



**Implementing national environmental
frameworks at the local level
A case study from Taita Taveta County,
Kenya**

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ABSTRACT

Since the 1990s, many African countries have invested in efforts to develop national frameworks to address crosscutting environmental management issues and problems. But how and to what extent have these national frameworks been implemented at the local level? And what has been the contribution of development cooperation in this respect? This report seeks to improve our insight into such issues through a detailed case study of the implementation of Kenya's Environmental Management and Coordination Act (EMCA) in Taita Taveta County in Southern Kenya. The study is primarily focused on the operations of one institution, namely the National Environment Management Authority (NEMA), which is a key authority in implementing the EMCA. The study focuses on the everyday aspects of implementing the EMCA on the ground in the past seven years, including the situation of the local Environment Officer, his/her relations to other actors in the area, and the implications of institutional competition and power relations. The main emphasis is on issues related to institutional development, enforcement, environmental planning and mainstreaming, and implications for public engagement.

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ACRONYMS

CBNRM	Community Based Natural Resource Management
CBO	Community Based Organisation
CDTF	Community Development Trust Fund
DEAP	District Environment Action Plan
DEC	District Environment Committee
DEO	District Environment Officer
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
GEF	Global Environment Facility
GoK	Government of Kenya
ICZM	Integrated Coastal Zone Management
LG	Local Government
MEMR	Ministry of Environment and Mineral Resources
NEMA	National Environment Management Authority
PCC	Public Complaints Committee
PDE	Provincial Director of Environment
PEC	Provincial Environment Committee
SEA	Strategic Environmental Assessment
SoE	State of Environment
UNFCCC	United Nations Framework Convention on Climate Change

EXECUTIVE SUMMARY

(i) Scope and purpose of the report

Since the 1990s many African countries have invested in efforts to develop legal and institutional frameworks for environmental management. Most reviews and studies of these arrangements tend to focus on the national level, perhaps due to the cross-cutting nature of environmental management and the perceived need to develop new institutional structures and strengthen existing ones. But how and to what extent have these national frameworks been implemented at the local level? What is the status and impact of district or other local-level institutions for cross-cutting environmental management, and how do they interact with other sector agencies and local citizens? And what has been the contribution of development cooperation in this respect?

This report seeks to improve our insight into such issues through a case study of the implementation of Kenya's Environmental Management and Coordination Act (EMCA) of 1999 in Taita Taveta County in Southern Kenya. The study is primarily focused on the operations of one institution, namely the National Environment Management Authority (NEMA). The study is not a traditional evaluation or technical review, but instead looks at the everyday aspects of implementing the EMCA on the ground from 2004-2012. One of the authors conducted interviews in Taita Taveta in 2005 when NEMA had just begun operations in the area, and both authors visited the area again in 2012 for the preparation of the current report.

The study has been conducted within the wider ReCOM research programme funded by Danida, which among other issues examines how and to what extent development cooperation has contributed to environmental management in the South. The case study therefore has a certain focus on the role of development cooperation, and is complemented by case studies on other aspects of development support to environmental management from elsewhere in Africa, Asia and Latin America.

(ii) National context of environmental management and development cooperation

The report begins by providing a general introduction to the development of environmental management frameworks in Kenya, as well as an introduction to the EMCA and NEMA specifically. In the past two decades, there has been significant development in the national institutional and legal framework for natural resources and environmental management in Kenya. This includes the EMCA itself, which in 1999 established the basic framework for environmental management, and provided for the establishment of NEMA under the Ministry in charge of Environment. In principle the EMCA provides a fairly wide scope for environmental management and gives certain opportunities for citizens to voice their grievances. However, the law also overlaps with sector laws and contains some uncertainties over the role and mandate of NEMA. As a new institution with few resources, NEMA has therefore been in a vulnerable position and subject to territorial power struggles with other line agencies.

A variety of donors have provided support to environmental management in Kenya, including support to NEMA. This support has played a key role in bringing environmental management on the agenda in Kenya, and has contributed significantly to the establishment of a fairly comprehen-

sive national framework for environmental management. This includes providing the final “push” that led to the approval of the EMCA, and supporting development of a national environmental policy as well as national coastal zone and climate change strategies. Development cooperation has furthermore played a key role in transforming NEMA into a more efficient organisation, and providing it with more clout and legitimacy vis-à-vis other agencies and the public.

However, the support from donors to NEMA and to the implementation of the EMCA has been strongly focused at the central level. One exception has been EU-funded activities to pilot decentralized environmental planning and management in Western Kenya, but these activities have not received much priority at central level. Likewise, planned Danida support to strengthen local environmental planning and NEMA’s operations at local level were not carried through as planned. Reasons include a view among central-level NEMA staff that local-level operations have been largely inefficient and not worth the effort in cost-benefit terms. A further rationale has been that it was important to develop the national-level frameworks first, and to establish central NEMA as an efficient authority before “moving into the field”. District-level implementation of the EMCA and of NEMA’s operations has therefore, with a few exceptions, generally taken place with little systematic support from development cooperation.

(iii) Local implementation of the EMCA in Taita Taveta County

Within this overall context, the question we ask is: what is the nature and progress of everyday implementation of the EMCA and NEMA operations on the ground? In order to answer this question, this study examines the particular situation in the mainly rural Taita Taveta County in southern Kenya, where NEMA posted a District Environment Officer (DEO) in 2004 with the aim of facilitating and enforcing implementation of the EMCA provisions. This report describes the situation with a focus on NEMA’s local institutional development, the everyday enforcement practices, the environmental planning and mainstreaming process, and the implications of the EMCA for local empowerment. The study found:

Increased attention to the environmental agenda

There has been progress. When the first DEO arrived in the area, his work was initially quite isolated and other government officers effectively paid him little attention, seeing him as a representative of a new agency with limited funds and an unclear mandate. Today, NEMA is generally recognized by other government officers in the area as a legitimate agency in its own right, and they are aware of its formal mandates and the EMCA. District Environment Committees have also been established, comprised of members from other line agencies, local government and civil society organisations. These developments are partly the result of the general strengthening of NEMA’s profile at the national level, but also a result of the presence of local DEOs at local level.

DEOs as facilitators, contact points and “watchdogs”

The work of the DEOs in the area have thus had several positive effects, including (i) introducing the environment as an agenda in its own right vis-à-vis other line agencies, (ii) facilitating joint actions among line agencies to address critical environmental issues, (iii) acting as a local “watchdog” when the EMCA is explicitly breached, and (iv) providing a window for the expression of local

grievances over environmental issues (although the ability of DEOs to actually act on local grievances remains fairly limited).

Institutional competition and limited resources

Despite many achievements, a number of features continue to significantly constrain implementation of the EMCA. These include (i) the very limited time and resources available to the DEOs, who have effectively been alone in covering a very large area, (ii) institutional competition and power relations, which are a major part of the everyday worklife of a DEO: Although line agency staff and local government generally recognize the legitimacy of NEMA and their basic mandate as an environmental agency, it remains a deeply contested issue where the *boundaries* of “environment” (and thereby NEMA’s mandate) actually are.

The informal nature of EMCA implementation on the ground

In an effort to make an impact in a constrained situation, DEOs in Taita Taveta County have to a large extent sought to carry out their work through informal but pragmatic approaches. This includes (i) “piggybacking” on the authority and resources of other agencies and actors (e.g. by hitching a ride with other officers), (ii) influencing local planning and coordination activities through personal networking with other line agency staff and CBOs, and less so through formal meetings and planning exercises, and (iii) enforcing environmental regulations through informal, self-tailored agreements with selected CBOs and local government Chiefs, among other agencies. While such approaches have in some cases resulted in innovative solutions to difficult situations, they do also mean that implementation of the EMCA in the area is to a large extent *informal* – i.e. based on personal relationships and informal agreements and not formal obligations. This makes the success of the EMCA implementation and NEMA operations quite dependent on the informal networks and approaches of individual DEOs, which is a vulnerable situation in terms of longer-term sustainability. It should be noted that this situation is not the “fault” of individual DEOs. Rather it is the result of structural issues, including the tendency for central NEMA to place little priority on funding and institutionalising local mechanisms.

“Putting out fires” rather than preventing them

The study found that the work of the District Environment Committees (DECs) in the area has been quite ad hoc and tends to focus on addressing immediate crisis situations rather than long-term planning. Again, some of the actions of the DECs have been able to overcome difficult situations with creative solutions, but the overall situation and underlying causes are rarely discussed and acted on. Taita Taveta is one of the relatively few areas in Kenya where a District Environment Action Plan (DEAP) has in fact been prepared, but although it provides a good description of the context, it is not a very operational document and appears to have been prepared by the DEOs independently. A contributing factor may have been lack of resources or cooperation from other agency staff, although this is not entirely clear. There has been very limited de facto mainstreaming of environmental issues identified in the plan into district development plans and sector agency plans. This appears to have been a general problem with the District Environment Plans prepared in Kenya so far, and it is to some extent understandable as this is the first generation of such plans to have been made. The DEAP process has also been constrained by the fact that – unlike EIAs and licenses – it does not generate revenue for NEMA, and therefore tends to get less attention

and funding than is required. Nevertheless, the prevailing situation at the local level is that environmental issues tend to be addressed either as isolated exercises (EIAs) or as ad hoc enforcement and collaborative action when crisis situations occur. A stronger emphasis on making the plans more operational and mainstreaming them into the local planning process is needed if the current crisis-handling situation is to be replaced with actually addressing the root causes of problems.

EIAs as a strategic platform

Although the number of EIAs conducted in Taita Taveta has been relatively limited so far, the fact that EIAs are carried out at all can be seen as an achievement in itself – perhaps especially in strategic terms: Because EIAs are mandatory and cut across important areas, such as business and infrastructure development, and apply in both urban and rural areas, they have been instrumental in putting the EMCA “on the map” in the mindsets of entrepreneurs, planners, decision-makers and media in Taita Taveta – and indeed nationally. The stakeholder consultations that are mandatory in EIAs furthermore provide a potential platform for raising local grievances, although that does not appear to have been the case in Taita Taveta yet (see explanation in the next subsection). The EIA process is also important for NEMA as an organisation – not only because it generates revenue, but because it is a central aspect of the organisation’s authority: Without NEMA’s approval there is no EIA, and without an EIA there is (in principle) no project. Having said that, the EIA process is still not without its problems: In practice, EIAs are conducted as individual and isolated exercises and are not linked to overall District Environment Plans, and wider Strategic Environmental Assessments are not currently conducted as standard practice in NEMA. Moreover, not all actors are content with the quality and procedures of EIAs, and there is a call for taking social aspects more seriously in the current EIA process.

The EMCA as a platform for local grievances

The EMCA has potential to serve as a platform for raising local grievances over resource rights and environmental issues. This includes (i) the mandatory consultations and public hearings in EIA processes; (ii) the Public Complaints Committee is an EMCA institution charged with receiving and investigating complaints and allegations regarding violations of the EMCA across the country; (iii) the National Environment Tribunal, and (iv) the potential for a citizen to take a case of violation of the law to the High Court (currently being transferred to the new Land and Environment Court). A number of examples exist in Kenya where these options have actually been applied. In particular, EIAs have provided an opportunity for local communities to raise their grievances vis-à-vis large-scale development projects. Because the law stipulates the need for public consultations in EIAs, it provides a platform for communities to claim that they have not been heard, or insufficiently heard. Although there are no such cases in Taita Taveta at present, there are several examples from neighbouring Counties (such as Kwale and Tana River Counties) where communities have had at least a degree of success in achieving either compensation or a temporary halt of activities on account of failure by investors to meet thresholds in the EMCA. Significantly, most of the major public protests in connection to EIAs or the EMCA in Kenya have been facilitated or led by NGOs and/or activist lawyers.

Constraints to inclusion and “voice” in everyday implementation

A variety of local stakeholder groups are represented on the DEC. However, because of the limited resources and ad hoc nature of everyday EMCA and NEMA implementation, DEC activities have sometimes been relatively exclusive and selective. The informal nature of everyday enforcement also means that agreements and decisions can be relatively exclusive and difficult to influence for some stakeholders. Although the DEOs provide an alternative space for local communities to voice complaints, it is often difficult for the DEOs to actually act on these as they lack resources or authority vis-à-vis other line agencies. The Public Complaints Committee (currently with an office only in Nairobi) should ideally handle such complaints but is severely under-funded and under-staffed, and appears to have been somewhat overlooked in development cooperation. Moreover, grievances expressed within the EMCA may “loose out” to other overlapping laws (such as the land law or wildlife law) and/or to underlying political issues such as land conflicts, as has happened in Taita Taveta in several instances.

(iv) The role of development cooperation in implementing the EMCA in Taita Taveta

Like most other counties or districts in Kenya, there has been no direct systematic support from development assistance to the EMCA and NEMA operations in Taita Taveta (although the currently planned “green points” may change that). As such the area represents the “typical situation” in the country: With the notable exception of the EU-funded activities in western Kenya there has been a tendency to focus on central-level operations in the development cooperation with NEMA.

The question is therefore whether the support to national-level frameworks is in fact evident in the everyday implementation of the EMCA and NEMA at local levels? In several respects, it is:

Helping to push the environmental agenda

It seems clear that development cooperation has helped to set the overall agenda of environmental management in Kenya – and thereby also indirectly at the local level. This includes the actual support to articulation of specific policies and plans, but also helping to “push” environmental management onto the national agenda. Examples of the latter include World Bank conditionality that gave the last push towards securing parliamentary approval of the EMCA, but also more recently facilitation of networks and discussions on “green growth”.

Strengthening NEMA’s overall “clout” and standing

It also seems clear that despite the vulnerable position of NEMA operations at field level, they do now operate with a greater degree of authority vis-à-vis other agencies and stakeholders than was the case before. This should to a large extent be seen as a result of the improved “clout” and efficiency of NEMA at the national level. Development cooperation has played an important role in this – including the support to strengthening the NEMA’s enforcement and compliance capabilities; EIA procedures and associated capacity; training other sector staff in the EMCA, EIAs and environmental auditing, environmental inspection, and supporting a re-organisation of the agency to become more effective.

Enhancing field staff capacity and improving central-level support

The development of enforcement and compliance capacity has also more directly involved DEOs, including those in Taita Taveta. By taking part in the training programmes supported by DFID and later Danida, DEOs in Taita Taveta have partly gained knowledge on a variety of technical procedures for EIAs, etc, and have partly gained a more sophisticated notion of enforcement and compliance. The emphasis by DEOs in Taita Taveta on working with people rather than against them whenever possible is thus partially a result of the general turn in NEMA towards creating a more incentives-based compliance. The development assistance to strengthening capacity at central levels has also helped to develop the ability of Headquarter staff to more effectively assist local DEOs in enforcement. The training of environmental inspectors who are able to move to the field and act in the capacity of prosecutors is one example. The development of the Environmental Police is another, and centrally based experts of particular areas of EIA is a further example.

Addressing environmental issues through support to agriculture and water

Although there has been no specific development cooperation support to NEMA activities and implementation of the EMCA in Taita Taveta, there have been a number of interventions in other sectors that were supported by development cooperation, and which have addressed environmental issues directly or indirectly. This includes support to agriculture and livestock development, as well as forestry and water resources management, provided by development partners such as the World Bank and Danida. As sector-specific interventions they have to a greater or lesser extent incorporated environmental aspects, and have as such contributed to the pick-up of environmental concerns and management among sector agencies in the area.

(V) Moving ahead

The development support to Kenya's national-level framework for environmental management has, then, contributed indirectly to a strengthened environmental agenda and improvements of NEMA operations. However, it is important not to overestimate the contributions of development cooperation to local implementation of the EMCA and NEMA operations: As discussed in the main report, it seems clear that systematic development of the decentralized mechanisms for environmental management has been given little priority in much of the development cooperation with NEMA to date – and indeed in NEMA's own work. Hence although progress has been made, many constraints and challenges remain on the ground.

