

AN EVALUATION OF THE POLICY FRAMEWORK FOR COMMUNITY BASED NATURAL RESOURCE MANAGEMENT IN KENYA

By

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Declaration

I declare that this research thesis is my own original work and has not been presented to any other university

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Dedication

To my husband, David Livingstone Mwenje Makutsa

Acknowledgements

I thank God Almighty for the opportunity to undertake this study and the grace He showered me with as I struggled to balance the competing responsibilities of being a fulltime employee, a mother with young children and a wife. I desired to further my education for a long time and I thank God that it is at this point in my life time that He gave me the chance.

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Abstract

This study was designed to assess international best practices in Community-Based Natural Resource Management (CBNRM) and how these can inform policy and legal framework for Kenya. It is premised that the CBNRM framework in Kenya is inadequate in making significant contribution to community livelihoods or ensuring sustainable management of natural resources. The study objectives were to (i) undertake a comparative analysis of international CBNRM policies in three selected countries with best practices; (ii) review the policy, legal and institutional framework for CBNRM in Kenya; and (iii) assess the challenges and opportunities for the Ngare Ndare Forest communities under existing CBNRM framework.

Policies and laws in the natural resources sector for Namibia, Botswana, Philippines and Kenya were analysed; and a case study of the Ngare Ndare forest community made. Ngare Ndare forest is indigenous and traverses Meru and Laikipia Counties in northern Kenya. There are six communities that live adjacent to the forest and utilize forest resources for their livelihood. The communities are involved in CBNRM as provided for in sectoral laws, particularly forest, water and wildlife. Purposive sampling was used to select community members who were then interviewed, using an interview guide. Key informants including government officers and non-governmental organisations working in the sectors were also interviewed using interview schedules. Primary data was categorized and analysed using a logical matrix.

The study found that Namibia, Botswana and Philippines have deliberate efforts in making clear policy positions for CBNRM and thus provide international best practices. In Namibia, policies for wildlife, forests, water and land specifically aim at incorporating CBNRM through provisions for management and benefit sharing with communities in a well defined structure. In Botswana, CBNRM is incorporated in development strategies including the National Policy for Rural Development, the National Strategy for Poverty Reduction and Botswana Vision 2016. In the Philippines, CBNRM is largely entrenched in the forest sector through the Environment and Local Government Codes. Whereas the Kenya Constitution 2010 provides for CBNRM, policy and legal provision remains inadequate. A number of policies, such as the Forest Policy (2007) and the Water Policy (1999) acknowledge the need for community involvement in resources management. However, none of these policies currently outlines the principles and practice for

CBNRM in their respective sectors. The Ngare Ndare Forest case shows that there are multiple and conflicting sectoral requirements. Communities have to register several institutions with different requirements to suit different sectors. In addition, there seems to be lack of clear direction within the government institutions on what CBNRM entails. Here, the Kenya Forest Service has transferred responsibility to communities without shared decision-making or economic benefits. The study concludes that: (i) a CBNRM policy should be developed to provide a clear direction and strategies on its practice in Kenya; (ii) CBNRM should be adopted as a development strategy in Kenya; and (iii) there is a need for consistency between policies and laws in the natural resources sector.

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CHAPTER ONE: INTRODUCTION

1.1 Background to the Study

Community based natural resource management (CBNRM) is a concept that implies the empowerment of communities to enable them share in the rights and responsibilities of management and utilization of natural resources with government (Danida, 2007). It aims at meeting the development objectives of governments, enable communities meet their livelihood goals and, at the same time, promote conservation of the environment (World Bank, 1999). CBNRM is seen as one of the ways by which states can achieve sustainable development (Rozwadowska, 2010).

The concept of sustainable development was adopted as an international environmental policy objective following the publication of 'Our Common Future' the Report of the World Commission for Environment and Development, widely known as the Brundtland Report (Segger *et al.*, 2002). The report defines sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (World Commission on Environment and Development, 1987). Sustainable development promotes two sets of priorities, environmental protection and economic development. These priorities are achieved through the application of principles which include: the duty of states to ensure sustainable utilization of natural resources; equity and poverty eradication; common but differentiated responsibility; precautionary principle; the principle of good governance; the principle of integration and interrelationship particularly in relation to human rights and social, economic and environmental objectives; and, public participation (International Law Association, 2002). The principle of public participation is central in the quest to achieve sustainable development as it promotes responsive, transparent and accountable governments. It requires effective protection of the human right to hold and express opinions; to seek, receive and impart ideas; to access appropriate, comprehensible and timely information held by governments on economic and social policies regarding the sustainable use of natural resources and the protection of the environment, and access to effective judicial or

administrative procedures (International Law Association, 2002). Public participation is the central tenet of CBNRM.

International environmental law and policy have entrenched public participation as an important component for sustainable development. Principle 10 of the Rio Declaration on Environment and Development states that 'environmental issues are best handled with participation of all concerned citizens, at the relevant level' while Agenda 21 declares that 'one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision making'. This principle has been widely accepted by many States, including Kenya, which have made provision in their national legal and policy regimes to incorporate public participation in decision making regarding development and environmental management.

1.2 Statement of the Problem

CBNRM is based on the premise that communities have a more intimate knowledge of their localities and have a greater stake in managing resources sustainably since their livelihoods depend on it (Malo *et al.*, 2008). It is a means by which the objectives of poverty reduction, natural resource conservation and good governance can be achieved (Danida, 2007). Kenya has been making concerted efforts to incorporate public participation in governance and management of natural resources. Various policies, laws and institutional frameworks have been established towards this end.

The implementation of CBNRM initiatives promise to deliver public participation in natural resource governance and management. However, the government has adopted a sectoral approach in the management of Kenya's natural resources. There is poor collaboration and partnership between ministries particularly when it comes to involvement of local communities. This has resulted in undue burden being placed on communities, which are required to form numerous local institutions to facilitate co-management of the resources with governments. In some cases, this has resulted in conflict or mandate overlap between government institutions. This makes public participation through the various CBNRM initiatives difficult and ineffective.

Natural resources occur in ecosystems. For example, a forest will have wildlife, flora, water, and other resources as interdependent units. This would, ideally, call for an integrated approach rather than a sectoral approach to governance and management of natural resources as is currently in place. A coordinated approach to public participation and an ecosystem approach to natural resource governance are key to achieving sustainable development.

1.3 Research Question

- (i) How can the policy framework for CBNRM in Kenya be better structured to allow efficient implementation?

1.4 Study Aims and Objectives

The aim of the study was to find out the status of Kenya's policy, legal and institutional framework for CBNRM and whether it is adequate to promote community livelihoods and sustainable management of natural resources. It also aimed at assessing the international best practices of CBNRM and how these can inform the CBNRM policy in Kenya.

