



Local rules and customary regulations on natural resource management in Lower Tana catchment, Kenya

Building Drought Resilience Project

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INTERNATIONAL UNION FOR CONSERVATION OF NATURE

1. Introduction

The International Union for Conservation of Nature (IUCN) and its partners¹ are implementing a three-year (2012-14) project funded by Austrian Development Agency. The project's overall objective is: "To improve resilience of drylands communities (within a river catchment) to the impacts of increasingly severe and recurrent droughts through strengthened ecosystem management and adaptive capacity". The project, known as *Building Drought Resilience through Land and Water Management* is being implemented in Kenya in the Lower Tana sub-catchment and Uganda in the Upper Aswa-Agago sub-catchment.

The project has five key results, one of which is improving the capacity and coordination of traditional and formal institutions, their rules and systems in the sustainable management of ecosystems. It is within this context that IUCN commissioned a study to identify and consolidate local rules and customary regulations that still, or used to exist, and that are, or used to be, used to manage the natural resources. The results of this study were designed to be used in an analysis of the opportunities for integration of local rules and systems within the more modern and formal institutions, laws and regulations for natural resource use and management.

This briefing note presents the findings of this study and highlights the recommendations made by it and that are now being implemented within the framework of the project.

2. Methodology of the study

The methodology used in the study included a desk review of relevant documents and field visits to the project area during which discussions were held with key informants. The documents reviewed included project related documentation, literature on traditional natural resource governance and management, and national policies and laws on governance, land, water, environment and natural resource management. On-going national level reform processes around these issues were analysed and their relevance to the study considered, in particular, the reforms introduced by the Constitution of Kenya 2010, as well as the National Land Policy and other relevant legislation. In addition, two sub-catchment management plans, which were also developed as part of the project, were reviewed in the course of the study. Key informant interviews and focus group discussions were held with community² members in the four areas where the project is working - Boka, Tula, Balambala and Saka. In each of the project areas, discussions were also held with officials and members of the local Water Resources Users Association (WRUA) and other community representatives including elders, youth, women and local administration officials.

The following key questions were asked:

- On which natural resources do community livelihoods depend?
- What are the key rules/norms/values, either traditional or modern, that are respected and implemented and thus that actively govern the management of natural resources?
- What institutions play important roles in the management of natural resources?
- What challenges are faced in enforcing the rules/norms/values?
- How can the management of natural resources be strengthened?

¹ In Kenya, the partners are: Fafi Integrated Development Agency (FaIDA), Water Resources Management Authority (WRMA) Tana River Basin, National Drought Management Authority (NDMA), Kenya Forest Service (KFS), Kenya Wildlife Service (KWS), National Environment Management Authority (NEMA), Ministries of Water, Livestock and Agriculture. In Uganda, the partners are: Directorate of Water Resources Management, District Local Governments of Lira, Alebtong and Otuke.

² The term community as used in this document refers to the people living (either permanently or temporary in the four sites that the project is being implemented in), utilizing and managing the natural resource base. These people are not homogeneous hence do not necessarily have common ethnic identities - traditions, customs, values, belief etc.

The results of answers given to these questions were then verified at a workshop attended by representatives of the communities visited as well as other stakeholders from government and civil society. A summary of the findings, as well as a list of conclusions and recommendations on the way forward, particularly with regard to developing frameworks for the management of natural resources that incorporate these results, are presented below.

3. Key findings

3.1. Natural resources on which community livelihoods depends

Since pastoralism (with limited cultivation along River Tana) is the main activity that supports livelihoods in the project areas, the natural resources upon which this lifestyle depends are of critical importance; these include land and water, vegetation resources, such as pasture, forest, and shrubland, as well as non-wood and odder products, such as honey, wild fruits, gums and resins (*gum arabic, myrrh and frankincense*). Other important natural resources include mineral resources, such as sand, gravel, hardcore and stones). The study found that communities highly value maintaining the integrity of the natural resource base because it supports their key asset for survival, i.e. their livestock, and also wildlife which the local communities co-exist with very well. One of the key natural resources, around which rules of management are organised, is water. The manner in which water is managed has a range of implications, such as access to vegetation, pasture, crops and other pastoral resources. In view of this, it is not surprising that the study found the WRUAs to be the main institutions around which the planning and management of natural resources is organised.