What is important now is to learn from the process and move forward: This case study suggests that support to legal and institutional frameworks for environmental management at the national level is important, and also has effects at the local level. But it also shows that building the national frameworks is insufficient in itself: An additional effort to address implementation at local levels is needed. The important work that has so far been put into establishing national-level environmental frameworks in Kenya now needs to be complemented with more focused and systematic attention to implementing these frameworks at the local level.

This does not mean that an environmental authority like NEMA should necessarily have a large and expansive local structure – in many instances it will make more sense to work through sector agencies themselves (as provided in EMCA). However, there *is* a need for a well-functioning presence at local levels. In Kenya, this will become more important with the current constitutional

transition and the intended decentralization of government services to local level, a change which NEMA – like many other agencies in Kenya – is currently seeking to adapt to. In this respect, it will be important for both NEMA and its development partners to:

- i. giving more attention to the often overlooked but important local footwork of pushing the environmental agenda on an everyday basis, and how this is best supported. In order to do this, local communities need capacity and continuous learning. NEMA and its partners could build local capacity through establishment of local environmental learning and demonstration centres to raise environmental awareness, transfer lessons and experiences on what works, and promote local solutions to environmental challenges;
- ii. placing greater emphasis on and revising the local environmental planning process in order to move from “putting out fires” towards proactive planning;
- iii. considering and strengthening whatever new forms the old District Environment Committees will take (once review of EMCA in line with the new constitution is complete), including their democratic procedures and their relationship to the new local government structure. This includes ensuring that local government structures are in fact able to follow the law and address issues highlighted by NEMA, i.e. that they possess sufficient capacity and resources to do so;
- iv. supporting the basis for expressing local environmental grievances. This may include strengthening the work of the somewhat overlooked Public Complaints Committee, but also strengthening platforms for local complaints and working through parallel support to address critical underlying issues related to such issues as land and water rights;
- v. working more intensively with the mainstreaming of environment into the everyday working procedures and performance contracts of local line agencies, e.g. agriculture, forestry, water and infrastructure;

Development cooperation can contribute to this. There are limits to how much individual development partners and programmes can “spread out”, but the opportunity for a coordinated and concerted effort is there. A range of experiences already exist from the multitude of small one-off projects that have worked with environmental conservation in individual sites, which can be combined with the experiences drawn from the support provided to the national-level frameworks so far.

I. INTRODUCTION

Since the 1990s, many African countries have invested in efforts to develop national frameworks to address crosscutting environmental management issues and problems. Typically, environment ministries and/or agencies have been established alongside the more traditional sector agencies, and environmental legislation has been developed or added to existing legal frameworks for regulation of such sectors. Specific procedures and practices, such as environmental impact assessment, environmental auditing and “State of the Environment” (SoE) reporting, have also been introduced and promoted in development planning. Frequently, these efforts have been funded through development partnership and cooperation.

Many reviews and studies of these arrangements have tended to focus mainly on the national-level frameworks, perhaps due to the cross-cutting nature of environmental management and the perceived need to develop new institutional structures and strengthen existing ones. However, there are still unanswered questions. How and to what extent have these national frameworks been implemented at the local level? What is the status and impact of district-level institutions for cross-cutting environmental management, and how do they interact with other sector agencies and local citizens in an everyday context? And what has been the contribution of development cooperation in the implementation of these new environmental management frameworks?

This report seeks to improve our insight into such issues through a case study of the implementation of Kenya’s Environmental Management and Coordination Act (EMCA) of 1999 in Taita Taveta County. The study is primarily focused on the operations of one institution, namely the National Environment Management Authority (NEMA), which is a key authority in implementing the EMCA.

The study has been conducted within the wider ReCOM study, which includes a focus on the ways in which development cooperation has contributed to environmental management. We therefore have a particular interest in this aspect.

The report is structured as follows: It first provides a general introduction to the development of environmental management frameworks in Kenya, followed by an introduction to the EMCA and NEMA specifically. The report then moves to the case study of Taita Taveta County, which is the bulk of the report. Finally, a brief concluding discussion is provided on the experiences generated from the case study in terms of implementing the EMCA and NEMA at the local level. The specific role of development cooperation is discussed at the end of each section.

The study is not a technical review, but instead focuses on the everyday aspects of implementing the EMCA on the ground (at local level) in the past seven years, including the situation of the District Environment Officer, his/her relations to other actors in the area, and the implications of institutional competition and power relations. The main emphasis is on issues related to institutional development, enforcement, environmental planning and mainstreaming, and implications for local empowerment. The study furthermore seeks to place these aspects into the wider context of institutional development at the national level, and the role and contributions of development cooperation.

It should be emphasized that the case study only provides an initial insight into the workings of NEMA at the local level. The study has been conducted within a limited timeframe and with limited resources, and is one among four case studies that feed into the wider ReCOM study of environmental management and development cooperation. The case study is based on interviews with selected actors and

observers in Taita Taveta and Nairobi, and a desk review of literature on the development of environmental management in Kenya. One of the authors conducted interviews in the district in 2005 just when NEMA had begun operations in the area, and both authors visited the area again in 2012 for the preparation of the current report.

The case study has been conducted at a time when Kenya is undergoing constitutional reform and a transition from one constitutional order to another, and the previous focus on Districts is now in the process of being reverted to the Counties as units for local administration. As the study is focused on developments until now, it deals mainly with the District-level structure. However, we believe that most of the issues discussed continue to be relevant.

2. OVERALL DEVELOPMENT OF ENVIRONMENTAL MANAGEMENT IN KENYA

2.1 Key environmental issues

Kenya's environment and natural resource base is under significant strain. Freshwater resources, agricultural soils, rangelands, forests, coastal wetlands and biodiversity habitats are all currently degrading. Agricultural areas of high potential are losing viable productivity as a result of excessive subdivision and inadequate soil management policies (GoK/EU 2006; NEMA 2011a).

Agricultural conversion of forests, wetlands, and marginal lands is a further problem, typically as a result of increasing populations or unsustainable commercial farming ventures. Desertification is increasing in the arid and semi-arid areas. Fisheries resources and coral reefs are also threatened if current developments continue without following sustainable paths. Industrial and human pollution of water resources, as well as unplanned

development and "urban sprawl" are significant environmental problems in urban areas. Unsustainable development policies and rent seeking from natural resource exploitation are some key underlying factors behind these developments (Lang 1995; Fox 2002; Sundet & Moen 2009).

Climate change impacts on Kenya vary greatly in form and severity across the country, but on average temperatures increased by 1.0°C from 1960 to 2003 (McSweeney et al. 2008; Huho & Mugalavai 2010). Prolonged droughts and intense flooding continue to occur in Kenya every year since 2000, with greater frequency than in the past, and a sea level rise of 1mm per year has been recorded on the Kenyan coast since 1986 (Norrington-Davis & Thornton 2011). Predictions suggest that an increasing amount of land will be made un-arable as a result of more erratic rainfall, while malaria is predicted to spread to areas where it has previously been absent (Norrington-Davis & Thornton 2011). The impacts of climate change on livelihoods have been particularly severe in the country's semi-arid and arid areas, where there in the past has been limited political interest in supporting development.

2.2 Legal framework

Kenya's legal framework for environmental management has in the recent past been characterized by fragmented and outdated laws, and overlapping/inconsistent policies. In the past 10-15 years there has been attempts to redress this situation through a series of efforts aimed at mainstreaming and elaborating the legal and institutional framework.

The 1999 Environmental Management and Coordination Act (EMCA) thus provided an important milestone in the history of environmental management in Kenya (GoK 1999). The act provides for the integration of environmental concerns in national policies,

plans, programmes and projects, and stipulates the formulation of 5-year Environmental Action Plans at National, Provincial and District levels. The EMCA furthermore enhances the regulatory framework for EIA and stipulates the establishment of the National Environmental Management Agency (NEMA) as the principal institution responsible for supervising and coordinating the implementation and enforcement of the act at national and local levels. Kenya's two National Environmental Actions Plans (NEAPs) from 1994 and 2009 have also emphasized the need for strengthening coordination and elaboration of the legal frameworks for environmental management, as have the Strategic Plans for the Ministry of Environment and NEMA (e.g. MEMR 2008; NEMA 2009).

These efforts have meant that the legislative framework for environmental management has been updated in several areas. Apart from the EMCA, the 2002 Water Act and the 2005 Forest Act represent relatively comprehensive legal frameworks (GoK/EU 2006). Regulations for EIA have been established (in 2004) and Environmental Quality Standards have been developed for land degradation, water quality, biodiversity, waste management, noise and various other environmental aspects. Reviews of old acts relating to mining and wildlife conservation have been/are being undertaken, and environmental issues are incorporated in policy frameworks such as the Government's 2030 Vision and the Energy (2004) and Fisheries (2005) policies. The 2009-2013 National Environmental Action Plan is relatively progressive, and among other aims, seeks to address land policy issues and the development of environmental dispute resolution mechanisms at all levels (NEMA 2009).

In terms of multilateral agreements, the Kenya Government has among others ratified the international conventions on Biological Diversity, Climate Change, Desertification,

Persistent Organic Pollutants as well as the Ramsar and Cites agreements, and the Kyoto and Montreal protocols.

In the past decade there has thus been progress in terms of updating and consolidating the legal framework for environmental management in Kenya. However, as is also recognized by the Government itself, a number of significant challenges remain. These are mostly related to the everyday implementation of the legal framework at national and local levels, including:

- Poor enforcement of legislation, typically caused by lack of organisational capacity and resources (see below);
- Inconsistencies in the legal framework for different sectors (GoK/EU 2006; MEMR 2008);
- A frequent lack of bylaws and guidelines for interpreting legal frameworks in "real-world" situations (MEMR 2008);
- Lack of integration of statutory and customary law, leading to contradictory legal frameworks for ownership/rights (such as over rangeland), and conflicts between state and customary authorities (Akech 2006);
- Reliance on elaborate and lengthy court systems and formal institutions in deliberating environmental cases and complaints (Akech 2006), and;
- Political opposition to updating and implementing the legal frameworks for certain highly politicized issues, most notably land (Fox 2002; Sundet & Moen 2009).

2.3 Organisational framework

State management of natural resources has historically been characterized by fairly top-heavy centralized agencies with a relatively narrow sector focus defined along the lines of traditional productive sectors of agriculture, live-

stock and fisheries, water and irrigation, mining, lands and tourism/wildlife.

In Kenya, the last about 20 years witnessed the development of new state organisations with a broader environmental mandate, including most notably (i) Ministry of Environment (under various names), (ii) National Environment Council (NEC) responsible for formulating national policies and goals and (iii) National Environmental Management Agency (NEMA) responsible for supervising and coordinating activities of lead sector agencies and mainstreaming environmental issues in plans and programmes. A range of additional committees and institutions are housed within the EMCA framework, including the National Environment Action Plan Committee, the Public Complaints Committee, and the National Environment Tribunal (NEMA 2009).

The 1999 Environmental Management and Coordination Act further stipulated the establishment of Provincial and District Environmental Committees with a responsibility for overseeing that development in the districts takes place according to the provisions in EMCA. The committees have been responsible for developing 5-year Environmental Plans at their respective levels, and for integrating environmental concerns into District Development Plans. The Act furthermore provides for these committees to be supported by local

NEMA offices, although these have not been established in all district units.

A basic organisational framework for environmental management is thus now in place in Kenya (Danida 2010b). In the past five years, new policies and strategies have furthermore been developed in most of the key sector agencies related to environment, and initial efforts at establishing local-level mechanisms for environmental management have been initiated. A greater appreciation of the need for addressing and mainstreaming environmental concerns also appears to be evident among some staff in sector agencies (Danida 2010a).

In terms of climate change adaptation, Kenya has been a focus of much attention from donors and researchers. Government agencies have nevertheless been criticized for reacting somewhat slowly and reluctantly on the issue (Norrington-Davies & Thornton 2011). However in 2010 a National Climate Change Response Strategy was developed. A national focal point for the UNFCCC is present in the Ministry of Environment, and a coordination unit for climate change policy has been established in the Office of the Prime Minister. A climate change secretariat has been established in the Ministry of Environment. National coordination structures for climate change are thus now more or less in place (Norrington-Davies & Thornton 2011).

Ministry	Development Ksh (million)	Recurrent Ksh (million)	Total Ksh (million)	% of total budget
Environment and Mineral Resources	2,269	2,164	4,433	0.45
Water and Irrigation	24,695	4,678	29,373	2.98
Agriculture	5,674	7,819	13,493	1.37
Lands	471	1,756	2,237	0.23
Fisheries Development	1,337	892	2,229	0.23
Forestry and Wildlife	2,004	3,705	5,709	0.58
Total			57,473	5.83

Table 1: Government budget allocations to environment related ministries in FY 2009/2010. Source:

Despite this progress, a range of problems persist. Currently the main challenge is the actual implementation of policies, strategies and laws – which are either ineffectively implemented, or de facto not implemented at all. Key issues are:

- Duplication and confusion of mandates between state agencies (MEMR 2008). This problem has been particularly prominent in Kenya, where the creation of new ministries and associated subdivision of sectoral “territories” has been a key strategy in political power brokering. The new Constitution of Kenya 2010 sets out to address this, but the results are yet to be seen.
- Interdepartmental conflicts persist between some agencies. As also seen elsewhere, the Ministry of Environment and NEMA are relatively weak entities compared to the productive sector agencies, which generate revenues, have more political attention and larger budgets (see Table 1).
- Inadequate budgetary allocations to environmental authorities. There are a number of reasons for this, including (i) limited political will and interest among politicians and in the Finance and Planning ministries (Fox 2002), (ii) a strained economy and declining donor contributions in recent years due to concerns over corruption. Under-spending by NEMA in its early years also led to government budget cuts for that organization specifically (see below).
- In extension of the above, human resource issues remain a problem. These include inadequate staffing levels, high staff turnover and weak staff capacity in some areas (MEMR 2008; Danida 2010a).

2.4 Governance framework

Kenya is currently in the process of a constitutional change. Among other features, the country’s new constitution from 2010 eliminates provincial units and replaces them with 47 Counties that will form the new focal point for administration and local government, headed by elected County Governors (GoK 2011).¹ Each county may have several administrative districts and depending on the restructuring that will take place, DECAs (which may be re-named) may remain but will feed into county-level organizations. The mandates of Counties will include overseeing implementation of national policies and county plans on agricultural development, natural resources management and environmental conservation. The new constitution will also restructure sectoral mandates and frameworks for these areas at both national and local levels, although exactly how is currently being debated. The county government structures will execute their mandates according to the new constitution.

In principle the Environmental Management and Coordination Act of 1999 provides for political representation of various group interests at several levels. At the national level, civil society organisations, the private sector and academia are represented in the National Environmental Council (though chaired by the Minister of Environment). The National Environmental Tribunal and the Public Com-

¹ Counties vary considerably in area and population size, e.g. Mombasa County (the smallest in geographical area) in Coast region measures 219.9 km²; Nyamira County in the Western region 899.3 km² and Turkana County (the largest in geographical area) in the North Rift region 68,680.1 km². Population numbers also vary greatly, ranging from about 101,539 in Lamu County (6,273.1 km²) in Coast region; about 143,000 in Isiolo County (25,336.1 km²) in upper eastern region to over 3,100,000 in Nairobi County (695.1 km²) (Source: Kenya National Bureau of Statistics, <http://www.knbs.or.ke/counties.php>, accessed on 20-February-2013).

plaints Committee (the latter also with civil society representation) furthermore provide opportunities for formal expression and resolution of grievances at the national level. At the local level, Provincial and District Environmental Committees have by law been composed of representatives from all relevant line agencies, as well as representatives of “farmers, women, youth and pastoralists” (4 reps); the “local business community” (2); community-based organisations (2); and NGOs (2) (GoK 1999). Where committees have been established, these criteria appear to have been maintained.