The objectives of the study were

- (i) To undertake a review of international best practices through comparative analysis of CBNRM policy in three selected countries, Namibia, Botswana and Philippines.
- (ii) To assess the status of the legal, policy and institutional framework for CBNRM in Kenya.
- (iii) To assess the opportunities and challenges for the Ngare Ndare Forest community under the current CBNRM framework.

1.5 Justification and Significance of the Study

Public participation in decision making ranges from state control with mere information sharing through collaborative management to complete community control (Awimbo *et al.*, 2004). However, successful CBNRM focuses on genuinely empowering the public to effectively participate in the decision making and management of natural resources (DPLG, 2005).

Through various policies, legislations and institutional strategies Kenya has incorporated aspects of CBNRM in the management of natural resources. However, there lacks a generally accepted policy position on the concept of public participation and specifically on CBNRM. This

has resulted in different government institutions having different approaches in the implementation of CBNRM projects guided by different sector objectives. In addition, there is a sectoral approach to natural resources governance in Kenya, which also contributes to a lack of cohesion, and collaboration in the involvement of communities even where resources interact in an ecosystem.

The Constitution of Kenya (2010) entrenches the right of participation by the public in decision making in the management of natural resources. However, the provision is broad and subject to wide interpretation. A national policy on public participation and/or CBNRM would provide a basis on which different sectors could draw from for CBNRM initiatives. It would define what pertains participation and enable delineation of democratic community structures for natural resource management at the national, county and local level. The policy would also provide mechanisms that would foster greater cooperation between government institutions especially in determining the most effective way to work with local community based institutions. A CBNRM policy with attendant legal framework would ease the requirements for local community institutions so that communities can work with different multiple state institutions regardless of sectoral differences. It would also provide the mechanism by which the constitutional rights for public participation in natural resource management would be implemented.

CHAPTER TWO: LITERATURE REVIEW

2.1 The Concept of Community Based Natural Resource Management

CBNRM is an approach to managing renewable natural resources in a manner that is sustainable, that is, meeting the livelihood and development objectives of communities that live around the resource while at the same time promoting conservation of the environment and biodiversity (World Bank, 1999). CBNRM has been touted as the third alternative to 'command and control' and 'market based' approaches to natural resource management and as the ideal model for environmental governance (Golin and Kho, 2002).

Over the last couple of decades of global implementation, CBNRM has come to mean different things to different people and in different occasions. Terms such as participatory, collaborative, joint, co-management and popular natural resource management are often used interchangeably to refer to the same concept. However, at other times, these different terms may be used to emphasis specific characteristics of the approach (Danida, 2007). The concept of CBNRM is about how the State can share rights and responsibilities regarding natural resources with local communities, with communities playing a central role but not entirely an exclusive role. It is management of natural resources by collective local institutions for local benefit (Roe *et al.*, 2009).

2.2 The aspect of community in CBNRM

CBNRM as a development and conservation approach has several key aspects and principles. The first and most critical aspect is *community* (World Bank, 1999). The Oxford Advanced Learner's Dictionary defines the term 'community' as a group of people who share certain common values. Such common values may include intent, belief, resources, preferences, needs, risks, and a number of other conditions (Odote, 2013). The Kenyan Constitution delineates a community on the basis of ethnicity, culture and common interest (COK 2010). The aspect of community in CNBRM is an area that draws a lot of research with different angles being explored. CBNRM starts with communities as a foundation and ends with communities as a focus. The World Bank emphasised the role of community in CBNRM as follows:

The essential feature of CBNRM is starting with the communities, taking them into confidence and having confidence in them. It engages their ideas, experience, values and capabilities on behalf of resource conservation objectives, at the same time it seeks ways for communities to become better remunerated and better served. It is prepared to accommodate local interests, needs and norms that are compatible with long-term preservation of ecosystem and their biological resources (World Bank, 1999).

Agrawal and Gibson (1999) have extensively explored the role of community in natural resource management strategies. They postulate that poor conservation outcomes resulted from the policy approach that

- saw people as an obstacle to efficient and 'rational' organization of resources use,
- declared that the goals of conservation and the interests of local communities were in opposition' and,
- declared that the way to effective conservation was through the heavy hand of the State (command and control) or through the equally heavy, if less visible, hand of the market and private property rights (market based).

This forced policy makers and scholars to reconsider the role of communities in natural resource use and conservation to the extent that communities are now 'the locus' of conservationist thinking.

They, however, warn that the interpretation of community as a small spatial unit or a homogeneous social structure with shared norms is inaccurate, inappropriate and ineffective. The misrepresentation of local people and their relationships with natural resources on which their livelihoods depend has also led to inappropriate and ineffective policy responses and development interventions. Agrawal and Gibson (1999) suggested that communities must be seen in the context of three critical factors – *multiple actors with multiple interests* and the *processes* through which these actors interrelate especially the institutional arrangements that structure their interactions. In their opinion, a focus on these community institutions rather than 'community' per se is likely to be more fruitful in community based natural resource management.

Golin and Kho (2002), in their review of CBNRM in the Philippines, reiterate that *community* and *participation* are key concepts at the centre of CBNRM. Citing illustrations from the Philipino context they concur with Agrawal and Gibson's (1999) assertion that the assumption in CBNRM that the community is homogeneous and that all the members share a common interest in the conservation and utilization of natural resources is not only a myth but instead, studies show that all societies and cultures are driven by divisions. These divisions include male/female, those favouring a given course of change/those who do not, rich/poor, literate/non-literate, different ethnicities, the politically powerful or connected/those who are not, old/young, those with access to resources/ those who have less or no such access, families, clans, and lineages, old-time residents/ newcomers, among others. In fact, in most communities common interests in resource use are the exception rather than the rule (Golin and Kho, 2002). Rotha (2009), in his paper on participatory approaches towards sustainable development in Cambodia, also emphasized that acknowledging the diversity of stakeholders was a key component in successful implementation of CBNRM.

Golin and Kho (2002) explore further the concept of participation in CBNRM by attempting to answer the question of what does it mean to be '*community based*'? In their analysis, community based management is largely a synonym for participatory management. The term '*community based*', however, depicts the power relations of such management. They infer that CBNRM makes strong claims to address social injustice and supports genuine democratic governance. Transferring or sharing power does not come easily, and this is a major factor in the struggle of CBNRM and other participatory programs to accomplish their goals. Power is the invisible thread linking many prospects and problems in CBNRM Golin and Kho (2002).

Rotha (2005) concluded that the term '*community based*' distinguishes the new emerging approaches from an early concept of community natural resource management which referred to communities having full and generally autonomous responsibility for the protection and use of natural resources. This earlier approach was derived from indigenous systems of natural resource management where local knowledge and institutions evolved simultaneously with those ecosystems. He reiterates that in CBNRM, communities play a central but not the only

role in identifying resources, defining development priorities, adapting technologies and implementing management practices the role of government is equally important.