3.2. Traditional norms/rules/values for planning and management of natural resources

The key rules/norms/values that were determined to traditionally govern the planning and management of key natural resources are presented in Box 1. Some of the rules listed applied in the past, while others are still used today, albeit with modifications to fit modern realities. In particular, the role of elders as the sole determinants of

punishment for breaking these rules/norms/values, and of young men as enforcers, has changed. For example, in modern society, the police, chiefs and other district and provincial administrators play an increasingly important role in enforcement. As society has modernised, the application of many of these rules on land, water, environment, wildlife as well as their enforcement has weakened considerably, particularly as a result of the transformation from a communal to a more individual approach to the planning and use of natural resources. Individual ownership of land is becoming widespread, especially in urban, peri-urban and riverine farming areas. As communal use of land for grazing remains the major land use system in the rural areas, however, one would expect that customary rules with regard to this would not only remain in existence but also that they would be largely enforced. The study discovered, however, that enforcement is lacking or inadequate mainly because of the rapidly diminishing influence of the role of elders as a result of modernization of governance systems (see section 3.3. below). In traditional African societies, the role of elders was was often key, not only for the management of natural resources, but also or political and social organisation of the societies; indeed, the two were intertwined. In addition, although it was almost entirely elderly men who formally provided leadership, women also played a significant role in the decisions that the elders made, even if only indirectly through their influence as wives. These findings underscores the connection between natural resources and the entire fabric of traditional African society.

3.3. Modern governance of natural resources

Although the rules listed in Box 1 are recognised and acknowledged to be important, their enforcement is no longer guaranteed in view of the institutional changes taking place in the communities. The introduction of statutory institutions of natural resource management, such as WRUAs in the water sector, have brought new dynamics that are transforming planning and management decision-making and functions. WRUAs have been formed within the framework of the Water Act to manage resources sustainably. They are regarded as community-based organisations whose main objective is to bring together those local communities living with and utilising water and natural resources within particular hydrological boundaries.

Box 1: Traditional rules/norms/values

Land

1. Land belongs first to God, and then to the clan or sub-clan and its access and use is controlled by elders
2. Individuals have the right to land for settlement and production to support their livelihoods

Water resources

3. Elders in charge of water resources management, oversee the digging of wells, big ponds and pans, and control access and use thereof;
4. Order and periods of accessing water points for humans and animals regulated as follows:
 - a. Women have first access to water points, then youth
 - b. When there is overcrowding of livestock at a watering point, cattle, donkeys, sheep and goats access water during the day, camels at night
 - c. Those with few livestock have first access, then those with large herds follow
 - d. One time visitors (especially during the dry season) can access water points with the permission of elders and at no charge.
5. Access to individually owned well only by consent and authority of the owner
6. Generally there is free access to springs and small ponds
7. Elders in charge of management of dams, oversee fencing and control access
8. Animals not allowed close to community/individually managed wells, ponds and pans. They are watered at a distance from the water.

Environment – trees, pastures, etc.

9. Everyone under obligation to care for the environment, water and pastures
10. No cutting of living trees and vegetation except for purposes of constructing a house and carving of containers and camel bells
11. Only dead wood, dry trees, weeds, palms and wild sisal for mats to be collected from forests
12. Burning of pastures prohibited except under the guidance of elders and after a survey
13. Cutting of acacia and other high value trees prohibited
14. No settlement allowed along rivers
15. No grazing of livestock on crop fields
16. Farmers not allowed to cultivate along Malkas (access routes to water points – water corridors)
17. Wet and dry season grazing are differentiated and access to them controlled accordingly.