Within the agriculture and natural resource sectors, formal provisions for public representation in planning has traditionally been more limited. District development plans in principle prepared (by the Ministry of State for Planning, National Development and Vision 2030) through bottom-up planning processes. This means that sub-district plans (including agriculture and natural resources issues) are fed into overall district development plans. In principle, Local Government authorities are key actors in this process, with support from government staff in the respective government line agencies – although in reality line agency staff tend to dominate the process. Apart from this, a wealth of community-based natural resource management (CBNRM) projects of various kinds have been implemented throughout the country, usually with external funding from central government, NGOs or donors.

Environmental NGOs in Kenya were traditionally dominated by wildlife conservation issues, but have been through a significant development in the past 10-20 years. New and more vibrant national civil society organisations, such as the Greenbelt Movement, have developed – but more local NGOs addressing specific concerns, such as urban environmental issues in the major cities, now also exist. The

strong international profile of Kenya’s environment sector has meant that external support to the country’s NGOs has been relatively forthcoming from international NGOs, private charities and (to a lesser extent) bilateral donors. As a result, NGOs have in some cases been successful in bringing international attention to Kenya’s environmental issues, such as the plans to develop biofuels in the Tana River Delta (of Tana River County) and titanium mining in Kwale County.

Environmental governance in Kenya is however still subject to a number of basic traits in the overall political system:

- Corruption and rent seeking in the political system, meaning that environmental laws and mandates are frequently ignored and conservation efforts are stalled/ineffective (Fox 2002; Kimani 2010).
- Strong interests among local, national and international political and economic elites in preserving and expanding control over strategic resources (most notably land), rather than exposing these to public law and management (Fox 2002; Sundet & Moen 2009).
- Active and ongoing conflicts over resource access at multiple levels (grazing areas, farming land, water, human/wildlife conflicts etc.), making environmental management difficult and subject to contention (Adan & Pkalya 2006; Kagwanja 2009), lack of political interest and will in aspects of environmental conservation that do not produce immediate financial outputs, votes or similar benefits to the political and business elite. This is frequently coupled to the anticipation that such issues will be addressed through donor funding and therefore are not the responsibility of the state (Fox 2002).
- Disconnects between government sector agencies and local institutions, e.g. dis-

district-level government line agency staff, has tended to consider Local Government (LG) authorities inefficient and corrupt even though inefficiency and corruption may pervade district-level government agencies in equal measure. There has, indeed, been a number of cases of corruption in LG authorities in Kenya. However, the skeptical attitudes of central government authorities towards LG staff has meant that they are in reality often ignored or bypassed, thereby making the situation worse. Likewise conflicts between customary and government institutions over authority in managing land, water and other natural resources are frequent. The result is a tendency for local-level environmental planning and management to be fairly technocratic and exclusive in practice. This has also been the case for some of the Provincial and District Environmental Committees established under the Environmental Management and Coordination Act: Although in principle these committees function, their actual influence vis-à-vis the technical sector agencies at local levels is often quite limited. It remains to be seen whether the new constitution and institutional frameworks at local level will address this issue.

- The numerous micro-projects that have sought to promote CBNRM have in some cases been successful in terms of improving management and livelihoods, but are typically stand-alone projects that do not lead to more democratic environmental governance at the broader scale. In many cases these projects have also tended to focus more on ensuring sound management, and have failed to address underlying inequalities and rights that may be the source of unsustainable use and management of natural resources.

2.5 Development cooperation in natural resources and environmental management

Overall development assistance constituted 4.1 percent of Kenya's GDP in 2007 (McCormick & Schmitz 2011). Up to the late 2000s, assistance to environmental and natural resources management increased steadily, followed by a downturn in the last 3-4 years as some donors have withdrawn support in concern over corruption and other governance issues. In 2009, donor support was estimated to constitute approx. 15 percent of the national budget for environmental interventions, and a total of 17 major donors provided support to the environment and natural resource management in Kenya (Danida 2010b). The nature of support has shifted over the years, following donor fashions and the national political situation. Following misgivings over the Moi regime, some donors (including Danida) gradually moved the focus from national-level support to the district level in the 1990s. This was followed by an increasing emphasis on community-based approaches in the wider development world, which is still evident in much of the environment-related support today – whether in the form of strongly livelihoods-centered approaches (DFID, World Bank), or more broad support to environment and natural resource management at community level (EU, USAID, FINNIDA, Sida, Danida). In the 2000s, national-level support to policy and capacity development has been provided in a range of the productive sectors (e.g. World Bank, Sida, Danida in agriculture, and Sida and Danida in water). These have included attention to mainstreaming environmental aspects. Environmental management per se has been supported mainly by EU and Danida through sector programme support to the Ministry of Environment (in its various configurations) and especially development of NEMA.

Efforts at donor coordination have led to the development of a Kenya Joint Assistance Strategy to which most major donors are signatories, including in the environment where common overall goals for development assistance have been formulated (HAC 2007). Basket funding has been attempted in some cases, although with mixed results. The modalities of support have followed the general shift from conventional project support to more programmatic approaches. Direct budget support has been provided in some instances, but due to corruption many donors have been reluctant to engage fully in this, and are instead providing support through more conventional means (e.g. as Appropriation in Aid). Recently, some donors have entirely abandoned any form of support to government departments following concerns over corruption (e.g. DFID who instead emphasize direct cash transfers supported by local institutional development for sustainable pastoralism). Support to civil society engagement in environment and natural resource management has included Trust Fund approaches whereby communities develop their own project proposals with support from NGOs (EU and Danida).

To date, the main impacts of development assistance to environmental and natural resource management in Kenya appear to be in the development of the legal and organizational frameworks. Some formal national policies also appear to have been influenced by donor efforts to promote environmental concerns and inclusive management approaches. This seems particularly evident in terms of environmental management per se, where development assistance has played a central role in developing/supporting the Ministry of Environment and NEMA. Likewise in climate change, where development assistance has been directly instrumental in the establishment of new organizational entities and policies (such as the Climate Change Coordination Unit in the PM's Of-

fice). A multitude of community-level projects have furthermore been carried out with development assistance, and have in some cases provided significant – but usually very localized – impacts on local-level natural resource management.

Donor assistance to environment and natural resource management has however also been hampered by difficulties in getting these frameworks implemented and operational in the everyday realities on the ground. There appear to be a number of reasons for this:

- The politics of natural resource governance mentioned in previous sections, e.g. corruption and personal interests of political and economic elites, especially in the productive sectors such as land, agriculture, forests, water.
- The significant challenges in providing development assistance to environmental management in a highly fragmented institutional landscape, with limited institutional “reach” and weak capacities that cannot be developed over a brief 4-year programme period (Sundet & Moen 2009).
- Environmental management and climate change as “donor agendas”, i.e. lack of political will and ownership in relation to environmental management and climate change, reflected also in the meager national budget allocations to these areas compared to the productive sectors. In extension of this, the lack of “clout” of environmental management agencies vis-à-vis natural resource management agencies.
- In many cases, there seems to have been insufficient attention to operationalizing “the middle ground” in the various development interventions. One example of this is the otherwise substantial support to environmental management through NEMA, which has achieved fair results at

the national level but appears to have underestimated the challenges of implementing at the district level. Likewise, many of the community-based projects in natural resource management have failed to link up to district-level institutions and local governments, thereby in some cases adding to/triggering conflicts between institutions at these local levels.

- The difficulties experienced in de facto harmonization of donor efforts (despite well-established frameworks for this) and joint monitoring with government agencies have been raised as reasons why experiences and lessons learnt from individual programmes and projects are not replicated and scaled up – meaning that achievements remain localized (McCormick & Schmitz 2011).

3. THE EMCA, NEMA AND THE ROLE OF DEVELOPMENT COOPERATION

3.1 Kenya's Environmental Management and Coordination Act

The Environmental Management and Coordination Act (EMCA) was enacted in 1999 with the aim of providing a legal and institutional framework for environmental management in the country. The EMCA is the principal legislation for environmental management in Kenya and its key elements include:

- The law stipulates at the outset that “Every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment” and that anyone has the right to take a person breaching this law to court (referred to in law as *locus standi*, GoK 1999:8).
- The law furthermore defines illegal activities within a number of areas, including waste management and pollution and

degradation of rivers, lakes, wetlands, coastal zones, agricultural areas, forests and biodiversity.

- The law also sets down the principles for Environmental Impact Assessment, and for the development of 5-year National Environmental Action Plans and similar plans to be developed at provincial and district level.

The law further describes the establishment of an institutional framework for environmental management. This includes:

- i. The National Environment Council (NEC), chaired by the Minister of Environment and responsible for national environmental policy formulation;
- ii. The National Environment Management Authority (NEMA), as the principal government institution charged with overall co-ordination and supervision of environmental management in Kenya;
- iii. Provincial and District Environment Committees, composed of sector agencies, local government authorities and representatives of the public, and charged with carrying out environmental management at the local levels;
- iv. The Public Complaints Committee charged with investigating citizens' complaints over violations of the EMCA;
- v. The National Environment Tribunal whose mandate is to decide on grievances and appeals against decisions made by NEMA with respect to issues such as environmental licensing among others. Those who are aggrieved by NEMA's decisions also have the option of going to the High Court but are typically encouraged to lodge their complaints with the National Environment Tribunal.

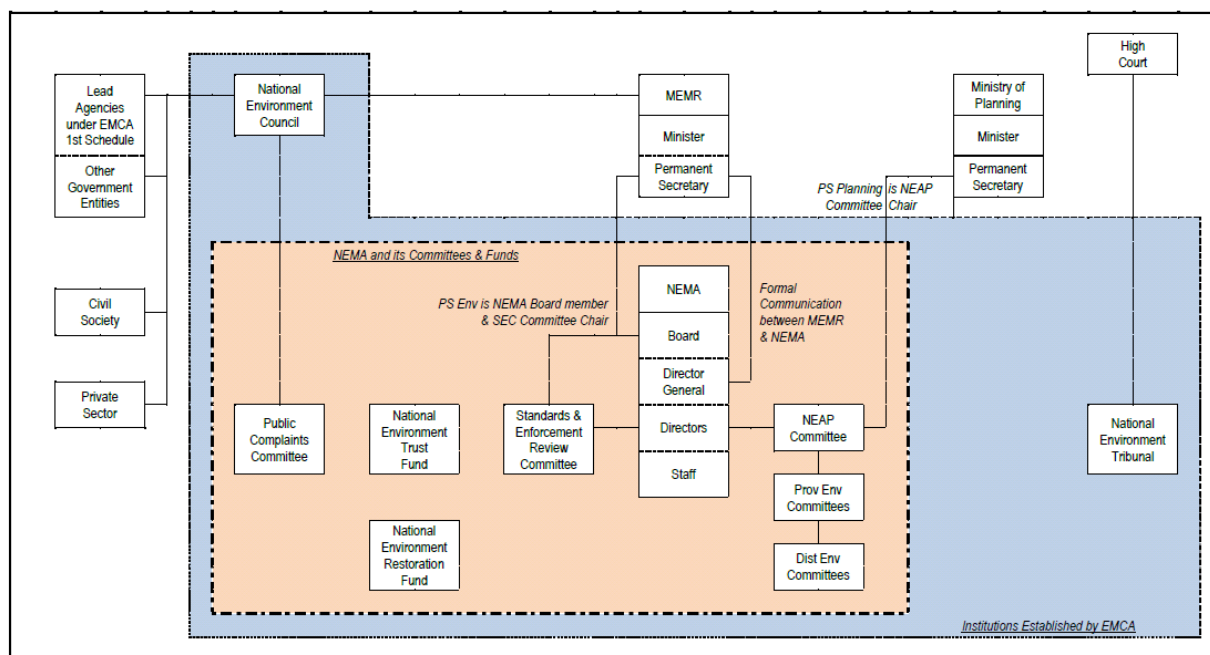


Figure 1: Institutional framework established by the EMCA. Source: Mott MacDonald 2010

The EMCA is thus a broad act and provides for the establishment of a fairly comprehensive institutional framework. In principle, the EMCA does not repeal the existing sectoral laws, but aims instead to coordinate and supervise the activities of other sector institutions and local authorities. However, because it addresses illegal activities in areas such as agriculture, forests and freshwater (and bestows authorities to NEMA in several of these instances), it is considered by some to effectively overlap with sector laws and institutions in several areas. In principle the EMCA should take precedence in cases of doubt, but this principle clashes with the interests of other sector agencies. For instance, it has been argued that because the Forest Act is more recent than the EMCA, the Forest Act prevails in situations of doubt/contradiction. While such an argument may not hold in court, it nevertheless illustrates that the legitimacy of the EMCA is contested in some quarters.

The right to “a clean and healthy environment” is often hailed as an important achievement in Kenyan environmental law, as it is seen to provide a platform for voicing general environmental grievances. Despite this important achievement, the act is somewhat unclear on the meaning of “clean and healthy”. This in turn reflects a general ambiguity in the law, which on the one hand appears to deal primarily with environmental externalities, but also in some instances reaches deep into issues of property and resource access rights.

For instance, the act provides NEMA with the responsibility to “protect indigenous property rights of local communities in respect of biological diversity” (GoK 1999). Apparently, the original intention of this and similar statements in the Act was to provide NEMA with a “watchdog” function which would allow the organisation to intervene if sector agencies or other concerned actors failed to satisfactorily perform their environmental management obligations. However, different actors have var-

ying interpretations about the actual role of NEMA, and as a result EMCA has to some extent become an arena for broader struggles over institutional authority and access in relation to land, wildlife, agriculture etc.

It should be noted that the new constitution currently being implemented in Kenya requires certain additions and changes to be made to the EMCA after land and environment was embedded into the new constitution to give EMCA greater strength. The EMCA is thus currently undergoing a review to ensure that it is consistent with the new constitution. Issues that require consideration are (i) implications of the establishment of an Environment and Land Court under the new constitution, which will take over handling of cases formerly allocated to the High Court,² (ii) alignment of the EMCA to the new decentralized governance structure, and (iii) increased focus on Strategic Environmental Assessment and integrated assessments that include social and health issues in EIA requirements.

3.2 Role and organization of NEMA

Functions of NEMA

The National Environment Management Authority (NEMA) is a government parastatal organization under the Ministry of Environment and Mineral Resources. Although it was established by the EMCA in 1999, the authority did not become a separate functional entity until 2002. The declared core functions of NEMA include:

- Coordination and supervision of environmental management activities being undertaken by the lead agencies, and

monitoring these activities to ensure they conform to requirements of EMCA;

- Promoting the integration of environmental considerations into development policies, plans and projects, establishing guidelines for environmental management and land use as necessary, and identifying and approving EIAs;
 - Taking stock of natural resources and land use patterns in Kenya and their utilization and conservation, including coordinating and conducting relevant surveys and information;
 - Advising the Government on legislative and other measures for environmental management and implementation of international conventions and agreements; and
 - Initiating and facilitating environmental education and public awareness activities.
- Despite these stated functions, there has in practice been considerable debate and uncertainty among many actors over the precise mandate and jurisdictional territory of NEMA: Is it only a coordinating and facilitating organization, or also an implementing authority in its own right – and in extension of this whether “the environment” is a sector in itself. Behind this debate lies a number of factors including (i) different perceptions of whether or not sector institutions can “be trusted” to incorporate environmental concerns in their work, (ii) a tendency for performance incentives to be developed internally within institutions rather than across them, and (iii) power dynamics and associated efforts to demarcate or expand institutional territories. The tense relationship between NEMA and other government agencies has been present right from the original formulation stages of the EMCA in the 1990s through the institutional development of NEMA and now pervades local levels of environmental management in the country.