2.3 The aspect of natural resources management in CBNRM

The second aspect of CBNRM is the natural resource management (World Bank, 1999). CBNRM aims at addressing the management of locally available and renewable natural resources. It focuses primarily on natural resources that are under some form of communal or collective management (World Bank, 1999). Nunan (2006) reiterates that for all intents and purposes, CBNRM is management of commons. It is based, at least in its underlying conceptual foundations if not always in its implementation, on the concept of common property regime – common property resources and resource governance (Jones, 2004; Roe *et al.*, 2009). Some resources have traditionally been managed collectively or communally, rather than individually, because the resources are subject to shared uses. If such resources are left entirely ungoverned (or ‘open access’) then the resource will be subject to depletion through a ‘tragedy of the commons’ scenario whereby all users compete to access and utilize the resource (Roe *et al.*, 2009). In addition, CBNRM developed, in part, as a result of frustration from unsuccessful efforts to protect and manage vulnerable natural resources while ignoring the needs and interests of local communities and failing to acknowledge their significant role and capability of managing the resources (Rotha, 2004).

CBNRM is often approached as a conservation strategy as well as a rural development strategy (IUCN, 2004). In the southern African region, CBNRM has developed primarily as a community conservation strategy, separated from other approaches by its emphasis on the devolution of authority over natural resources (particularly wildlife and forests) from the State to defined groups of resource users (Jones, 2004b). This is clear from the founding documents of national programmes on CBNRM such as Communal Area Management Programme for Indigenous Resources (CAMPFIRE) in Zimbabwe, Administrative Management and Design for Game Management Areas (ADMAGE) in Zambia, Communal Conservancy Programme in Namibia and Living in a Finite Environment (LIFE) in Namibia (Roe *et al.*, 2009; Jones, 2004).

2.4 Institutional arrangements for CBNRM

CBNRM activities take place at different levels. It is, therefore, important that relationships are established between stakeholders located on different levels based on comparative advantages, that is, those on the horizontal axis (community based groups/institutions) and on the vertical axis (government, donors and NGOs) (World Bank, 1999).

For effective CBNRM to take place as a conservation and development strategy, there must be some form of local institutional arrangement that governs decision making (Jones, 2004; Nunan, 2006; Agrawal & Gibson, 1999). Local institutions provide the context for which collective action can take place in the management of natural resources. For CBNRM, collective action refers to the joint management of, and responsibility for specific natural resources (Agrawal & Gibson, 1999). The term 'institutions' under CBNRM is used both in the sense of cultural rules and values and in the sense of societal structures and organizations (World Bank, 1999). Nunan (2006) defines institutions as 'regularized patterns of behaviour between individuals and groups in society', and, organizations as 'the players or groups of individuals bound together by some common purpose to achieve objectives'.

Collective action is intrinsically connected with the idea of collective rights to natural resources, of common property rights (World Bank, 1999). Lynch and Harwell (2002), postulate that most CBNRM policies and programmes are predicated on an assumption of state ownership of land and other natural resources. As such, communities are granted certain legal rights to use and benefit from the natural resources in a defined area in return for their agreeing to assume certain duties. Lynch and Harwell (2002) further make a case for entrenchment of community based property rights because the rights derive their authority from the community in which they are located and not from the nation-state. In this regard, CBNRM should really be about initiatives that are primarily controlled and authorized from within a community.

Agrawal and Gibson (1999) argue that focus on institutions leads to a substantially different focus for locally oriented conservation policies in comparison to policies focusing on 'community'. However, they warn that community institutions in themselves may not be the panacea to CBNRM but that these institutions should enable communities make rules,

implement them and resolve disputes over the management and benefit of natural resources. Nunan (2006) reiterates that people rely on different institutions to support their claims to environmental goods and services and many of these institutions are informal and dynamic. Under CBNRM, therefore, new structures or organizations are often formed.

Gollin and Kho (2002) noted that distinction between 'organic' and 'incipient' community institutions may occur in CBNRM. Organic institutions are those that are self-initiated by the community while incipient institutions are those that are externally initiated. While the organic institutions often share sociological, geographic, historical, interests, norms and sense of identity, incipient institutions may not necessarily have these commonalities. Such is the case with migrant communities to an area which may be linked by the shared interest in the long-term availability of the resources. Representation of internal differences in power, interest and local politics is important in CBNRM along the horizontal axis of stakeholders.

Along the vertical axis of stakeholders the role of the State in CBNRM has been the subject of significant debate (Gollin and Kho, 2002). Like community, the State is a heterogeneous entity with multiple interests. Each sub entity (ministry, department, national agency, local government etc) is capable of alliances with outside actors to further its internal political struggles (Gollin and Kho, 2002).

The government, at a minimum, is important in providing an enabling policy and legal framework through which community decisions can be carried out (Gollin and Kho, 2007). Government also plays an important role in CBNRM due to its power of state. A non state actor, whether community based or a non-government organisation (NGO), does not have the power to withhold or exclude privileges unless there is delegation of that power by government. Enforcement of law is primarily the domain of the State (Gollin and Kho, 2007).

Effective CBNRM requires that state and non-state actors work together. The challenge, however, is how to obtain state involvement without state dominance on one hand. On the other hand, some CBNRM approaches have been built on a model of empowerment that takes community control as the primary goal – the community asserting power against the state (Gollin and Kho, 2002).

2.5 Principles of CBNRM

The principles of CBNRM include decentralization and devolution; clarity over rights and responsibilities of stakeholders in resource management; tenure rights and responsibilities over land and resources that empower communities; investment of time and building of trust between communities, authorities and other stakeholders; cooperation between multiple levels of governance; and, progressive policy and legal environment that empowers local communities in the management and utilization of renewable resources and retention of revenues (Rozwadowska, 2010).

2.5.1 Decentralisation and Devolution

A key principle of CBNRM is the decentralization and devolution of natural resource management to the local level (Rozwadowska, 2010). Many governments have been keen to decentralize decision making and policy implementation in natural resource and development on the grounds of increased efficiency, greater equity and higher responsiveness of government to citizen demands (Danida, 2007). In addition, decentralization is seen as a means of achieving certain agenda such as social development, democratic participation, resource management and service provision (Agrawal and Gupta, 2005). Under CBNRM different types of decentralization have been undertaken in different countries (Roe *et al.*, 2009). In Tanzania ownership, management rights and responsibilities of managing certain natural resources have been handed over to local governments through a process of devolution. Other models also applied in Tanzania include 'de-concentration' where parts of government owned forest reserves are managed jointly by local branches of government, and/or with local communities in accordance with negotiated management agreements – partial delegation (Danida, 2007). The last decade has, however, seen growing consensus among CBNRM advocates and implementers that successful CBNRM hinges on transfer of power not to local governments authorities (decentralization) but to local community institutions (devolution) (Rihoy and Maguranyanga, 2007). CBNRM, is a people centred conservation and development strategy and because of the dominant role that natural resources play in the livelihoods of communities, decentralization and devolution is necessary in order to give people a voice and leverage in

decision making, it is in essence community empowerment (Rozwadowska 2010; Roe *et al.*, 2009).

