversely affects the implementation of environmental interventions and undermines governance processes, the national government and its agencies grapple with the challenge of missed priorities in resource allocations to manage emerging environmental challenges. For instance, as the global debates on climate change continues, governments previously focused on mitigation but are now shifting attention to adaptation issues. The skewed response and preparedness to climate change impacts leaves other sectors more exposed and vulnerable. The two approaches to address climate change issues are complementary and need multilevel and multisector approach. Evidence collected through key informant interviews and supplementary data indicates that this is an issue that is recognised as a problem and a failure at county level. For example, a key respondent stated that:

*“...The county government does not allocate resources for forestry and forest governance issues .....”*

The study also finds more attribution of the dysfunctionality of the county environmental committees to inadequate allocation of resources to facilitate its activities. Overall, matching the environmental management and governance priorities as emerging issues with the resource allocations and support is much needed in the various levels of governance.

## **Recommendations**

### **Development and implementation of policy guidelines and legislations**

*i) Fast track the enactment and implementation of the Natural Resource Benefit Sharing Bill:* The legal framework on sharing natural resources will help in the protection and conservation of the environment. This will make the management of the resources inclusive for the two levels of government. The Natural Resource Benefit Sharing Bill, which is currently in parliamentary legislative process, has the potential to address the concerns around sharing of forest and other environmental resources between county

and national government. Parliament should ensure that it is enacted and national and county government agencies should follow up on implementation.

*ii) Develop county specific terms of reference for respective county environmental committees and the deliberate recognition of the committees in county environmental policies and laws:* The potential of county environment committees as a coordination mechanism for the multi-level governance of the environment cannot be overstated. However, to ensure that they are operationalised as provided in the EMCA 1999 (rev.2015), it is important to domesticate them within the county governments' legislative framework. This will ensure the county governments appreciate its role and take it seriously including through budgetary facilitation. It is also important that each county elaborates the functions of the committees by developing customised terms of reference in line with the provisions of the law.

*iii) Develop national laws and guidelines that gives counties enforcement mandate over certain aspects of environmental governance:* There is need to identify specific areas of enforcement that counties can play a role and they be given the enforcement mandate and capacity in enforcing some environmental laws and regulations.

### **Capacity Building and Sensitisation**

*i) Establish a framework on how resources are disbursed to the counties and how prioritisation of resources to the environment departments can be achieved:* The delays in disbursement of funds by the national government has hindered smooth and effective governance in the counties; establishing a legal framework for this disbursement will be of significance. In addition, for equal allocation of funds in the county department, a legal framework should be created to avoid biases that overlook crucial departments like environment.

*ii) Establish alternative mechanisms for funding opportunities:* To avoid over dependence on the national government funding, alternative revenue generation streams should be established in all the 47 counties. This will help avoid interruption in the running of the county government.

*iii) Enhance county environmental committees for effective functioning:* The county environment committee is the only link that exists between the two levels of government; and for proper management of the environment, the committee should be enhanced to make it more effective.

*iv) Sensitise national and county governments' executives and legislature on environmental functions:* This should help create awareness and appreciation of the environment and distribution of responsibilities in governance of the same. This should target governors, relevant members of the executive committees, chief officers, committees of county and national assemblies and members of county environment committees.