² The court was established in 2012 and 13 judges have been appointed to the court.

NEMA and international conventions

NEMA is the focal point for coordinating and reporting on the international environmental conventions ratified by Kenya, on behalf of the Ministry of Environment and Mineral Resources. So far the main activities undertaken by NEMA in this respect have focused on generating information. This includes production of State of the Environment Reports, which provide baseline information and overviews of the environmental condition. The reports have so far been prepared at 3-4 year intervals. NEMA also facilitates the Kenya Environmental Information Network project which has sought to create a framework for cooperation and managing data among and within the various institutions that generate environmental data.

NEMA has itself stated that there is room for improvement in terms of “domesticating” the international conventions in Kenya, such as linking them more clearly into problem analysis and planning activities, and developing/aligning national monitoring systems that can assess progress towards convention targets (see also Matiru & Stewart 2007). Weak coordination between the multiple activities carried out by NGOs and Government agencies in the various environmental fields also makes it difficult to link activities on the ground to the international conventions.

The local level in NEMA: Structure and perceptions

Apart from the national level where NEMA has a fully functional Headquarters in Nairobi, the authority has until recently had offices at provincial and district levels. In principle, NEMA should have assigned a District Environment Officer (DEO) to each District but this has never been achieved and some DEOs have had to cover more than one district, a situation that was particularly necessitated by the proliferation of districts in the country in

recent years so that deployment of a DEO in each district became unsustainable or impractical to NEMA.

In July 2012 the sub-national structure of NEMA was changed in accordance with the constitutional reform process.³ The Constitution of Kenya 2010 abolished provinces and aggregated the more than 250 Districts into 47 administrative units called Counties. Following this new constitutional dispensation in the governance of Kenya, NEMA aims at making the County as its epicenter for local environmental management where the authority will gather small and – it is hoped – effective teams of 2-3 NEMA officers supervised by an officer known as a County Director of Environment. This has so far been achieved in 35 Counties, while 12 Counties have just one officer.

Despite the re-organisation that NEMA is currently undertaking, most field officers continue to cover expansive geographical areas with large populations and serious logistical challenges. Moreover, the NEMA deployment array still appears to be top-heavy considering that of the 360 NEMA staff, 207 are currently located at Headquarters in Nairobi and 153 (of which 109 are technical staff) are allocated to field offices in the Counties.

This paucity of staff resources at the local level is partly a result of limited funding. In the first years of its operation, NEMA’s activity levels were low and the institution was generally considered by national budget authorities

3 Following Kenya’s new Constitution (Constitution of Kenya 2010, which was promulgated on the 27th August 2010 following a national referendum on 4th August 2010), Counties will be the new centers of local government and service provision, rather than Districts. Although the move to County level signifies a “step away” from Districts, the new Constitution provides for a certain devolution of power away from the center, to be vested in elected Governors who will hold greater powers than the previously rather weak Local Government structures.

as a low-budget spending government organisation. Consequently, Treasury made significant cuts in the organisation's budgets. Today NEMA budget allocations remain relatively low, despite a very significant increase in activity levels meaning that it is now considerably under-funded.⁴

The development of NEMA's local institutional infrastructure is however also very much a result of priorities and perceptions of the NEMA leadership. Following the rather sluggish performance of the organization in its first years, a feeling developed among the top leadership that it would be important for the organization to "get its act together" at the central level first, before decentralising to the local levels. This in turn connected to a recognition of Kenyan real-politik: If the agency was to have any chance of gaining respect from policy-makers and asserting itself among existing sector agencies, then central-level strength and clout would be critical.

In addition, it has never been entirely clear what the exact roles of DEOs would be on the ground. The EMCA mentions that Provincial and District Officers should be present as members of Provincial and District Environment Committees, but it is silent on their specific tasks and mandates. The assumption was initially that they would simply represent NEMA at the local level and undertake the same tasks locally as the organization did nationally, but there has been a growing doubt in the NEMA leadership whether this was an effective approach, and whether the whole notion of DEOs was in fact worth the effort.

Senior NEMA staff thus often express a perception that the DEOs lack sufficient ca-

capacity to work effectively at the local level, and that it is difficult to control whether they are actually doing their work and "staying within the guidelines" (i.e. the procedures for Environmental Planning, EIAs, etc) as one senior staff member in Nairobi expressed it. Instead, NEMA have placed an emphasis on allocating critical functions to central-level staff who can then conduct ad hoc field missions to conduct such tasks as high-risk EIAs. Local operations have therefore been considered a lesser priority, and so far field operations have been allocated less than 25 percent of the organisation's annual budget.⁵

3.3 The EMCA and the overall role of development cooperation

As described above, a wide variety of donors have funded development cooperation in support of environmental management in Kenya. Much of this support has related to specific sectoral aspects of natural resource management and agriculture and/or the role and capacity of civil society and communities in environmental management. This type of support has contributed to the implementation of the EMCA, in general terms.

A more limited number of programmes and projects have focused directly on developing and implementing the EMCA's legal and institutional framework as such. Of these, two are of particular interest here, namely:

World Bank conditionality. According to observers, the EMCA was originally proposed and promoted by government professionals and university academics who saw a need for a cross-cutting legal and institutional framework for environmental management. However, the law encountered resistance in the higher levels

⁴ For example, NEMA's 2008-2012 Strategic Plan was budgeted at KSH 6 Billion, but the organization has been granted slightly less than 1 Billion of this from Treasury (data from Field Operations Dept, NEMA).

⁵ This does not include central level support to DEOs or staff training

of Government as it threatened to undermine existing sectoral territories and power-bases. Eventually the World Bank set the law as a conditionality for various support (including the long-term Arid Lands Resource Management Project), and the law was subsequently adopted in 1999.

Denmark and Sweden's joint Environment Programme Support (EPS). Initiated in 2006 and completed in 2010 with a total budget of KSH 2.25 billion (DKK 167 million), this has provided support to implementation of the EMCA through three components, namely:

- Support to policy development in NEMA's parent Ministry – the Ministry of Environment and Mineral Resources (MEMR);
- Support to NEMA itself (see below); and
- Support to the Community Development Trust Fund (CDTF) which facilitates demand-driven community-based natural resource management and environmental management with support from local NGOs.

The Danida/Sida support to the MEMR has provided a number of key contributions to the formal framework of the EMCA, including development of a National Environmental Policy (currently in draft), which did not exist previously, and a National Climate Change Response Strategy. The MEMR support has furthermore been positively evaluated for its contribution to a functional analysis which resulted in establishment of an Environmental Directorate in the Ministry, and a nationwide National Environmental Awareness & Education Initiative.⁶ Danida support is now contin-

ued under the 2010-2014 Natural Resource Management Programme.

Enhancement of the government's capacity to address responsibilities in international conventions has to a large extent been funded and facilitated by multi- and bilateral development cooperation. UNEP has thus supported the MEMR and NEMA in the production of the State of the Environment Reports, and played a key role in development of the Kenya Environmental Information Network mentioned earlier. A variety of GEF grants have been made available for globally significant environmental conservation efforts at national and local levels relevant to the Convention on Biodiversity and other conventions.

Funding and facilitation from various donors has also been instrumental in the development of national mechanisms to comply with the UNFCCC. This includes establishment of a National Climate Change Secretariat in MEMR, support to climate change coordination in Office of the Prime Minister, and establishment of an interministerial National Climate Change Activities Coordinating Committee. Development and operation of these mechanisms was initially quite sluggish and to some extent kept alive by donors. However they appear to have become more consolidated and internalized in the past 2-3 years, as climate change issues have escalated and carbon credit opportunities have become more apparent. There is thus also now a growing interest in climate change issues in other ministries, including Ministry of Finance and the Ministry of Energy (Norrington-Davies & Thornton 2011).

⁶This study has not examined the MEMR or CDTF support in any great detail, but a balanced discussion of successes and failures can be found in Danida (2010c)

3.4 NEMA and the role of development cooperation

There have been three major efforts to support NEMA through development cooperation, as follows:⁷

Firstly, initial support to NEMA was provided by *DFID*, including development of approaches to Enforcement & Compliance, establishment of enforcement training programmes for both central and local-level staff, and twinning arrangements with the UK Environment Agency for central-level staff. According to Senior NEMA staff, this support was key in laying the foundations for a more incentives-oriented and inclusive approach to enforcement, where the emphasis is not only on wielding the stick but also demonstrating the benefits of sound environmental management and use.

Secondly, the *EU* has provided support to NEMA under the wider Community Development for Environmental Management Programme. This work has included developing GIS capacity at NEMA HQ, but has otherwise focused mainly on piloting NEMA capacity at the provincial and local levels. This has included (i) development of pilot District Environment Plans, (ii) community-based project activities such as tree planting and alternative energy use in collaboration with NEMA, (iii) training of local NEMA and sector staff in environmental issues. A significant result in this respect has been the generation of experienc-

es with local-level environmental planning in NEMA, including production of first generation local environmental plans and community involvement. However, for reasons discussed below, the wider impacts of these efforts have been limited.

Thirdly, joint *Danida/Sida* support to NEMA has been provided as one of the three components under the Environmental Sector Programme which ran from 2006-2010. This has been the largest support programme to NEMA, with a donor contribution of DKK 44 million (approx. KES 695 million at current rates).⁸The support focused on five key areas, namely:

- i. support to development of Strategic Environmental Assessment in NEMA and with key sector agencies;
- ii. decentralized environmental management capacitated in at least 20 districts;
- iii. capacity development for Integrated Coastal Zone Management in NEMA and key agencies;
- iv. improved management and financial systems in NEMA; and
- v. improved enforcement and compliance.

The *Danida* support now continues in a second phase as a component within the wider 2010-2014 Natural Resources Management Programme. However, due to delays in the commencement of this programme, activities have only recently taken off, and the focus in this aspect will therefore be on the *Danida's* Environmental Sector support to NEMA from 2006-2010. This phase was subject to a fairly extensive "lessons learnt" study which included an internal self-assessment exercise

⁷ Lesser grants have been provided by the UNDP who has supported preparation of the annual State of the Environment Reports, and USAID who has provided technical assistance to enhancing NEMA capacity on economic instruments for environmental management. UNEP/GEF support has been provided to NEMA and other environmental authorities to conduct an initial assessment of the national capacity to implement international environmental commitments, such as the conventions on biodiversity, desertification, and climate change

⁸ The programme was led by *Danida* with *Sida* as a "silent partner" providing funding.

by NEMA staff (Danida 2010c). The “lessons learnt” study found that significant progress had been made on three elements:

- An Integrated Coastal Zone Management (ICZM) Policy and National Action Plan was developed – a fair achievement given the multiple stakeholders and contested issues of Kenya’s coastal areas;
- NEMA’s internal financial and strategic planning was improved. A functional analysis of NEMA was conducted, which eventually contributed to providing a more efficient organization; and
- Enforcement and compliance capacity was enhanced. The DFID training programmes were developed further with the Danida/Sida funding, and staff were trained. A particularly interesting development was the collaboration between NEMA and the Kenya Police, in which the Police train NEMA Environmental Inspectors in prosecution procedures and matters. This has allowed NEMA officers to become State Prosecutors under the EMCA. In addition, an Environmental Police Unit has been established in 2008 in which NEMA environmental inspectors work with police officers on joint operations. This has been effective with more than 60 prosecutions conducted in one year. The vast majority of these enforcement activities take place in the Nairobi area, although the Unit has also taken its activities to areas outside Nairobi – for example, in relation to pollution from the tourism industry in Coast region, and a limited number of waste management prosecutions in other regions.

Other elements of the support produced fewer less enthusiastic results. Progress on developing a framework for SEAs was slow, one reason being the lack of any mention of SEAs in the EMCA – and thereby an absence of a legal basis

for conducting them, and for requiring other agencies to cooperate. SEA guidelines were however developed, with plans to pilot them in the current (2010-2014) Danida-funded activities.

The planned support to decentralized environmental management within NEMA saw even less progress. A cross-cutting review of Danida’s Environment Programmes in Africa noted this, but was not sure why this was so (Danida 2010b). As this is of relevance to the current study, we will dwell briefly on this issue in the next section.

3.5 Development cooperation and NEMAs local operations

As originally planned, the Danida/Sida support to NEMA’s decentralized operations was fairly ambitious (Textbox 1). The Programme Document thus aimed at developing a NEMA decentralization strategy and approach that would devolve power to the Environmental Officers and Committees at District and Provincial levels, and implementing this strategy in 20 districts.

In reality, few of these activities were carried out, and none of the district-level activities were initiated. A key reason for this was the previously discussed concern in NEMA that the agency would need to strengthen its capacity and clout at the central level first, and that the lower levels were of secondary importance. The emphasis on the district-level operations in the design of the support thus seem – at least to some extent – to have been a donor agenda.

This in turn reflected a broader issue in the programme: As pointed out in the “lessons learnt” study (and confirmed in our interviews) the Danida/Sida support to NEMA was not broadly popular among NEMA staff. There was a feeling that the support was parallel to – rather than supportive of – NEMA’s own strategies and workplans, and ownership

was thus limited.⁹ In an effort to address this, the programme design was adapted to better follow NEMA workplans and preferences. This improved activity levels in several areas of the component, and the lessons learnt from this effort were fully adopted in the design of the next phase, which more or less follows NEMA's own Strategic Plan.

The greater attention to NEMA's own preferences does nevertheless appear to have contributed to what was effectively a cancellation of the planned support to development of the district-level structures. This situation was further compounded by developments in the EU-funded efforts to develop district environmental planning in NEMA: These activities have largely been restricted to Nyanza region in Western Kenya, but were intended as a pilot effort for subsequent scaling up and replication to the country more broadly. However, this latter process has been somewhat constrained by (i) the tendency to focus attention on central-level capacity development in NEMA, and (ii) the fact that district-level planning – unlike enforcement and compliance – does not generate funds, and therefore tends to be an area of somewhat limited interest in some parts of NEMA. Following the conclusion of the EU support, further development of local environmental planning capacity in NEMA has thus been significantly constrained by a lack of sufficient funds both from donors and internal allocation in NEMA.

In conclusion, it seems clear that development cooperation has contributed in significant ways to the development of *national-level* frameworks related to the EMCA. Donor contingencies provided a final push to get the

EMCA approved, and environment, climate change and coastal zone management policies have been developed. Development cooperation has also played an important part in supporting the development of NEMA at the national level: NEMA is today a considerably more efficient and respected agency than it previously was, and it has managed to develop a certain degree of improved “clout” vis-à-vis other sector agencies. National-level task forces have also been developed that are able to “move out” to address specific issues in the field.

By contrast, the contribution of development cooperation to the development of a decentralized structure at NEMA's lowest tier – until recently the district level – has been rather less successful. But to what extent is this actually needed? What is in fact the situation at the district level, and what are the everyday realities, achievements and constraints faced by District Environmental Officers and other actors seeking to implement or benefit from the EMCA at the local level? This will be discussed in the next part of the report.

⁹ The Danida policy of not providing allowances for field-work activities also appears to have constrained enthusiasm to take on activities.

Textbox 1: Original description of support to NEMA decentralized environmental management in the Danida/Sida Environmental Sector Programme

Output:

Decentralised environmental management implemented in at least 20 districts following an overall flexible NEMA strategy guiding all decentralised environmental management.