2.5.2 Clarity over rights and responsibilities

The second principle of CBNRM is clarity over rights and responsibilities of stakeholders. For a natural resource regime to be successful, Ostrom (1990), opines that all stakeholders need to be clear and understand who is involved and at what level. Other scholars postulate that insecure land tenure can undermine the sustainability of CBNRM project (Medvey, 2010) and in addition, land tenure without resource tenure may be of little value to local communities (Medvey, 2010). Tenure rights and responsibilities in CBNRM must also incorporate clear mechanisms for benefit sharing. The benefits of involvement must outweigh the costs to communities (Fabricius and Collins, 2007). Local communities often bear the greatest cost of natural resources. Some of these costs stem from loss of access and user rights when protected areas are established or bear the brunt of human wildlife conflict.

2.5.3 Cooperation between multiple levels of government

The third principle for successful CBNRM is cooperation between multiple levels of governance at local, national and regional levels. CBNRM is influenced by legislations and policies at multiple levels. These include national laws and development strategies, regional policies (regional land use policies) and even international policies (transboundary natural resource management protocols) (Rozwadowska, 2010).

2.5.4 Progressive policy and legal environment

Successful CBNRM requires a progressive policy and legal environment. Lindsay (1998) emphasized that successful CBNRM requires legal regimes that allow local community based institutions to define, preside over and redefine the rules of resource use. Rihoy and Maguranyanga (2007) state, that in addition to other factors, the policy environment plays a critical role in the outcome of CBNRM in a country. For example, in Botswana there was much optimism when CBNRM was introduced and it was implemented through a well funded government department (Rihoy and Maguranyanga (2007). National policies emphasized public participation and empowerment, sustainable development and sustainable use of natural resources. Implementation of CBNRM lead to the process of developing a specific CBNRM

policy but other implementation factors such as lack of adequate accountability mechanisms and pulling out of donor support to the department lead to the disenfranchisement of the strategy (Rihoy and Maguranyanga, 2007). In Zimbabwe, however, the internationally acclaimed CBNRM strategy CAMPFIRE was a raging success until policies of land reform and redistribution begun to dominate the rural areas where CBNRM was being implemented (Rihoy and Maguranyanga, 2007).

Policy and legislation are important for CBNRM because they determine who will have access and control over natural resources, who may benefit from use and defines the roles and responsibilities of different institutions and actors (Jones, 2007). Law is a tool for implementing policy as it translates the guiding framework in the policy statements into legally enforceable obligations and rights. The effectiveness of CBNRM legal provision is, therefore, dependent on an appropriate policy framework (Sifuna, 2010). CBNRM policy framework should be based on the conceptual foundations of CBNRM (Jones, 2007). These are empowerment of communities, devolution of power by government and sustainable use of natural resources (Sifuna 2010; Roe, *et al* 2009; Jones 2004; Golin & Kho 2002; Agrawal & Gibson 1999).

CHAPTER THREE: RESEARCH DESIGN AND METHODOLOGY

3.1 Analytical Framework

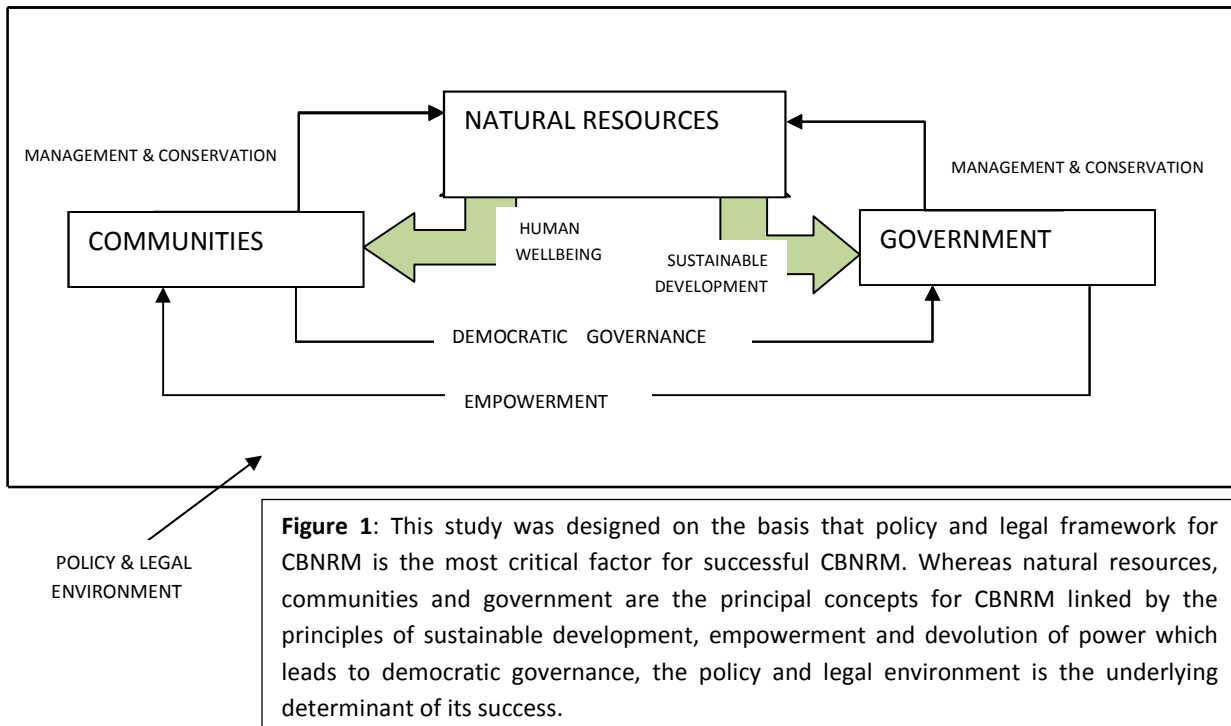
3.1.1 Theoretical Framework

There are three concepts that constitute CBNRM. These are communities, government and natural resources (Sifuna, 2010; Roe *et al.*, 2009; Jones, 2004; Golin and Kho, 2002; Agrawal and Gibson, 1999). The concept of community takes into consideration issues such as multiplicity of actors the different interests within communities and the process required to undertake CBNRM like the establishment of local institutions (Agrawal and Gibson, 1999). Government as the second concept includes the consideration of the multiplicity of actors within government and differing interests for CBNRM (Rowzwadowska, 2010). The concept of natural resources refers to the common pool access of the resources and the aim of CBNRM which is conservation and sustainable development (Roe *et al.*, 2009; Jones, 2004).

The principles of CBNRM form the linkages between the three concepts. Empowerment of communities, through decentralization and devolution, enables the community role in CBNRM to be effective (Agrawal and Gupta, 2005). When communities participate through CBNRM, the benefit derived from natural resources is not only improved but is sustainable. Democratic governance and sustainable management of natural resources is the government's main concern regarding natural resources. However, the policy and legal environment is the most significant determinant of the success of CBNRM (Sifuna 2010; Rihoy and Maguranyanga 2007). These conceptual linkages are illustrated under the conceptual framework in figure 1.