Wildlife

18. Killing or eating of wildlife prohibited

Sanctions/Punishment

19. Different forms of punishment available according to the seriousness of damage or breach in question
20. Punishment includes: banishment from manyatta/community, temporary isolation, fines, hanging upside down on a tree for a period
21. Fines paid in the form of goats, cows or camels – number and nature depending on seriousness of damage/breach
22. Young men responsible for ensuring enforcement of punishment meted out by elders.

Box 2: Major natural resource planning and management institutions in Lower Tana Catchment

Traditional/Local	Modern/Statutory
<ul style="list-style-type: none"> Elders – committee, council, etc. of men Youth – especially young men Peace committees Individual environmental overseers Witchdoctors, fortune tellers Religious leaders = sheikhs, imams etc 	<ul style="list-style-type: none"> Water Resource User Association (WRUA) – has much broader mandate including water resources management at a sub-catchment level Water Users Associations (WUA) – has a limited mandate to the management of a water scheme such as borehole, shallow wells etc- Peace Committees Environmental committees <ul style="list-style-type: none"> CBOs working on water and sanitation Range Users Associations (RUAs) Community Forest Associations (CFAs) District Environment Committees (DECs) District Grazing Councils (DGCs) District Steering Group (DSG) Water Resources Management Authority (WRMA) Kenya Wildlife Service (KWS) Kenya Forest Service (KFS) National Environment Management Authority (NEMA) National Drought Management Authority (NDMA) Kenya Forestry Research Institute (KEFRI) Line Ministries, especially those responsible for agriculture, livestock development, range management, environment, water and ASALs development Food and Agriculture Organisation of the United Nations (FAO) Chief and Headman Projects and Programmes being implemented in the region Police Courts County Government

One of the ways of doing this is through the development and implementation of sub-catchment management plans (SCMPs). SCMPs include the development and implementation of by-laws on the sustainable management of natural resources. Such by-laws are to be developed largely through consensus building as WRUAs lack functional enforcement mechanisms that can be used to compel compliance. It is through this requirement for by-laws within SCMPs that WRUAs (whose official members also include traditional elders) can seek to implement some of the traditional or customary rules identified here as still of value and relevance. Other than the fact that they derive their authority from statute, WRUAs are different from traditional frameworks in the composition of their leadership. Leaders of WRUAs are usually educated, young people with the capacity to engage with government and other modern frameworks. Their committees are composed of both younger and older men and women. In the four project locations, however, specific efforts were being made to ensure that elders joined WRUAs and their leadership in order to integrate traditional norms in managing water and other resources. In the absence of WRUAs, the only laws of relevance are national sector-specific laws, but these tend to have limited impact 'on the ground' due to the absence of effective enforcement mechanisms and resources. The absence of WRUAs therefore tends to result in an 'open access' situation where there is largely uncontrolled access to the natural resources leading to their unsustainable use at community level.

3.4. Key natural resource management institutions and structures

The main institutions, both traditional and modern, involved in the management of natural resources are listed in Box 2. As can be seen from the list, modern institutions far outnumber traditional institutions although most have mandates that extend to rural areas the majority had no presence in the project area. The tragedy of this situation is that the creation of these modern institutions has at best undermined the effectiveness of traditional institutions and at worst removed them completely. This is made worse by the fact that the institutions available 'on the ground', i.e. traditional ones, no longer have power, mandate or legitimacy while those that have these elements have

no presence on the ground. It is this reality that has created the 'open access' problem leading to unregulated exploitation of natural resources and consequent degradation and decline.