Activities:

- Review existing decentralized environmental management and recommend options for improvement;
- Carry out internal NEMA decision-making process to define overall NEMA strategy for decentralization including level of operational costs based on the above review;
- Develop/adjust job descriptions, manuals, procedures, guidelines and capacity building plan for DEOs/PDEs/DECs/PECs and other stakeholders according to the strategy;
- Implement strategy in 2-3 pilot districts;
- Review lessons learned from first pilot year and adjust strategy accordingly;
- Implement overall decentralization strategy in a minimum of 20 districts.

“The output supports the development and implementation of an overall NEMA strategy for decentralisation with an implementation approach that devolves power to the DEOs/PDEs, the DEC/PECs, the local authorities, and other stakeholders.”

Danida 2006: p13/14 (typo in original document corrected)

DEO= District Environment Officer; PDE=Provincial Director of Environment; DEC=District Environment Committee; PEC=Provincial Environment Committee

4. CASE STUDY: THE EMCA AND NEMA IN TAITA TAVETA COUNTY

4.1 Introduction to Taita Taveta County¹⁰

Taita Taveta County is located in Southeastern Kenya along the border with Tanzania, and belongs to the country's so-called Semi Arid and Arid Lands. The County covers 16,965 km² and has a population of some 285,000 people. The area can be divided into three distinctive geographical zones, namely (i) the mountainous zone known as the Taita Hills, (ii) Taveta at the footslopes of Kilimanjaro, and (iii) the "lowlands" comprising Tsavo National Park and adjacent rangelands. Some 89 percent of the area is designated arid or semi-arid land, all of which is in lowland areas and the Kilimanjaro footslopes around Taveta. Just 2.5 percent of the County is considered a high-potential agricultural area. The latter is found in the mountainous highlands, which are subject to high population pressure.

A variety of land uses and livelihoods are found in the area:

- Maize and beans are the most important food crops and are grown mainly for subsistence.

¹⁰ Taita Taveta has been divided into a variety of administrative constellations over the years. The County currently falls within Coast region, and is administered as four districts namely Taita, Taveta, Voi, and Mwatate. These four districts will remain during the current period of transition to the revised administrative order under the new constitution. The new order is expected to be in place after the general election in March 2013. After that point, the entire Taita Taveta County will be managed by an elected Governor, while Provinces and Districts will cease to exist in law. It is not yet clear to what extent local sector agency staff will be under the supervision of the office of the Governor or their parent ministries in central government.

- Horticulture is a major economic activity in the Taita Hills and along some irrigation schemes in the lowlands around Taveta;
- Livestock production is dominated by Maasai pastoralism in Taveta and the lowlands, but also includes some small-scale dairy production in the Taita Hills and some areas around Taveta;
- Lake Jipe in the southernmost part of the County is an important resource for small-scale fishermen.
- Taita Taveta furthermore has large-scale agricultural estates producing sisal, dairy, beef and fruits. These estates are small in number but cover considerable tracts of land.
- A significant proportion of the County is designated as protected areas, most notably the Tsavo National Park, which is the biggest conservation area in Kenya. The County also hosts several small wildlife reserves and sanctuaries along its edges. These support a growing tourist industry, although this is largely dominated by non-local investors.
- Mining for gemstones and other mining resources has long been an enterprise in the district. Most of the mining is small-scale but a few larger ventures operate in the district. Sand mining has recently become a significant activity in the area.
- The area is largely rural but has a number of small but growing urban centers including Taveta, Mwatate, Wundanyi and Voi on the Nairobi-Mombasa highway.

Taita Taveta is thus subject to competition between a number of different land uses. Key environmental problems in the area include:

- Over abstraction of water resources for irrigation;
- Water pollution from agrochemicals;
- Overgrazing in some areas;

- Poaching and human/wildlife conflicts;
- Land conflicts between small- and large-scale farms, and between farmers and pastoralists;
- Forest destruction in both low-lying areas and the highlands (including the moist Eastern Arc forests of the Taita Hills) for land and firewood/charcoal;
- Destruction and siltation of wetlands;
- Land degradation and water pollution by mining activities;
- Illegal destruction of water catchment areas that has led to declining rivers, especially in the Taita Hills;
- River pollution and river channel destruction by sand mining activities;
- Uncontrolled small-scale gemstone and sand mining in some areas, which leave excavated areas uncovered resulting in erosion; and
- Waste management problems and urban sprawl in the growing urban centers.

The environmental problems of the area are thus fairly common but nevertheless intense, and are all in one way or another covered within the EMCA. It is in this context that the local NEMA representatives have worked since 2004.

4.2 NEMA organizational development at the district level

The first District Environment Officer (DEO) arrived in Taita Taveta in 2004. During the first years no separate office was available for the DEO, and he used a borrowed desk in another government office. His work was initially quite isolated and other government officers effectively paid him little attention, seeing him as a representative of a new agency with limited funds and an unclear mandate. Today the DEO in Taita Taveta has a separate office and a vehicle. NEMA is generally recognized by other government officers as a le-

gitimate agency in its own right, and they are aware of its formal mandates and the EMCA. The local DEO is broadly considered to be a focal person for “environmental” issues at district level, and it has been demonstrated that NEMA holds a degree of clout in certain areas. A District Environment Committee has been established, comprised of members from other line agencies, local government and civil society organisations.

In other words, there has been progress. NEMA has established its presence in the area, and there is now greater awareness of the environment as an arena for government planning and intervention among line agency staff. This development can be seen as the result of both local and national factors, both inside and outside NEMA itself, namely:

- A general rise in the status of NEMA at the national level as a parastatal organization with a certain capacity and clout, especially in terms of environmental inspection and EIAs and the associated authority to halt projects that do not conform to set environmental standards;
- Increased attention to environmental issues in other sectors such as agriculture and forestry. Environmental aspects have been included in educational curricula and in sector training programmes, and a variety of (typically donor-funded) programmes and projects have worked to increase attention to environmental issues nationally and in Taita Taveta (see below).
- Networking and outreach activities by DEOs. DEOs posted in the area have emphasized these aspects of their work and have generally shown good personal skills in this respect.

Despite these achievements it would be wrong to conclude that the work of DEOs or the presence of NEMA is in any way fully or effec-

tively institutionalized in Taita Taveta. A number of features continue to significantly constrain this process. One aspect of this is limited staff resources. The DEO in Taita Taveta has effectively been alone in charge of an area covering 16,975 km², with poor roads, many remote communities and considerable variety in production systems, ecosystems and environmental issues.¹¹ Because of the crosscutting nature of their work, DEOs furthermore tend to be invited to a significant number of government line agency staff meetings in the main sub-locations of the district. In principle, significant time must also be allocated to reading and commenting on EIAs, preparing District Environmental Plans etc. This makes it difficult for DEOs to maintain an up-to-date overview of developments across the district, and to carry out inspections as appropriate. Some observers claimed that DEOs tended to selectively disregard complaints and field visits in outlying areas. Following the new constitutional dispensation it is expected that a team of two DEOs will work in Taita Taveta County, but even such a team will likely be stretched by the volume of activities that may demand their attention.

4.3 Institutional competition and DEO networking

Institutional competition and power relations are also a major part of the everyday worklife of a DEO and this is made difficult by the complexity of the sector itself. Although staff in line agencies and local government generally recognize the legitimacy of NEMA and their basic mandate as an environmental agen-

cy, it remains a deeply contested issue where the *boundaries* of “environment” (and thereby NEMA’s mandate) actually are. Firstly, NEMA is considered a potential intruder into the territories of other agencies due to the overlapping nature of the EMCA and other more sector-specific laws. For example, the water law in Kenya grants the right to issue water licenses to the Water Resources Management Authority, but this is in conflict with the rights provided to NEMA in the EMCA to issue similar licenses. Secondly, through the EIA requirements and other provisions in the EMCA, NEMA has the legal mandate to step in and halt activities carried out by the other line agencies. Examples include infrastructure development for agriculture and rural water development, which require EIAs that are approved by NEMA. Thirdly, besides institutional competition between NEMA and line agencies, there is also competition and conflict among various line agencies as a result of the *general* interconnectedness of environmental issues.

District line agency staff thus tend to be wary of NEMA as a competitor and intruder into their own work domains and spheres of authority. This echoes broader institutional struggles at the national level. For example, a major public dispute recently took place between central NEMA and Kenya Forestry Services (KFS) over the right to variously halt or approve logging in forest areas around Mt Kenya, eventually requiring top ministry officials to step in and settle matters. Such full-blown turf wars have been more limited in Taita Taveta, although one example became apparent when the DEO demanded a halt to a prestige project that was being constructed on a wetland by the Council and eventually succeeded.

But apart from such individual cases, DEOs posted in Taita Taveta have generally tended to take a collaborative stance and have avoided confrontations with other line agen-

¹¹ In 2011 the standard operational budget for a DEO amounted to KSH 160,000 (approx. 1,800 USD) a year to cover all costs including fuel, inspection visits, community meetings, as well as DEC meetings, accommodation and per diems for all participants, etc.

cies where possible. Instead, they have tended to rely on maintaining informal personal relationships with other government officers, selected members of civil society organizations, and other stakeholders. Several factors make such an approach logical: It is well in keeping with an emphasis in NEMA on ensuring compliance through collaboration (see below). It furthermore echoes a strategy seen elsewhere, in which district-level line agency staff tend to find pragmatic approaches to their work as a means of getting by and gaining influence in an everyday context (Lipsky 2010; Blundo 2006).

Finally and most importantly, it reflects the fact that DEOs – although taken more seriously now than before – are in a vulnerable position: The lack of a clear description in the EMCA of the particular tasks and mandates of a DEO places him in an uncertain position in conflictive situations, and makes him dependent on bringing in central-level NEMA institutions where other agencies oppose him directly. This to some extent amputates the independent power of a DEO, and other government officers are aware of this vulnerable position, which they may exploit. The reliance on personal relationships and networks with other government line agency staff furthermore means that the relative influence of the DEO position is very individual from person to person, and any commitments derived from such relations are not necessarily enforceable by law if one party fails to honour its part. Hence when a new DEO began work in Taita Taveta in early 2012, staff from other government line agencies took on a “wait-and-see” position before deciding how close they would cooperate.

4.4 The District Environment Committees

District Environment Committees (DECs) are formally charged with overseeing implementation of the EMCA at district level. In Taita Taveta, two DECs are currently in operation, one for Taita and another for Taveta. Both DECs are largely composed of the representatives stipulated in the EMCA, namely: the District Development Officer, the DEO, representatives from government departments in Agriculture, Livestock, Forestry, Kenya Wildlife Services, Water and Health, representatives from the Local Government, four representatives representing farmers, women, youth and pastoralists within the district, two representatives of NGOs working in the area, and two representatives from the business community.

According to the EMCA, the DECs are chaired by the District Commissioner, with the DEO as the secretary. However, due to his busy schedule, the District Commissioner rarely attends DEC meetings but instead is often represented by an appointee. Examples exist where members of the DECs have jointly addressed critical issues and come up with proposed solutions – such as on sand mining in Taita and irrigation around Lake Jipe in Taveta (Textbox 2 and 3). These cases also reflect a degree of responsiveness by the DEC to public requests and are therefore in reasonable accordance with the initial aims of the committees as envisioned in the EMCA.

However, the activity levels of the DECs appear to have varied considerably over the years, and have to a large extent been dependent on the engagement of the DEOs and DDOs. Some line agency officials who are DEC members have shown a lack of interest in the committees and preferred to deal individually with the DEO. Moreover, DEC meetings are costly and cumbersome for the DEO to arrange. Although DECs are required to have quarterly meetings, they tend to be arranged on an ad

Textbox 2: Addressing sand mining in Taita Taveta

In recent years, small-scale sand mining has become an environmental problem in Taita Taveta, as in the country more widely. The sand is dug from open pits or rivers and sold for use in construction. Often, the mining is done by outsiders who drive a truck in and mine the sand. Quite often the sand may be sold to far away markets including Mombasa on the coast.

If done excessively or in sensitive areas, sand mining leads to erosion and siltation of rivers. It can furthermore constrain the digging of shallow wells in dry river beds, which is an important source of water for some households during the dry season. Sand mining falls between the cracks in the current legal framework, and is not covered in the existing Mining Act (although it will be included in the upcoming new act).

Following complaints from a CBO to the DEO, and informal discussions among the various district officers, the Taita District Environment Committee decided to address the matter. Referring to the EMCA, the Committee banned sand mining in particularly sensitive areas, while in other areas it was subjected to stringent regulations, inspection and approval by the DEO. The Committee furthermore encouraged communities to establish sand mining cooperatives, which could apply for permit to mine sand for a small fee. The formation of local mining cooperatives ensured a certain protection and promotion of local interests in terms of stakes and benefits from sand vis-à-vis outsiders.

One main challenge though is how to effectively monitor and stop illegal sand mining activities. The District Mines Officer and some other offices pass along information to the DEO when they see illegal activities, and the DEO has made agreements with local community leaders, cooperatives and CBOs to also monitor the situation. However, at some sites illegal sand mining continues to take place at night, especially along the Voi River – but is difficult to enforce.

hoc basis to deal with immediate crisis situations, rather than on a regular basis.

There is furthermore a perception in NEMA and among many DEOs that District Environmental Committees (DECs) are too large to be effective as committees. There has therefore been a tendency for district officers to meet informally rather than call a full meeting, or to invite those members that are considered relevant to a given issue. As a result, some CBO representatives that are formally members of the committees stated during interviews that they had only been to 1-2 committee meetings over a period of several years, and felt excluded from the process.

At the time of writing the future of the District Environmental Committees is unclear following the ongoing implementation of a

new constitution in Kenya. The new focus on Counties might suggest County-level committees, but this raises the question of how to maintain contact with grassroots. It is also unclear whether the new Governors would be heading such committees or whether they will have separate (and hence competing) fora.

4.5 Engagement with the public

The DEO in Taita Taveta engages directly with the public in two overall ways: through ad-hoc enquiries, and through planned events. The ad-hoc enquiries take place by people turning up at the DEO office, or when the DEO is in the field on inspection or other activities. The enquiries typically consist of people seeking licenses to exploit natural resources such as sand; people seeking advice or funding op-

opportunities for their CBO projects; and complaints over environmentally related issues. Regarding the latter, the DEO may receive some 2-4 such complaints a week. The subject of these complaints are typically about (i) grievances over land and resource use issues such as upstream water pumping, livestock grazing, land clearing for farms, tree cutting, building construction etc, and (ii) government rules and measures related to the environment, such as restrictions on forest and wildlife use, small-scale mining regulations etc.

The DEO is thus confronted with a wide range of issues relating to multiple sectors that are in one way or other “environmental” – either because they are perceived as such by the complainants, or because people have unsuccessfully approached the relevant sector agencies and are now trying their chances in another agency (also called “forum-shopping”). This situation has both positive and negative implications: On the one hand, it means that the DEO’s office provides an additional forum for taking up grievances that have been rejected elsewhere, or where a process has been stalled because it cuts across multiple line agencies (for example, the conflicts between fishermen, farmers and herders around Lake Jipe, see Textbox 3).

On the other hand, it places the DEO in a difficult situation as the issues brought up often fall under the legal provisions and mandates of other sectors, where he has little or no power, or where the mandate of himself and NEMA in general is unresolved. Many issues furthermore arise from fundamental land use conflicts that cannot be resolved by a single DEO or which are not accommodated by the EMCA. This is discussed further below. It should be noted that because the complaints require personal contact to the DEO, the option to complain is to a large extent limited to those who are sufficiently resourceful and

organized to travel the distance to the DEO’s office or otherwise engage him.