3.1.2 Conceptual framework

COMMUNITY BASED NATURAL RESOURCE MANAGEMENT



3.2 Methods and Study Design

The study approach was qualitative and descriptive informed by an interpretive or constructive paradigm where reality is socially constructed, ever changing (Glesne, 1999) and inductive; gathering the meanings people have made of their lived experiences (Patton, 2002). The first and second objectives were desktop based while third objective was field based. The field study was undertaken in an indigenous forest and hence it was important to contextualise the biophysical environment sustaining the ecosystem and socio-economic environment of communities inhabiting the area since these are important determinants of CBNRM.

3.2.1 Study Site

A case study was undertaken in the Ngare Ndare Forest Reserve. The forest traverses Meru and Laikipia counties and lies between $0^{\circ} 07'N$ to $0^{\circ} 10'N$ and $37^{\circ}18'E$ to $37^{\circ} 27'E$ at an altitude of 2336m above sea level covering an area of 5,554.3 ha (Ngare Ndare Forest Trust, 2008). The forest location is shown in Figure 2. The area receives a mean annual rainfall of 450mm distributed in two seasons, March to May and November to December. Average daily maximum

temperatures ranges between 20°C and 28°C. The forest descends in a South-North direction with the southern part being wetter. It is characterised by hanging hilltops and deep valleys. The northern part borders the dry savannah plateau of Laikipia. The forest is an important watershed with numerous springs that flow into streams. These run through valleys and waterfalls into pools and small rapids. The streams merge into four permanent rivers, that is, Ngare Sergoi, Ngare Nighting, Ngare Ndare and Ethi that provide water for wildlife, small and large scale farms and pastoral communities in Laikipia and Isiolo (Ngare Ndare Forest Trust, 2008). The forest is dominated by *Juniperus procera* (African Juniper), Red Cedar and *Olea africana* (Brown Olive) trees in the south transitioning to the drier north with rangeland species of *Dodonea* (hopbush) and *Euclea* (dryland evergreen shrubs) (Ngare Ndare Forest Trust, 2008). Ngare Ndare is a very pristine ecosystem with beautiful waterfalls, a serene natural forest atmosphere, rock outcrops offering panoramic views of the forest and surrounding plateaus (Ngare Ndare Forest Management Plan, 2008).

Fauna includes colobus monkey, eland, waterbuck, lion, leopard, hyena, and baboon. It is an important dry season refuge for giraffes, Grevy zebras, black rhinos (*Diceros bicornis*) and elephants. The forest is a breeding area for black rhinos, (which roam freely between the forest and Lewa Wildlife Conservancy) and a sanctuary for elephants where they recuperate from injuries or come to die. Ngare Ndare forms part of the migratory corridor for wildlife that links the Mt. Kenya forest and the Laikipia- Samburu ecosystems, extensively used by elephants in their migrations (Ngare Ndare Forest Trust, 2008).

The local communities consist mainly of the Meru and Laikipiak Maasai although there are other communities such as the Kikuyu, Borana, Turkana and Nandi who are also residents in the area. They number about 8,000 people (Ngare Ndare Forest Trust, 2012). The main economic activity of communities in Ngare Ndare is livestock rearing and tourism as the forest is an important part of the Laikipia tourism circuit (Ngare Ndare Forest Management Plan, 2008). The forest is used by local communities to meet their needs and support their livelihood. It provides wood for domestic fuel use and construction, water for domestic use, livestock and small scale

MAP OF THE AREA

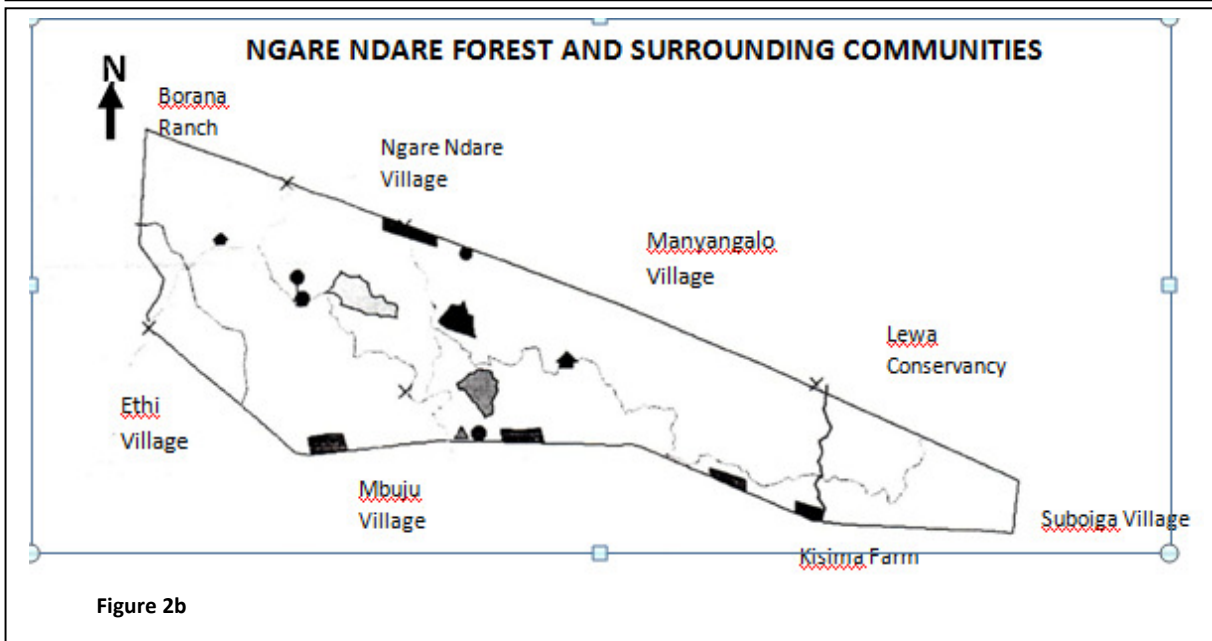
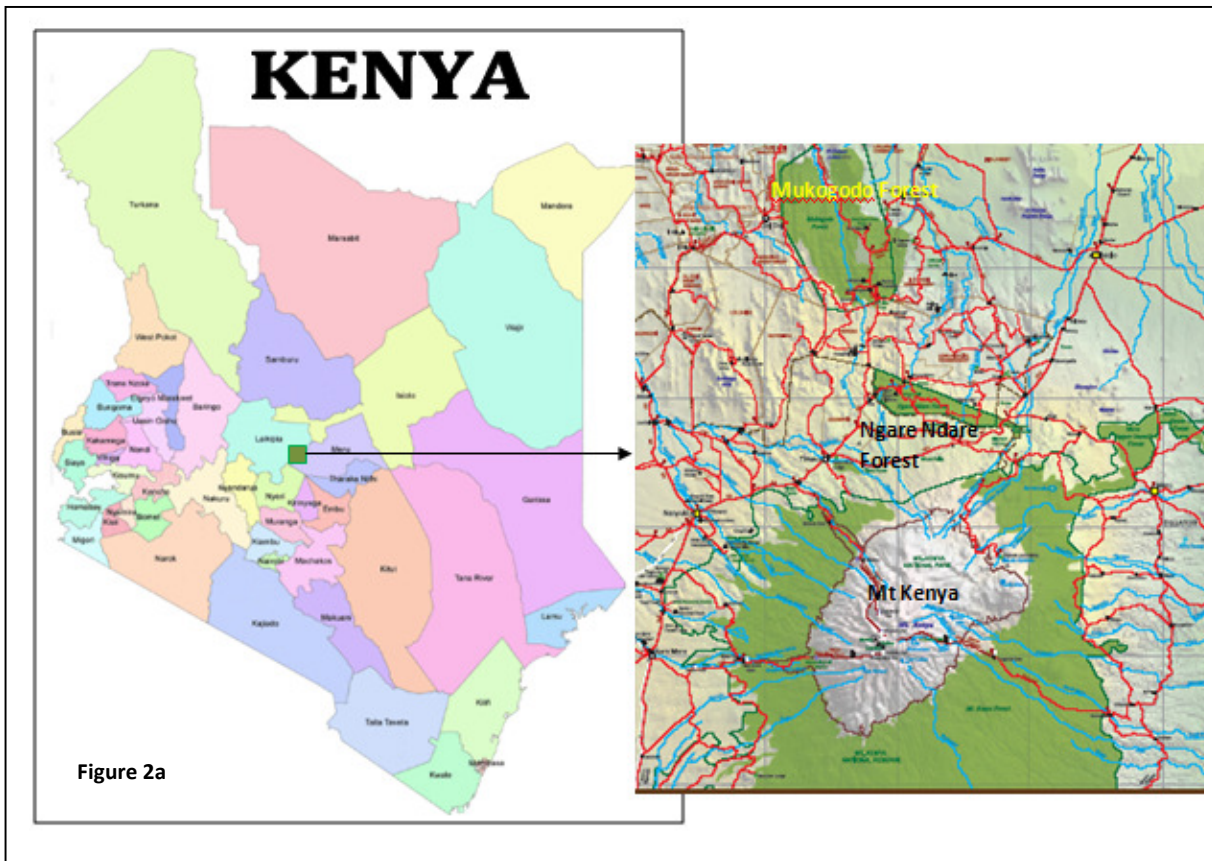