3.5. Enforcement of rules: challenges and opportunities

The reason for exploring opportunities that may exist through the resurrection of traditional rules, institutions and systems for natural resource management arises out of concerns about the ineffectiveness of modern resource governance systems. The institutional crisis described, i.e. where effective and sustainable management systems fall in-between traditional and modern systems, is at the heart of current failures in natural resource management. In addition, communities identified the following additional challenges:

- migration and movement of people from outside the area – thus results in communities with mixed and different values and history and with the inclusion of those who have no knowledge of, and thus respect for, traditional systems
- socio-cultural and political changes – the role of elders has been taken up by Chiefs and other government departmental heads who derive their authority from outside the community
- new economic activities – many of these depend on exploitation of natural resources, e.g. charcoal production
- education and modernisation – these have introduced new sources and foundations of wisdom that have undermined the authority of elders and other traditional institutions

Other challenges highlighted by communities include poor physical and social infrastructure, pervasive illiteracy, and inadequate capacity and resources of sector departments and ministries in the area.

Despite all this, there are now opportunities for strengthening community level planning and management of natural resources. These arise from the policy and institutional changes being implemented in Kenya as part of the on-going governance and natural resource management reforms. These include changes arising from the adoption and implementation of the new Kenyan Constitution (2010) and of the Sessional Paper No. 3 of 2009 on National Land Policy, which have in turn triggered reforms of laws,

policies and institutions for the governance and management of specific natural resource sectors. These new frameworks will enlarge spaces for communities to be able to participate directly in the management of their resources and will strengthen community-based planning and natural resources management.

4. Conclusions and recommendations for the way forward

This briefing note has presented the findings of the project's consultations with communities and other stakeholders about strengthening the interface between traditional and modern systems and institutions for natural resource management. From the findings, it is more appropriate to talk about 'local' rather than 'traditional' rules because the rules/norms/values that apply at the community level are no longer purely of a traditional character but are rather integrated influences and imperatives from different communities and modern stipulations. Even though elements of these rules/norms/values may well derive from traditions and customs, their essential character is that they are locally generated. In any case, given the changes that have occurred in the make-up of the communities, what is 'traditional or customary' is no longer that clear.

A number of specific conclusions were reached, as follows:

1. The creation of modern institutions for natural resources management has undermined the effectiveness of traditional institutions, yet in most areas it is still traditional institutions that are found on the ground. Since the latter have no power, mandate or legitimacy with regards to natural resources management, however, this has created an 'open access' problem where natural resources are exploited without regulation leading to degradation and decline.
2. There is a general acknowledgement of the reality of change which has led communities to embrace new frameworks, such as WRUAs. Communities recognise that certain modern institutions, i.e. those that are capable of effectively enforcing rules, are better placed to deal with modern challenges and thus at ensuring sustainable management of key resources.

3. Existing rules and systems for natural resource management are largely a mixture of traditional and modern imperatives and informed by ideas from different communities.

The study has confirmed the need for a structured and participatory process for the integration of the traditional and modern systems of natural resources management and it is suggested that the best way of achieving such integration is through the development and implementation of new by-laws. This has to be achieved through a participatory process in order to ensure community ownership of the rules in order for them to be effectively implemented. These new by-laws, once agreed and adopted at the community level, shall inform the design of regulations at the county level.

The following process is recommended for the way forward in developing an appropriate regulatory framework for community-based planning and management of natural resources in the Lower Tana Catchment:

1. Develop a structure for by-laws and facilitate communities to develop their own by-laws in a participatory process based on the common structure;
2. The by-laws should be validated by the community and this may require the production of the by-laws in the local language where appropriate;
3. Lobby the county government to develop regulations for the recognition and enforcement of community by-laws for planning and management of natural resources.

The WRUAs in the project area constitute an appropriate entry point for mobilising communities for the purposes of developing by-laws, but they should seek to include other environment and natural resource management frameworks (both traditional and formal) such as Water User Associations (these are members of the WRUAs managing smaller units of a water scheme), District Environment Committees, Rangeland User Associations, Community Forest Associations etc. Ultimately, the success of the exercise and the effective enforcement of the by-laws will depend on the level of their ownership by the widest possible cross-section of the communities. This will also be important for selling the by-laws to the County Governments and getting their buy-in which is integral for enforcement.