The other means by which the DEO engages with the public is through more planned events, consisting mainly of general inspections and environmental education activities. The latter may consist of sensitization efforts in communities where the DEO informs on particular laws, sustainable resource management practices and information on NEMA’s activities. These and similar events are typically arranged via CBOs, which have increasingly come to serve as contact points between district officers and “the grassroots” in Taita Taveta. The community development offices at the districts encourages this kind of contact and partnership. Given the multitude or plethora of CBOs in Taita Taveta and the limited time and resources of the local NEMA office, DEOs in the area have typically chosen to establish close informal relations with a selected handful of CBO leaders who are deemed to be effective and “dedicated” (as opposed to being merely a conduit for appropriating funds). This somewhat exclusive strategy means that some CBOs feel left out or are simply not aware of the existence of NEMA and the DEO.

4.6 Enforcement strategies

Everyday enforcement and handling of complaints

The practical everyday enforcement work of the DEO consists of two broad activities: Ensuring that ongoing and planned activities are in accordance with the EMCA; and taking action to address activities that do not comply with the EMCA.

Ensuring that ongoing and planned activities are in accordance with the EMCA. In practice this includes inspection visits and spot checks at specific sites, screening/ monitoring of plans and proposals and EIAs. Inspection visits are sometimes done randomly, but mostly in re-

Textbox 3: Environmental management and competing interests around Lake Jipe

Lake Jipe straddles the border between Kenya and Tanzania in the southern part of Taveta. The lake is an important wetland and has been appointed a Ramsar site. The lake sustains significant wildlife populations and provides grazing and drinking water for Maasai livestock. The lake is also an important source of livelihood for local fishermen. While these various livelihoods coexist peacefully most of the time, there are also a number of conflicts between the different users of the lake.

For many years there has been no consistent management of Lake Jipe, due in part to the lack of a coordinated effort by the departments of agriculture, livestock, wildlife, fisheries and local government. However in 2008, a management plan was developed for the area (NEMA 2008b). The plan was prompted by Nairobi-based conservation NGOs, but was led by NEMA as the national agency responsible for the Ramsar convention. With NEMA as coordinator the various institutions and stakeholders were brought together for the first time and the plan was developed. Unlike the District Environment Plan, this management plan was considered a successful exercise by those involved, and showed the potential of NEMA in a coordinating role. However, so far no funding has been allocated for actual implementation of the plan.

Meanwhile, issues are escalating around the lake. Small-scale farmers in search of arable land are moving increasingly close to the lake shores, and some are drawing water from the wetland and its feeder river for irrigation purposes. This has raised a concern among local fishermen, who fear that the lake is being variously drained and suffering from siltation, and that fish stocks are being polluted by agrochemicals from horticulture.

The fishermen have complained about this to the DEO and the Taveta District Environment Committee. The committee decided to discourage farmers from settling close to the lake. An actual bylaw was not developed, partly because it was thought that this would conflict with other laws, and partly because it was considered impossible to enforce anyway. Instead, agricultural extension officers were instructed to advise households against moving close to the lake, as their productivity would quickly decline in the fragile environment. Government officers furthermore engaged local "Chiefs" under the provincial authorities and asked them to speak to their communities and monitor the situation. These actions have had some effect, but the problem persists – thereby highlighting the difficult conditions under which District Environment Committees operate.

response to particular license applications, EIAs or complaints. As is still the case in a number of other districts across the country, the DEO in Taita Taveta did not initially have access to a vehicle and was therefore dependent on borrowing from other government agencies or hitching a ride. This naturally limited the ability to conduct inspections efficiently. The availability of a vehicle has improved this situation. The DEO nevertheless continues to draw on personal relationships with other government staff in the enforcement work, for example, by

conducting joint field visits with other sector staff in order to save fuel costs and display a unified and coordinated efforts vis-à-vis communities. Some other government officers also give tips and hints on illegal activities they observe while in the field, such as illegal mining activities. Information on illegal activities from the public are more rare if they do not directly affect the person reporting, but occasionally happen.

Taking action to address activities that do not comply with the EMCA. This includes issuing

fining, bringing offenders to court, making formal or informal comments on the planned activities of other agencies or private actors, and coordinating joint activities to address successful complaints or other critical issues. Licenses and EIAs are an important source of revenue for NEMA and this work is therefore given some priority (see next section on EIA). Action on complaints is, as discussed above, constrained by the fact that many complaints fall within work jurisdictions of other agencies and associated sectoral laws. In many cases, the complainants are therefore referred to the relevant sector agency. In other cases, the DEO conducts an inspection and eventually reports the issue to the relevant line agency office himself.

Complaints that fall more clearly within NEMA's legal framework are either acted on individually or through a collective effort. As an example of the former, a CBO member recently reported unlicensed mining activities near the Voi Highway. The DEO visited the site, ordered a stoppage of the mining activities and required an EIA to be conducted before a license could be issued.

Where complaints are numerous and reflect an issue of broad public concern, the DEO has taken them up at meetings with other government officers, or called ad hoc meetings of the District Environment Committee to address the issue. Two noteworthy examples of the latter are the efforts to address sand mining in Taita, and the conflicts over natural resource use near Lake Jipe (Textbox 2 and 3). Cases such as these demonstrate the potential scope for NEMA (and the District Environment Committees) to act as a facilitating and coordinating institution when addressing local environmental issues. It should however be noted that the relative success of these cases was dependent on the fact that the other district line agencies had an interest in addressing the issues through the District Environment

Committee. Otherwise, the DEO would not realistically have been able to force their collaboration.

Enforcement strategies vis-à-vis small-scale actors

Since the arrival of the first DEO in Taita Taveta, enforcement approaches and work relationship with communities appear to have changed. Initially the focus was purely on informing about the law, issuing fines and (occasionally) taking offenders to court. While this still happens, there is increasingly an emphasis on creating compliance through collaborative approaches, sensitization and incentives. This approach is partly a reflection of the national strategy of NEMA to “emphasize the carrot as much as the stick” as one staff member put it. It is however also a result of the realities on the ground:

Given the large area to be covered, a single DEO cannot realistically enforce the EMCA among resource users throughout the County. One example is that of small-scale mining, which is conducted in numerous locations and with different methods in many parts of the county. Likewise, cultivation near streams – which in principle is not allowed within a 30 meter boundary (although this figure varies by the size of the river) – is virtually impossible to monitor effectively. Many resource users furthermore have negative attitudes towards the DEO as someone who primarily tells them what they are not allowed to do, without being able to offer services and inputs to the same extent as the productive sector agencies responsible for forestry and agriculture. DEOs and other district officers in the area have therefore resorted to alternative strategies, including:

- Developing informal verbal “agreements” with communities on the principles for environmental management, rather than formal bylaws and regulations. Thus no

- bylaws have been developed locally in Taita Taveta within the framework of the EMCA, because as one officer put it “We wouldn’t be able to enforce them anyway”. Instead meetings are held with community representatives in which the legal framework is explained, issues are debated and community leaders are asked to comply;
- Bestowing monitoring responsibilities on community institutions, such as Chiefs or CBOs. In Taveta, for instance, Chiefs have been asked to keep an eye out for use of pesticides on croplands. In other areas, agreements have been made with CBOs to monitor illegal mining;
 - Providing environmental education meetings in which communities are “sensitized” with the hope that an improved understanding of environmental issues will reduce illegal activities; and
 - Securing funds for community projects aimed at enhancing incentives and goodwill towards the law and NEMA. The Kwa Tom river protection project in Taveta is one example of this (Textbox 5), and is well in line with the wish of DEOs to change community perceptions towards seeing NEMA as a service provider rather than a policeman, and thereby improving the organisation’s “bargaining position” at local level.

The extent to which such “enforcement strategies” (as we may call them) have in fact been effective, requires a more in-depth study than has been possible here. In some respects, the approach is well in line with the basic ideas of community-based and incentive-driven approaches to conservation that are already widespread throughout Kenya (though usually with mixed success). However, in strict enforcement terms the strategy also has clear drawbacks and risks: Firstly, the agreements made cannot realistically be monitored, and are therefore essen-

tially based on good faith. Secondly, it is debatable how voluntary such local agreements and monitoring responsibilities are, as there appear to be few options for communities to turn them down. Thirdly, where rules are based on informal “agreements” rather than law, they may be manipulated by local elites to the disadvantage of other community members. Fourthly, agreements may be biased against certain stakeholders, who may be in a vulnerable position. For instance, notions of pastoralists and so-called “squatters” being trapped in vicious circles of environmental degradation were prevalent among line agency staff, who showed more interest in engaging sedentary farmers in collaborative efforts.

Enforcement vis-à-vis other agencies and large-scale actors

Apart from local communities, two other types of actors are in principle subject to enforcement of the EMCA, namely other public authorities and large-scale commercial actors. In this respect, there is an example where the Taita Taveta DEO has publically successfully opposed and stopped one public authority from constructing a new market in a wetland area (Textbox 4). This case highlights the benefit of having an organization like NEMA acting as a local-level “watchdog” who can engage with the press in a situation that would probably not otherwise have gained much attention. The case echoes other examples from elsewhere in Kenya, where NEMA has taken local government county councils to court over environmental offences.

It should however be noted that there is a significant difference between opposing a local government council and opposing a central government line agency. Councils have in the past yielded limited real power in Kenyan politics, whereas the DEO’s position versus other central line agencies is (as earlier dis-

Textbox 4: NEMA vs the County Council

In 2011 the County Council of Taita whose offices are in Wundanyi Town decided to construct a new market on the outskirts of the town in a forest of indigenous trees. The Council did not consult the DEO before deciding on the project. The DEO protested to the Council, and claimed they would need an EIA license for the project to proceed. In response, the Council claimed they had a right to build on the land in question, and that it was for the benefit of the people. The Council then began clearing the area. The DEO gave an interview to a reporter, whose article ended up in a national newspaper. He furthermore reported the issue to NEMA in Nairobi, asking for their decision and intervention. Eventually, the Council backed down and the market was not constructed.

The case demonstrates NEMA's roles as a "watchdog", and echoes a number of other cases around Kenya, where NEMA has intervened in County Council planning in accordance with the EMCA.

Such cases do however also highlight the dilemma of enforcing environmental law in a context where local government planning capacities and budgets are limited. Elected local government representatives and Council administrative staff are frequently not aware of the EMCA or its details, and are furthermore frequently under pressure from local voters and development dynamics.

For example, NEMA has for some time been locked in a dispute with the Mombasa Municipal Council over the closure of a local market. NEMA required the market closed in 2010 in order to prevent disease outbreaks, but local traders protested and the Council rejected on the grounds that a closure would be a major problem for local livelihoods. Elsewhere in the country, population growth and urbanization has led to an increasing need for regulation of dump sites and waste management. NEMA has in several cases required Councils to improve waste handling, but Councils often lack the capacity to do so.

Such examples highlight that there is a "second leg" to implementing national environmental law at the local level – namely ensuring that local governments have the capacity and budgets to actually follow the law.

cussed) much more fragile.¹² We did not find any examples in Taita Taveta where the DEO has openly opposed central government sector agencies for violating the EMCA. Instead, the DEO appeared to have preferred a less confrontational approach, based on "friendly reminders" and individual meetings with other government mining staff whenever a potential environmental issue emerged. The DEO has,

¹² Under the current constitutional reform, this situation may change as Local Government potentially becomes a more powerful force in Kenyan politics.

for example, worked fairly closely with the district mining officer on small-scale mining issues.

Such a strategy should not be underestimated. In fact some observers in the district felt that DEOs had skillfully handled potential "frictions" between the EMCA and the various sector laws. And yet it seems clear that if a major overt or covert confrontation was to take place with say the Department of Forestry, Agriculture or Mining in the area, the DEO would, considering power politics, face a more formidable adversary than is the case with Councils. Where such cases have happened

Textbox 5: The Kwa Tom Springs conservation project – and the other side of the river

In past decades, an increasing number of small-scale farmers have cultivated close to the Upper Lumi River in Taveta. Trees and vegetation along the river have been clear-cut, and feeder springs have been diverted for small-scale irrigation. Moreover, small-scale pumping of water directly from the river to horticulture plots has escalated, and pollution from agrochemicals is a concern.

In response to this, NEMA has funded a small demonstration project, overseen by the DEO and implemented in collaboration with a CBO – the Chala Lumi River Environmental Group – and agricultural extension staff. The CBO has restored a spring, established a nursery, fenced off the forest along parts of the river, and delineated a line beyond which no cultivation must take place to protect riparian vegetation. Education on use of pesticides has been provided by extension staff. During our interviews CBO members expressed satisfaction with the project, which although small appears to be successful in itself.

However, the CBO also pointed out that the project appeared somewhat insignificant compared to the activities on the commercial farms on the opposite bank of the same river. Along with some other actors in the area, CBO members claim that the large-scale farms are extracting excessive amounts of water from the river, and that much of the pollution comes from these farms. These claims have however not been investigated by the Water Department, NEMA or the District Environment Committee.

elsewhere in Kenya, local DEOs have typically had to call in the backing of central NEMA and the issues have been played out at higher echelons of politics and public management.

The DEO's ability to effectively enforce the EMCA vis-à-vis large-scale private sector actors is also questionable. While there have been some achievement in terms of EIAs (see below), other aspects are problematic. One example is the large-scale commercial farms in Taveta. In this area, DEOs have put an effort into addressing small farmer's use of pesticides, and their cultivation close to the Lumi River. But it seems they have not sought to examine widespread concerns that the main sources of pollution in the Lumi River are the area's large commercial farms, or that these same farms are suspected of unlicensed water abstraction from the river (Textbox 5). The commercial farms are owned by some of the country's wealthiest and most influential families, and to oppose them would be a lost and risky cause not only for a

lone DEO, but also for NEMA in general. The overall effect is a somewhat amputated and biased enforcement of the EMCA in the area, focused mainly on small-scale resource users.

4.7 Environmental Impact Assessment

At least 3-5 EIAs are conducted annually in Taita Taveta County. Although there were problems with uptake of EIA in the first years of using this tool in Taita Taveta, the EIA process in the area now appears to operate in a relatively standardized way. As per standard NEMA practice, the EIAs are conducted by NEMA-licensed consultants, recruited and paid for by the project proponent. NEMA conducts inspections of the proposed sites both before the EIA is approved, and afterwards to ensure compliance. EIAs for activities considered low-and medium-risk are screened and approved locally by the District Environment Committee. In Taita Taveta these typically concern small- and medium-scale mining,

construction of small dams and weirs, charcoal burning enterprises, and activities in the town centers such as waste sites, abattoirs, new building construction, among others. EIAs for high-risk activities are approved by NEMA in Nairobi. Examples from Taita Taveta include the Voi oil processing plant, 1-2 larger-scale mining companies and sisal crop producers.

Although the number of EIAs conducted in Taita Taveta has been relatively limited so far, the fact that EIAs are carried out at all can be seen as an achievement in itself – perhaps especially in strategic terms: Because EIAs are mandatory and cut across important areas such as business and infrastructure development and apply in both urban and rural areas, they have been instrumental in putting the EMCA “on the map” in the mindsets of entrepreneurs, planners, decision-makers and media in Taita Taveta – and indeed nationally. The stakeholder consultations that are mandatory in EIAs furthermore provide a potential platform for raising local grievances, although that does not appear to have been the case in Taita Taveta yet (more on this below).

The EIA process is also important for NEMA as an organisation – not only because it generates revenue, but because it is a central aspect of the organisation’s authority: Without NEMA’s approval there is no EIA, and without an EIA there is (in principle) no project. This is also the case in Taita Taveta, where EIAs are an important part of the reason why DEO’s are not entirely sidelined and ignored: The ability to approve or turn down an EIA (or even to require one in the first place) bestows the DEO and NEMA with a certain power in this particular domain. In some cases, EIAs can also be seen as an inroad into the budgets of other line agencies for environmental issues. For example, the District Agriculture Office has included funds for EIAs related to irrigation and construction of small dams in their annual budgets.