Figure 2: Ngare Ndare Forest traverses Laikipia and Meru counties north of Mt Kenya (**Fig 2a**) the six communities resident around the forest are depicted in **Fig 2b**

Source: www.opendata.go.ke; www.laikipiatourism.org; Ngare Ndare Forest Management Plan

irrigation, it is dry season grazing zone for livestock, provides honey and other non wood forest products such as herbal medicines and cultural sites such as the sacred areas(Ngare Ndare website, 2012).

In 2004 the community established the Ngare Ndare Forest Trust as the local institution through which they participate in community based natural resource management. The community works closely with the Kenya Wildlife Service (KWS) to protect the wildlife, the Kenya Forest Service (KFS) to manage the forest resources and the Water Resources Management Authority (WARMA) to manage the water resources (Ngare Ndare Forest Trust, 2008).

3.3. Data sources, collection and analysis

The first objective of the study was to undertake a comparative analysis of the policy and legal framework for CBNRM at the international level. Two African countries, Botswana and Namibia and one country in Asia, the Philippines, were selected for review based on their long experience of CBNRM practice of over two decades. Secondary data including relevant policies laws and reviews of CBNRM project documents from each of the countries were reviewed. The second objective was to critique the status of the policy, legal and institutional framework for CBNRM in Kenya. To achieve this, secondary data in the form of relevant policies in the natural resources sector and laws such as the Constitution of Kenya (2010) the Forest Act (2005), the Water Act (2002) and Wildlife Act (Cap 376) were reviewed. The third objective was to assess the challenges and opportunities that communities face under the current CBNRM framework in Kenya. To achieve this, a case study was selected which was Ngare Ndare Forest community. The case study was selected on account of their participation in various CBNRM programmes with a number of government institutions in managing several natural resources. In addition, they also represented a scenario where the interaction of natural resources calls for an integrated and ecosystem approach in the management of natural resources. Primary data was collected and reviewed to meet this objective.

Key informant interviews were undertaken using interview schedule that had open ended and semi-structured questions. A review of reports from the study site was also done. Three

categories of key informants were selected for interviews. These were government officers engaged in CBNRM with the communities in Ngare Ndare, key officials of the Ngare Ndare Forest Trust and other nongovernmental organizations that work with communities in CBNRM projects and community representatives from the study site. There are four government institutions engaged in CBNRM in study site. These are Kenya Forest Service (KFS), the Kenya Wildlife Service (KWS), the Water Resources Management Authority (WRMA) and local provincial administration. One officer from each of these institutions was selected as a key informant and was subjected to an interview. The Ngare Ndare Forest Trust plays the dual role as the nongovernmental institution and community institution that is involved in CBNRM in the study site. Two officers were selected for interviews from the Trust. While two officers from WWF, an international NGO that extensively works on forest issues in Kenya, including participatory forest management, were also interviewed.

The communities in Ngare Ndare are constituted into six villages. Four of the villages' primary occupation is pastoralism while the other two are primarily farmers. One community member was selected to represent the pastoralists and one to represent the farmers. Each of the villages has formed a community based organisation (CBO). The Trust is made up of the six CBOs representing the villages. Three community representatives were interviewed using questionnaires each from a different CBO. There was, therefore, 50% representation of the CBOs. In addition, the CBOs are constituted by resource user groups. Each CBO has six user groups and 50% of the user groups were represented in the interviews.

Primary data collected from the key informant interviews was categorized and analysed with a logical matrix which compared responses to the same questions by different respondents' view of answering the research questions. Conclusion was then drawn from the analysis using a logical matrix.

3.4 Study Limitations

CBNRM as an approach to sustainable development is relatively young in Kenya as a concept and as a practice. It has been fronted mainly by NGOs and on a really small scale as projects. From the government perspective partnership with communities in the management of natural

resources began fairly recently with the Water Act in 2002 and the Forest Act in 2005. Thus the research can only benefit from the experience of communities and government institutions over the last few years. The study was also constrained by lack of adequate finances.

CHAPTER FOUR: RESULTS

4.1 International best practices for CBNRM

4.1.1 Namibia

(i) Development of CBNRM in Namibia through the wildlife sector

CBNRM in Namibia is both a conservation and rural development strategy. It is implemented as a national program involving various stakeholders including government, NGO's and the private sector coordinating themselves at a national level (Jones, 2007). Policy and legislation for CBNRM in Namibia goes back to 1968 when the Namibian colonial government, through a policy decision, granted commercial farmers conditional rights over certain wildlife species and allowed them to use and exploit wildlife for game and trophy hunting and tourism including the right to retain all income derived from the use and sale (Bandyopadhyaya *et al.*, 2004; Brown and Bird, 2011; App *et al.*, 2008; NASCO, 2012). These rights were entrenched in the Nature Conservation Ordinance (No. 4 of 1975) but were not, however, extended to farmers on communal land (Jones, 2007). The direct impact of this was an increase in the number and diversity of wildlife on freehold land and a decline in wildlife numbers in communal areas (App *et al.*, 2008; Brown and Bird, 2011; NASCO, 2012). At independence in 1990, the Namibian government faced high levels of poaching, inadequate resources for enforcement of regulations in the wildlife, forestry and land resources (Jones, 2007). In addition, highly variable climatic conditions, lack of sustainability and suitability of Namibia's land for arable crop and livestock production brought the realization for the need to diversify economic activities and livelihood approaches in rural areas (Brown and Bird, 2011).

In an effort to understand community perspectives of wildlife and conservation, the Namibian government through the Ministry of Wildlife Conservation and Tourism commissioned a series of participatory socio-ecological surveys in several parts of the country (NASCO, 2012). These were carried out between 1990 and 1992, in partnership with local NGOs. The surveys showed that communities in local areas wanted wildlife to be conserved for future generations and also wanted to have the same rights over wildlife as the freehold land owners (App *et al.*, 2008; NASCO, 2012). These findings, and borrowing from CBNRM experiences in neighbouring

countries, particularly CAMPFIRE in Zimbabwe, and outcomes of local pilot projects laid the foundation for policy and legislative reforms in Namibia for CBNRM. The reforms gave direct rights over resources to local communities and provided for community level common property resource management institutions (App *et al.*, 2008; Jones, 2007; NASCO, 2012).

In 1992, the Namibian government drafted the 'Policy on the Establishment of Conservancies' in an effort to begin addressing the needs identified in the surveys (Boudreaux, 2007). The policy provided for the creation of community level collective management institutions called conservancies. In 1995, the government approved the 'Policy on Wildlife Management, Utilisation and Tourism in Communal Areas'. The policy had two main objectives to enable rural communities to gain the same rights of use and benefit from wildlife as freehold commercial farmers had, and to gain rights over tourist concessions. These rights would be conferred on a community through conservancies (Jones, 2007). Conservancies needed to be legally constituted, with clearly defined boundaries, defined membership, a committee representative of the membership and a plan for equitable distribution of benefits to members (MET, 1995a).

The government further developed and approved a policy on 'Community Based Tourism Development in 1995. This policy's aim was to provide support and encourage the development of community run tourism activities on communal land. It provided a framework that ensured that communities had access to opportunities in tourism development and were able to share benefits of tourism activities taking place on their land (MET, 1995b).

In 1996, the Namibian government promulgated the Nature Conservation Amendment Act (Act 5 of 1996) which amended the Nature Conservation Ordinance (1975). It gave effect to both the Policy on Wildlife Management, Utilisation and Tourism in Communal Areas and the Policy on Community Based Tourism Development (Boudreaux, 2007; Jones 2007). The Act aimed at promoting and integrating wildlife production and tourism activities into the livelihoods of communal area residents by devolving consumptive and non-consumptive use-rights over wildlife to the community. By creating this legislation, the government put faith in a CBNRM approach, provided Communal area residents with a framework to establish incentives to use

natural resources sustainably (Brown and Bird, 2011). The legislation provided the point at which Namibia's CBNRM officially begun (Naidoo *et al.*, 2011).

Although Namibia's CBNRM programme has focused primarily on wildlife which provides the most important model at an institutional level for its implementation - conservancies (Corbett and Jones, 2000), other natural resource sectors including forests, water and fisheries also have legal and policy provisions for CBNRM.

(ii) Forest Resources Policy and Legal Provisions for CBNRM

Namibia's Forest Policy Statement states that the mission of the Directorate of Forestry is to "practice and promote the sustainable and participatory management of forest resources and other woody vegetation, to enhance socio-economic development and environmental stability' (MET, 1995c). It aimed at empowering farmers and local communities to manage forest resources on a sustainable basis and 'reconciling rural development with biodiversity conservation'. It establishes a strategic implementation framework including a programme for 'Community- Based Management of Natural Forests', which involves the participation of rural communities in forest management and entails granting them ownership and tenure rights to forest resources to achieve management objectives (MET, 1995c).

Namibia's Forest Act (Act No. 12 of 2001) implements the Forest Policy. It provides that, with the consent of the chief, traditional authority or other authority which has rights over community land, and community forests can be established on communal land to be managed for the interests of persons who have rights over such communal land (Sec 15). The management authority of a community forest must provide for equal use of the forest and equal access to the forest produce by members of the communal land where the forest is situated; must provide for adequate reinvestment of the revenues of the forest and for the equitable distribution of the surplus (Sec 15). The management authority is established under the same conditions and subject to the same procedures as conservancies that were established under the 'Policy on the Establishment of Conservancies'. In addition, the Act does not prevent the community forest management committee from constitution itself in a similar

way to a conservancy and then collapsing its functions into those of the conservancy committee, or functioning as a sub-committee of the conservancy (Corbett and Jones, 2000).

(iii) Water Sector Policy and Legal Provisions for CBNRM

Namibia's water policy, the National Water Policy White Paper (2002) explicitly provides community participation and awareness as one of the principles that is important in the management of water resources in Namibia. It states that 'the management of water resources and services shall provide for broad community involvement at all levels.' The Policy further outlines institutions and community participation principles which are; accountability, clarity and separation of roles between water management and services institutions, stakeholder participation especially rural communities, cost efficiency, decentralization, knowledge generation, and integration and coordination. The policy formed the foundation of the Water Resources Management Act (Act 24 of 2004) (Ruppel & Ruppel-Schlichting, 2011).

The Act provides for management, development, protection, conservation and use of water resources. It also provides for the establishment of water basin development committees (Sec 12), whose mandate includes 'to promote community participation in the protection, use, development, conservation, management and control of water resources in its water management area through education and other appropriate activities' (Sec 13 (b)). It further provides for the establishment of water point user associations and local water user associations to maintain and manage water supply services at water points (Sec 16). The National Water Policy White Paper (2002) and the Water Resources Management Act (2004) provide for policy, legal and institutional framework for CBNRM in the water sector in Namibia.