The EIA process is however not without its problems: In practice, EIAs are conducted as individual and isolated exercises and are not linked to overall District Environmental Plans, and wider Strategic Environmental Assessments are not currently conducted as standard practice in NEMA. Moreover, not all actors are content with the quality and procedures of EIAs, and there is a call for taking social aspects more seriously in the current EIA process. For example, during interviews in the area, some line agency staff and CBO members expressed concern at the lack of a more thorough, inclusive and socially oriented EIA process in connection to the government’s own upgrading of the Voi-Mwatate road. This brief study did not identify examples of corruption in past EIAs in Taita Taveta, but such problems have occurred elsewhere.¹³ Some small-scale entrepreneurs have complained that the cost of EIAs creates a comparative advantage for larger operators. For example, an otherwise innovative women’s small-scale mining cooperative in the area claim they cannot afford the cost of carrying out an EIA, which the government requires if the group has to continue with its mining activities. Within EMCA, the costs of doing an EIA includes the hire of a registered expert to do the EIA and the cost of an environmental license payable to NEMA.

The introduction of EIAs under the EMCA has thus to some extent provided a tangible vehicle for introducing environmental issues in local business and development activities. This is an achievement in itself, although the current process remains vulnerable to structural problems of rent seeking and inequality, and

¹³ In 2011, two senior NEMA staff were suspended after accusations of irregular behavior in awarding a license for Jatropha production in the neighbouring Tana River County.

remains to be linked to more holistic and strategic planning efforts.

4.8 Planning and mainstreaming

In principle, all District Environmental Committees have been charged with producing 5-year District Environmental Action Plans (DEAPs). The purpose of the DEAPs is to identify strategies and actions to protect the environment and mitigate adverse impacts, and to mainstream environmental issues into the area's general development planning and activities. The DEAPs are to take an outset in the national State of the Environment (SoE) reports, and address issues highlighted in SoEs that are of particular relevance to the area in question. Until the recent constitutional change, the plans were to be prepared and overseen by the District Environment Committees, facilitated and drafted by technical sub-committees known as the DEAP committees, which are chaired by the District Development Officer and the DEO is a member. Following the constitutional changes, the plans will be prepared at the County level but following the overall procedures and principles in EMCA, which was also being revised at the time of this study. The DEAPs are approved by national tiers of NEMA, and as such feed into national-level planning and state of the environment reports.

In reality, only a dozen of districts have produced DEAPs. This is to some extent the result of a deliberate strategy by central-level NEMA: Given the limited staff and financial resources in the field, the approach has been to develop DEAPs gradually in selected areas, in order to generate experiences.

Taita Taveta is one of the areas where a DEAP has been produced. The plan covers the period 2009-2013, and follows a required format: It provides a fairly comprehensive description of the many environmental issues and problems of the district, and provides recommendations and proposed interventions for

each sector. It furthermore includes an implementation log frame that stipulates objectives, outputs and activities and the responsible sector agency. A matrix for monitoring natural resources and their use is also included, again stipulating what institutions are responsible for monitoring which issues.

As such the Taita Taveta DEAP provides a good overview and the state of environmental issues in the district, and an ideal list of what needs to be done by the respective agencies. Production of the report has also contributed to the experience of the DEO and NEMA in preparing such plans, and this is clearly the most positive outcome of the first generation of DEAPs in Kenya. Apart from this, the DEAPs currently produced appear to have had very little effect, both in Taita Taveta and elsewhere. There are several reasons for this:

- The DEAPs in Taita Taveta and elsewhere in the country reflect a general limited experience of NEMA and District Environment Committees in preparing such plans. The DEAPs are essentially long wish lists of what should ideally be done, but activities are not prioritized and are very broad (e.g. "reduce human/wildlife conflicts"). There are no budgets or timelines for the various activities to be carried out by sector agencies. While these problems are perhaps understandable given that these are first-generation plans, it does mean that they are very difficult to implement in reality, and virtually impossible for the DEO to monitor;¹⁴
- The institutional competition between agencies and authorities means that other

¹⁴ A new County Environment Planning Manual was introduced in 2012, but appears to follow roughly the same format.

line agencies and district planning authorities in the district have been reluctant to engage with and act on the DEAP. For example, because the EMCA is unclear on the role of DEOs and DEAP procedures, there is no requirement for the District Development Officer (DDO) to actually integrate the DEAP recommendations and actions in wider district plans. Interaction between DDOs and DEOs over the years has thus tended to be on a personal basis and has focused on addressing ad hoc issues and crisis situations, rather than integrating the DEAP into development plans;

- Limited stakeholder inclusion. The DEAP for the area appears to have been conducted as a relatively exclusive process, and the DEAP was not broadly known especially at community levels. No civil society organisations or private actors are mentioned in the DEAP's implementation matrix. Delays in production of the report for the 2009-2013 period means it was not made publically available until 2012; and
- At a more general level, the DEAP process has also been constrained by the fact that – unlike EIAs and licenses – it does not generate revenue for NEMA. As a result, there seems to have been a tendency for central-level NEMA to give the area less attention and funding than it requires, and for DEOs to act accordingly.

The combined result of these factors is that environmental planning is one of the areas of the EMCA in which least progress has been made on the ground. In extension of this, there has been very limited mainstreaming of environmental issues identified in the DEAPs into district development plans and sector agency plans. This situation is not necessarily static: In an effort to address the issue, central-level NEMA has recently negotiated that environ-

mental activities and specified budget lines must be included in the performance contracts of sector agencies. This may force line agencies at the local level towards greater compliance with environmental objectives and aims.

Nevertheless, the prevailing situation at the local level is that environmental issues tend to be addressed either as isolated exercises (EIAs) or as ad hoc enforcement and collaborative action when crisis situations occur. This means that much of the work of the DEO and other district line agency officers becomes a matter of “putting out fires” rather than longer-term planning and strategizing. This is not only problematic from an environmental mainstreaming point of view, but also from a governance and equity perspective: If the emphasis of environmental management is reactive rather than forward-looking (proactive), it offers few real entry points for the public, and may end up treating symptoms rather than leading to change.

4.9 The EMCA as a platform for local grievances

Observers of Kenyan environmental politics have pointed to the potential of the EMCA to serve as a platform for raising local grievances over resource rights and environmental issues. Indeed, the EMCA was originally formulated by legal experts who were sympathetic towards this aspect. The most apparent opportunities for raising grievances within the EMCA framework are:

- The mandatory consultations and public hearings in EIA processes;
- The Public Complaints Committee is an EMCA institution charged with receiving and investigating complaints and allegations regarding violations of the EMCA;
- The National Environment Tribunal, also an institution of EMCA has powers to

resolve disputes related to the EMCA and review decisions by NEMA; and

- The EMCA furthermore provides for any citizen or person in Kenya to take a case of violation of the law to the High Court.

A number of examples exist in Kenya where EIAs have provided an opportunity for local communities to raise their grievances vis-à-vis large-scale development projects. Because the law stipulates the need for public consultations in EIAs, it provides a platform for communities to claim that they have not been heard, or insufficiently heard. Examples near Taita Taveta include the Tiomin Resources titanium mining project in the neighbouring Kwale County, and Bedford Biofuels Project in Tana County. In both cases, communities have claimed that the EIA process was flawed and that it either did not adhere to EMCA or was improperly done. And in both cases, the involved communities have had at least a degree of success in

achieving either compensation or a temporary halt of activities.

The Public Complaints Committee (PCC) receives and reviews 300-400 complaints a year from the public. The complaints concern a range of issues related to the EMCA, including complaints of water and air pollution, waste disposal, illegal logging, illegal construction, and wetland destruction. A growing number of complaints relate to missing or inappropriate EIAs, again highlighting the extent to which EIAs have become a tangible platform for addressing environmental issues. The PCC reviews complaints and conducts on-site inspections and (on occasion) public hearings in some cases. If complaints are found valid, they are forwarded to the National Environmental Tribunal who makes a decision.

These are clearly important achievements within the framework of the EMCA. It should however be noted that such opportunities remain off-limits to a large part of the popula-

Textbox 6: The EMCA and the “squatters” in Taita Taveta

Although Taita Taveta district covers an area of 16,975 km², 62 percent of this land area has historically been set aside for Tsavo National Park and other protected areas. A further 24 percent of the land consists of large-scale farms and plantations, owned by some of Kenya’s wealthiest families. The remaining 14 percent are reserved for the local population. Many communities in the area claim they have been alienated from their historical lands, and some have settled on the private large-scale farms. According to formal land law, this makes them squatters.

Several community-based organisations in the area have complained to the DEO and the District Environment Committee about this issue, and in doing so some have referred to the EMCA. However, although the EMCA refers to NEMA’s obligation to protect indigenous rights, it does so only with respect to biodiversity, and it is in any case overruled by the land law and the fact that the “squatters” do not have formal title to the land.

By contrast, the DEO and District Environment Committee are in principle obliged to act when the large-scale land owners and/or Kenya Wildlife Services complain that the squatters are degrading their land, and that they are thereby subject to prosecution not only under the land law, but *also* under the EMCA (because of the alleged degradation). The approach taken by the DEOs in this situation has – perhaps not surprisingly – been to steer away from the issue as much as possible, and repeat the statement that these are not “environmental” issues.

tion. Most of the major public protests in connection to EIAs or the EMCA in Kenya have been facilitated or led by NGOs, and where grievances have been taken successfully to court they have typically been championed by activist lawyers. Moreover, although the PCC serves an important function (playing the role of an environmental ombudsman) it is severely underfunded and effectively consists of a single senior staff member and a handful of student assistants (!). As such it lacks the resources to effectively advertise its existence and is entirely unknown in most rural communities. The use of the EMCA as an opportunity to express one's voice and grievances is thus to a large extent dependent on access to intermediaries, information and other resources.

This is also the case in Taita Taveta, In connection to the DEO's daily engagement with the public and handling of complaints, the DEO has occasionally informed the complainant of the Public Complaints Committee if he deems it relevant.¹⁵ However, many community members and even some CBOs are simply not aware of the institutional framework provided by EMCA as such, or of the opportunities therein.

The so-called "squatting" situation in Taita Taveta furthermore illustrates the dual nature of the EMCA in terms of resource access and rights (Textbox 6). The response by the DEO and District Environment Committee to this situation has generally been that the issue is not an environmental one, but falls under the land and wildlife acts. Such situations highlight the limits to the scope for addressing environmen-

tal grievances under the EMCA, and the deeper-rooted factors that may constrain the ability of communities to express grievances.¹⁶

5. THE ROLE OF DEVELOPMENT COOPERATION IN THE IMPLEMENTATION OF EMCA AND NEMA IN TAITA TAVETA

5.1 Contributions of development cooperation

During the period examined in this study there has been no direct support from development assistance to NEMA operations in Taita Taveta (but see below regarding the planned "green points"). As such the area represents the "typical situation" in the country: With the notable exception of the EU-funded activities in western Kenya there has been a tendency to focus on central-level operations in the development cooperation with NEMA.

The question is therefore whether the support to national-level frameworks is in fact evident in the everyday implementation of the EMCA and NEMA at local levels? In several respects, it is:

Helping to push the environmental agenda

It seems clear that development cooperation has helped to set the overall agenda of environmental management in Kenya – and thereby also indirectly at the local level. This includes the actual support to articulation of specific policies and plans, but also helps to "push" environmental management onto the national agenda. Examples of the latter include the

¹⁵ For reasons of discretion the Public Complaints Office in Nairobi was unable to inform us exactly how many complaints had been filed from Taita Taveta. Most of these appear to have been from individuals in the urban centers of the county. We were also informed that approx. 90 percent of complaints are from urban areas.

¹⁶ A similar situation occurred in the well-known case around Lake Baringo, where environmental lawyers eventually took up the case and brought it to the Africa Court of Justice, thus circumventing the EMCA and other national legal frameworks.

World Bank conditionality that gave the last push towards securing parliamentary approval of the EMCA, and also, more recently, facilitation of networks and discussions on “green growth” (Textbox 7). In Taita Taveta, the effects of this are indirectly evident in the fact that sector agencies now accept the basic notion that environmental concerns are legitimate issues to be addressed in their work. It is also evident in the fact that complaints are made by communities and other actors to the DEO and District Environment Committees in relation to the EMCA. Organisations and stakeholders may then disagree, manipulate and compete over control and influence within this agenda, but at least environment *is* an agenda.

Strengthening NEMA’s overall “clout” and standing

It also seems clear that despite the vulnerable position of NEMA operations at field level, they do now operate with a greater degree of authority vis-à-vis other agencies and stakeholders than was the case before. This should to a large extent be seen as a result of the improved “clout” and efficiency of NEMA at the national level. Although the organization is still relatively new and constrained by a number of factors, the past five years have seen a considerable improvement in the agency’s ability to act and assert itself vis-à-vis other agencies and actors at the national level. This is important in a political context where an organisation’s power and status at the central level is critical to its legitimacy and influence at local levels. Development cooperation has played an important role in this – including the support

Textbox 7: Green points and green growth

In recent years, Danida has facilitated annual meetings of senior staff from the sector agencies involved in the agency’s natural resources and environment support. The meetings have included thematic sessions where topical environmental issues and solutions have been introduced and discussed. Provincial staff have attended these meetings, including Provincial Directors of Environment from NEMA.

One theme discussed at meetings has been that of “Green Growth”, and these discussions appear to have been instrumental in fostering the idea of “green points”, which are now planned to be established in selected areas, including Taita Taveta. The idea is to establish demonstration centers where public and private partners collaborate to illustrate practical technologies (e.g. sustainable sand-harvesting methods and solar-powered water pumps) and especially the economic benefits of these. The “green points” are thus seen as part of NEMA’s overall strategy to focus more on the economic benefits of environmental management (rather than the costs), and to increase engagement with – and opportunities for – the private sector.

Such examples illustrate how development cooperation can facilitate the adoption of new approaches through support to networking and dissemination/discussion of new ideas. As such it presents a different approach from more up-front setting of conditionalities. Both types of approaches have been used by donors over the years in the support to environmental management in Kenya. However, it is perhaps questionable (and certainly debatable) whether the conditionality that helped push through the EMCA in 1999 could be repeated today.

to strengthening the NEMA's enforcement and compliance capabilities; EIA procedures and associated capacity; training other sector staff in the EMCA, EIAs and environmental auditing, and supporting a re-organisation of the agency to become more effective. These and other efforts have helped make NEMA far more visible at the national level as an agency that "means public business" and must be reckoned with, and this has to some degree rubbed off on local operations.

Enhancing field staff capacity

The development of enforcement and compliance capacity has also more directly involved DEOs, including those in Taita Taveta. By taking part in the training programmes supported by DFID and later Danida, DEOs in Taveta have partly gained knowledge of a variety of technical procedures for EIAs etc, and have partly gained a more sophisticated notion of enforcement and compliance. The emphasis by DEOs in Taita Taveta on working with people rather than against them whenever possible is thus partially a result of the general turn in NEMA towards creating a more incentives-based compliance.

Improving central-level support and back-up

The development assistance to strengthening capacity at central levels has also helped to develop the ability of Nairobi-based staff to more effectively assist local DEOs in enforcement. The training of environmental inspectors who are able to move to the field and act in the capacity of prosecutors is one example. The development of the Environmental Police is another, and centrally-based experts of particular areas of EIA is a further example. Local DEOs cannot be expected to be experts in all areas, and as such there is a legitimate need for centrally based experts who thereby provide an important support to implementation of the

EMCA at local levels. That this should not undermine local-level operations is another issue.

Addressing environmental issues through support to agriculture and water

A further point should be made here. Although there has been no specific development cooperation support to NEMA activities and implementation of the EMCA in Taita Taveta, there have been a number of interventions in other sectors that were supported by development cooperation, and which have addressed environmental issues directly or indirectly. This includes support to agriculture and livestock development, as well as forestry and water resources management, provided by development partners such as the World Bank and Danida. Much of this support was in the process of being phased out when NEMA began operations in the district (especially the Danida-funded activities), and was not aimed specifically at implementing the EMCA. Nevertheless, as sector-specific interventions they have to a greater or lesser extent incorporated environmental aspects, and have as such contributed to the pick-up of environmental concerns and management among sector agencies in the area – although not always without its problems. Textbox 8 illustrates one example of this.

5.2 The challenges that remain

The support to Kenya's national-level framework for environmental management has, then, to some degree contributed indirectly to a strengthened environmental agenda and improvements of NEMA operations. However, it is important not to overestimate the contributions to the local level. There has been little direct support to improving decentralized environmental management mechanisms in the support to NEMA, and although there have been numerous small one-off projects, it seems clear that a more concerted, systematic

Textbox 8: Danida support to sustainable agriculture in Taita Taveta

Danida supported agricultural development in Taita Taveta during various phases from the 1980s until 2004. As a result of concerns over corruption at the central level at the time, the support had a strongly local and project-based focus, working mainly with communities and district-level staff. The project was implemented alongside support to other sectors in Taita Taveta, including health, micro-financing and road development.

The Agricultural Support Project had various objectives over the years, but eventually centered on fostering sustainable management of soil, water, vegetation and livestock in selected locations. There was a strong emphasis on capacity development. This was increasingly focused on farmers, but some district agricultural staff were also trained. Training included farming techniques, soil and water conservation, livestock management, agroforestry, riverbank- and stream protection etc. Practical activities included terracing to prevent soil erosion on hillsides, and construction of hydrologically sound small-scale irrigation systems managed by farmer groups.

In 2004 an evaluation of Danida activities in the area concluded that the community level activities had been positive: “[T]he project made communities aware of possibilities and helped to create a knowledge base to an extent and in ways that had not previously existed. Social and environmental impacts were largely positive (early exceptions were gradually overcome). Technical impacts have been considerable because they were built on the incorporation of local expertise.” (Danida 2004:23). The evaluation was less positive about other aspects, including failures in cross-sectoral coordination, caused partly by poor project design, and partly by mono-sector approaches in line agencies.

When we first visited Taita Taveta in 2005, the Danida support was still in fresh memory among the district agricultural staff, who stated that the project had made a significant contribution to introducing environmentally sound agricultural practices in the area. When we returned in 2012 for the current study, most of the district staff who had been involved in the project had been posted elsewhere. It was therefore difficult to assess to what extent the Danida support had made a longer term impact on mainstreaming environmental issues into local agricultural development. World Bank support to subsequent projects in the area do at least seem to build on the same principles of environmental mainstreaming.

A more obvious impact was seen in communities along the Lumi River, where small-scale irrigation infrastructure was introduced with Danida support in 1989 and continues to function. The Danida support in this area included hydrological studies to determine sustainable levels of irrigation, and training of local farmers in environmentally sound water resources management.

Community members in the area are however concerned at the increasing influx of new small-scale farmers who irrigate from the same river on an ad hoc basis, and thereby to some extent undermine the original scheme and the experience gained by farmers trained under the project. Escalating use of agro-chemicals by both small-scale farmers and the area’s large commercial farms is also a problem. As such the Danida support to Taita Taveta appears to illustrate that local environmental mainstreaming activities do need to be supplemented by parallel efforts at other levels. This includes not only enhancing broader institutional frameworks, but also the need to address “difficult” issues such as land conflicts and changing land use dynamics by e.g. addressing land rights, conducting strategic environmental assessments etc.

and programmatic approach to the local level has to some extent been “forgotten” or left out in much of the development cooperation with NEMA to date.

This includes the Danida assistance, which originally included specific support to improve the NEMA operations and decentralized environmental planning, but where few of the planned activities were in fact implemented. Even the EU support to Western Kenya, which did implement capacity development at the local level, appears not to have been picked up and replicated more broadly across the country. As discussed in section 3.5, this development is to some extent the result of a trade-off: NEMA needed to feel more ownership, even if this meant letting go of the local components in the original support. At the same time, it was deemed necessary to focus on developing a strong national organization before “moving into the field”.

Hence although progress has been made, many constraints and challenges remain, and it would be wrong to say that the picture is rosy. The position of the DEO vis-à-vis other sector agencies and powerful interests such as wealthy landowners remains volatile at best, and there is a long way to go before environmental issues are fully mainstreamed. This is not only the case at local level, but also at the national level where, for example, the efforts to conduct cross-cutting activities such as SEAs have seen slow progress. The District Environment Plans that have been developed are difficult to implement and monitor, and have largely ended up as shelf-documents that are frequently unknown to key actors.

Stakeholder inclusion in the development of plans has also been marginal, and the functioning of the District Environment Committees has been less inclusive than intended: There has been a tendency to address problems and issues by calling together only a selected group of people on an ad hoc basis, thereby

leaving behind a feeling by others of having been left out. Indeed, much activity has been undertaken on an ad hoc basis in an attempt to “put out fires”. In most cases, such approaches are not the result of ill intentions by the DEOs or other actors involved, but are attempts to “do what can be done” within the given circumstances of limited resources and an unclear mandate. The DEOs’ enforcement strategy of developing temporary and ad hoc “agreements” and working through community leaders etc is another example.

Although the specific organizational arrangements are currently in the process of changing under the new Constitution and the associated decentralization, there is a likelihood that these problems will be carried over into the new arrangements unless something is done.

6. MOVING AHEAD

Would the benefits from development cooperation have been stronger at the local level, if a more concerted effort had been made by NEMA and its development partners to support work at this level? Probably yes, but development cooperation rarely works in ideal ways. What is important is instead to learn from the process: This case study suggests that support to legal and institutional frameworks for environmental management at the national level is important, and also has effects at the local level. But it also shows that building the national frameworks is insufficient in itself: An additional effort to address implementation at local levels is needed.

The aim of this study has been to provide a “status report” of the everyday implementation of the EMCA and NEMA’s role at the local level, and to feed this information into the larger ReCOM study. It is therefore beyond the scope of this report to discuss recommen-

dations for future action in detail. However, in general the experiences from Taita Taveta suggest that the support to national-level environmental frameworks now needs to be complemented with more focused and systematic attention to implementing these frameworks at the local level.

The effectiveness of local levels and their staff (such as DEOs) is often somewhat underrated by the central level, and clearly not all such staff are equally adept at their work. Nevertheless, the significance of local environmental offices in “pushing” the environmental agenda should not be underestimated. The DEOs’ strong emphasis on networking with other sector agency staff in Taita Taveta is an example: Through this approach, they have played their part in promoting environmental concerns at the district level and have helped to ensure that NEMA now has a degree of legitimacy among other sector agencies in the area. Such networking efforts with other agencies are, in fact, well in line with progressive capacity development principles, such as those contained in the ROACH approach (Boesen & Therkildsen 2005).

This does not mean that an environmental authority like NEMA should necessarily have a large and expansive local structure – in many instances it will make more sense to work through sector agencies themselves. However, there *is* a need for a well-functioning presence at local levels. In Kenya, this will only become more important with the current constitutional transition and the intended decentralization of government services to local level – a change which NEMA – like many other agencies in Kenya – is currently seeking to adapt to. In this respect, it will be important for both NEMA and its development partners to:

- i. Give more attention to the often overlooked but important local footwork of pushing the environmental agenda on

an everyday basis, and how this is best supported.

- ii. Placing greater emphasis on and revising the local environmental planning process in order to move from “putting out fires” towards proactive planning.
- iii. Considering and strengthening whatever new forms the old District Environment Committees will take, including their democratic procedures and their relationship to the new local government structure. This includes ensuring that local government structures are in fact able to follow the law and address issues highlighted by NEMA, ie that they possess sufficient capacity and resources to do so.
- iv. Supporting the basis for expressing local environmental grievances; this may include strengthening the work of the somewhat overlooked Public Complaints Committee, but also strengthening platforms for local complaints and working through parallel support to address critical underlying issues related to such issues as land and water rights.

Apart from addressing these issues through specific environmental sector agencies, there is also a need to work more intensively with the mainstreaming of environment in the everyday working procedures and performance contracts of local line agencies such as in agriculture and infrastructure. Addressing environmental management issues through more traditional sector support can be an effective way of supporting “mainstreaming”, because the respective sector agencies and local stakeholders are directly involved. This allows for more ownership and benefits become more clearly and directly visible – as opposed to an alternative approach where the focus is exclusively on strengthening the environmental authorities in themselves. Working through

other sectors also provides better opportunities to address issues such as land rights and agricultural development policies that have significant impacts on environmental issues, but which cannot always be addressed through environmental law alone.

Development cooperation can contribute to this. Clearly there are limits to how much individual development partners and programmes can “spread out”, but the opportunity for a coordinated and concerted effort is there. A range of experiences already exist from the multitude of small one-off projects that have worked with environmental conservation in individual sites, which can be combined with the experiences drawn from the support provided to the national-level frameworks so far.

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ANNEX I: LIST OF PEOPLE INTERVIEWED

Nairobi

Dr Kennedy Ondimu, Director, Environmental Planning & Research, NEMA
Dr Ayub Macharia, Director, Env. Education, Information & Public Participation, NEMA
Mr Malwa Langwen, Director, Compliance & Enforcement, NEMA
Mr Kodia Bisia, Deputy Director, Operations, NEMA
Mr Isiah Kyengo, Field Operations Coordinator (formerly Prov. Director of Env., Coast), NEMA
Mr Joseph Tuikong, Programme Officer, Natural Resource Management Programme, NEMA
Mr Daniel Nyamura, Head of Research Teams, Public Complaints Committee, MEMR
Mr Paul Kere, Director of Policy, MEMR
Ms Isabella Masinde, Technical Policy Advisor; MEMR
Mr Dan Mesis, Deputy Secretary, MEMR
Prof. Charles Okidi, Director, Centre for Adv. Studies in Env. Law and Policy, Univ. of Nairobi
Prof. Albert Mumma, Faculty of Law, Univ. of Nairobi
Mr Benson Ochieng, Executive Director, Institute for Law and Environmental Governance
Ms Anne Angwenyi, Team Leader, NRM & Climate Change, Royal Danish Embassy

Taita Taveta County

Wundanyi

Ms Edith Kalo, Taita Taveta County Environment Officer, NEMA
Mr Kahindi Yeri, Tana River County Coordinator (formerly Taita Taveta), NEMA
Councillor Musila Mndwadimisha, Chair of Env. Committee, Taita County Council
Ms Margaret Jefwa, District Agricultural Officer, Taita
Mr Ahmed Mohammed Ali, District Monitoring & Evaluation Officer, MoA
Mr Edward Omoto, District Geologist, MEMR
Ms Tina Mugatala, District Gender & Social Development Officer, MoGCSD
Mr John Mlamba, Coordinator, Taita Taveta Wildlife Forum
Mr Elijah Mwandoe, Chairman, Taita Taveta Wildlife Forum
Mr Reuben Mwluma, Vice-Chair, Taita Taveta Wildlife Forum
Mr Colman Mwiwawi, Secretary, Taita Taveta Wildlife Forum
Mr John Mwololo, District Water Office, Taita
Mr Geoffrey Mworira, WRMA, Coast Regional Office
Mr Eliphaz John Gitari, WRMA, Coast Regional Office

Taveta

Councillor Nehemiah Nyamai, Chair of Environment Committee, Taveta Town Council
Ms Helen Mosake, Council Environment Officer, Taveta
Mr Benjamin Odongo, District Development Officer, Taveta
Mr Stanley Kia Ura, District Agricultural Extension Training Officer, Taveta, MoA
Mr Nicholas Mwambezi, Agricultural Business Officer, Taveta, MoA

Mr Peter Kariuke, Division Extension Officer, Taveta, MoA
Mr Henry Mazenia, Crop Officer, Taveta, MoA
Mr Peter Njamai, Constituency Development Fund, Taveta
Chief Catherine L. Kidondi, Chief, Chala Location
Mr Fredrick Leshamta, River Lumi and Wildlife Conservation Group
Mr Juma Sikukuu, River Lumi and Wildlife Conservation Group
Ms Lydia Mghoi, River Lumi and Wildlife Conservation Group
Ms Laurencia Kidaike, River Lumi and Wildlife Conservation Group
Ms Alice Kulola, Kwa Tom Natural Spring Conservation Group
Mr Reuben Nzioka, Kwa Tom Natural Spring Conservation Group
Ms Gladness Mwaluda, Kwa Tom Natural Spring Conservation Group
Mr Cornel Gamwel, Kwa Tom Natural Spring Conservation Group

ANNEX 2: KEY ENVIRONMENTAL LEGISLATION IN KENYA

Type of legislation	Year	Title	Details
General environmental legislation	1999	Environmental Management and Co-ordination Act, 1999	An Act of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for the matters connected therewith and incidental thereto
Implementing guidelines			
Biodiversity	2006	Environmental Management and coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations	These regulations concern the conservation of biological diversity in Kenya and the control on access to genetic resources of Kenya
Implementing guidelines			
Land	1967	Land Control Act (Cap. 302)	
Implementing guidelines	2001 2008 2010	Land Control Regulations	
Forest	2005	Forests Act	To provide for the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socioeconomic development of the country
Implementing guidelines	2009	Forests (Harvesting) Rules, 2009 Forests (Charcoal) Regulations, 2009	
Water	2002	Water Act	To provide for the management, conservation, use and control of water resources and for the acquisition and regulations of rights to use water
Implementing guidelines	2007	Water resources Management Rules	These Rules implement provisions of the Water Act, 2002. They shall apply to all policies, plans, programmes, and activities to which the Act applies
Fisheries	1989	Fisheries Act (Cap. 378)	Intends to set up the basic principles for the development, management, exploitation, utilization and conservation of fisheries and for connected purposes
Implementing guidelines	1991	Fisheries (General) Regulations	

Coastal resources	2009	Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulation	These Regulations, made under the Environmental Management and Co-ordination Act, 1999, make provision for the management, conservation and sustainable use of wetlands and wetland resources and the sustainable utilization and conservation of (resources on) river banks, lake shores, and the seashore.
Implementing guidelines			
Mineral resources/mining			
Implementing guidelines			
Air pollution	2006	Environmental Management and Co-ordination (Fossil Fuel Emission Control) Regulations	These Regulations set out emission standards for internal combustion engines, provide for the licensing of persons who treat fuel and for the appointment of environmental inspectors for purposes of emission inspection and authorizes the National Environment Management Authority to enter into partnerships for purposes of emission inspection
Implementing guidelines			
Waste/hazardous substances	2006	Environmental Management and Coordination (Waste Management) Regulations	These Regulations define rules for the management of waste in general and for the management of solid waste, industrial waste, hazardous waste, pesticides and toxic substances, biomedical waste and radioactive substances in particular
Implementing guidelines			
Protected areas	1976	Wildlife (Conservation and Management) Act Amendments: 1989, 2007, 2010	An Act of Parliament to consolidate and amend the law relating to protection, conservation and management of wildlife in Kenya; and for purposes connected therewith and incidental thereto
Implementing guidelines	1991(?)	Wildlife (Conservation and Management) Regulations	
Pesticides	1983	Pest Control Products Act	An Act of Parliament to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and of the organic function of plants and animals and for connected purposes