Namibia's Draft Wetland Policy (2004), adapts the principles of the National Water Policy White Paper including community participation and awareness, where it specifically calls for the extension of CBNRM activities into all areas associated with wetlands that have potential for tourism and ecotourism. It also provides for decentralization through the management of wetlands and wetland resources being managed at the lowest practicable level, particularly identifying Basin Management Committees. It further calls for cooperation and partnership between all agencies that affect or are affected by wetlands. These are government

departments responsible for agriculture, mining, health, rural development, urban development, local government, trade and industry, environment and tourism. NGO's, the private sector and communities that are traditionally dependent on wetlands for their livelihoods are also expected to participate.

The Policy states that Basin Management Committees (as documented in the Water Resources Management Act) could play a vital role in this regard if wetland specialists and representatives from the different stakeholders are included in the membership.

(iv) Land Sector Policies and Legal Provisions for CBNRM

The National Land Tenure Policy (2003) was passed to guide all land tenure rights and promote sustainable utilization of land and other resources (Ruppel & Ruppel-Schlichting, 2011).

The Land-Use Planning Policy Document (1994) defines five physiographic land forms namely; communal state land, privately owned commercial farmland, proclaimed state land, urban areas and wetland ecosystems including their catchments. This policy emphasizes the sustainability of natural resources, biodiversity and essential ecological processes (Ruppel & Ruppel-Schlichting, 2011).

The National Land Policy (1998) aimed at redressing social and economic injustices inherited from Namibia's past, promotes decentralization and community involvement in land and resources including wildlife, water, fish, vegetation for grazing and tourist attraction. It provides for joint ownership rights for legally constituted bodies and cooperatives as a category of land rights holder. This category would include such bodies as wildlife conservancies and community forest management bodies (Jones, 2007).

The Communal Land Reform Act, 2002 (Act No. 5 of 2002) provides for the allocation and administration of all communal land in Namibia. The Act vests 'all communal land areas in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities' (Sec 17). The rights that may be

granted under the Act are customary land rights and rights of leasehold (Sec 19). Whereas, the Act does not specifically provide for secure group land tenure, which is important for CBNRM, it does not specifically preclude group tenure rights. When read with the section on the National Land Policy that provides for legally constituted bodies and institutions to exercise joint ownership rights as a category of land holder, the Act could be used by conservancies, for example, to try and obtain group tenure (Jones, 2007).

(v) Environment Policy and Law Provisions for CBNRM

Namibia's Environmental Management Act, 2007 (Act No 7. of 2007) 'promotes the sustainable management of the environment and the use of natural resources by establishing principles for decision making on matters affecting the environment'. The Act promotes community involvement in natural resources management and the sharing of benefits arising from the use of the resources, and, the participation of all interested and affected parties whose interests, needs and values must be taken into account in decision making.

(vi) Constitutional Provisions for CBNRM

Namibia's constitution provides, among the principles of state policy, that the government shall actively promote and maintain the welfare of the people by adopting policies that shall 'maintain ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future' (Article 95 (I)).

(vii) The impact of CBNRM policy and law in Namibia

The policy and legal provisions in Namibia clearly define how communities benefit from CBNRM. In the wildlife sector, the policies on Establishment of Conservancies (1992), Wildlife Management, Utilisation and Tourism in Communal Areas (1995) and Community Based Tourism Development (1995) provide rights of use and benefit from wildlife. These rights are provided to communities through conservancies which must have clearly defined boundaries, defined membership and a plan for equitable distribution of benefits. Through conservancies communities benefit from wildlife through consumptive use – hunting quotas and non-consumptive use – tourism ventures. The rights given to communities in CBNRM over wildlife in Namibia are broad and secure and even if they are conditional and can be revoked, they are not

term-limited. In addition all benefits from wildlife is retained locally by communities with no local government of state tax on revenue earned (Roe et al, 2009).

Namibia has achieved some positive impacts following implementation of conservancies. By 2010, 59 community conservancies had been registered in Namibia which, together manage 132,697Km² of communal land. This is 41.8% of the total communal land and 16.1% of all land in Namibia (NASCO, 2011). Income from the overall CBNRM grew from zero in 1994 to over N\$45 million (about US \$5.6 million) in 2010. 86% of this amount (N \$39.5million) was generated by conservancies. Conservancies share revenue among members in various ways including individual member/village cash payouts (23% of conservancies), capital investment projects, social benefits programs such as school bursaries, water installations and support to HIV/AIDS affected families (NASCO, 2011).

For successful CBNRM, transfer of power from central government to local community institutions (devolution) or local government institutions (decentralisation) (Rihoy and Maguranyanga, 2007) in the management of natural resources plays a critical role. CBNRM Policy and law in Namibia provide for the devolution of power for decision making to community institutions. In the wildlife sector in Namibia, the Nature Conservation Ordinance (No 4 of 1975) conferred ownership and use rights over wildlife on private land. These rights were extended to communities in communal areas through the Nature Conservation Amendment Act (1996). Communities are allowed to hunt certain species of wildlife for their own consumption and are allocated hunting permits for trophy and sport hunting which they are at liberty to lease to private companies. Conservation committees make decisions with regard to the use and management of resources within the boundaries of their conservancies. The government's role is granting them permits and receiving reports such as conservancy AGM and audited financial reports (NASCO, 2011; Jones, 2007). Namibia's Forest Policy and Forest Act (2001) transfers management rights of community forests to the chief, traditional authority or conservancy committee.

The success of CBNRM in Namibia can be demonstrated by its impact on natural resources. There is indication of an increase in the numbers of wildlife since the adoption of CBNRM. Using

the Event Book Monitoring system 59 conservancies in Namibia keep track of a range of wildlife while an annual road-based game count is undertaken by the government to keep track of wildlife population change (NASCO, 2011). A number of factors have been attributed to this increase in wildlife populations. Most of these factors are directly related to decisions made by communities through conservancies. These include reduction and actual cessation of illegal hunting resulting from aggressive monitoring by conservancies and steps taken to manage human-wildlife conflicts (NASCO, 2011). Another factor is that establishment of conservancies increased the amount of land available for wildlife. 62% of conservancies (as of 2007) are located adjacent to protected areas, in corridors between protected areas or provide wet season dispersal area (Brown and Bird 2011). In addition, conservancies contribute more to the protection of Nama Karoo and Broad-leafed savannah biomes than other types of conservation management (NASCO 2011).

4.1. 2 Botswana

(i) Development of CBNRM in Botswana

Botswana's Department of Wildlife and National Parks (DWNP) introduced CBNRM in Botswana primarily for conservation. Economic benefits of CBNRM were seen as a means of achieving conservation (Cassidy, 2000). It was introduced in 1989 through a programme funded by the Government of Botswana and the United States of America International Development (USAID). The programme was underpinned by scientific rationale of sustainable use and accepted as an ecologically and economically land use option for significant portions of the country as with high value resources and a limited range of alternative land use options. In addition, most of the land was held as communal land (Rihoy and Maguranyanga, 2007; Cassidy, 2000).

CBNRM in Botswana focused on providing incentives for communities to take responsibility for managing natural resources sustainably, and on actively building community capacity to do this (Jones, 1999). It was aimed at giving communities incentives to manage land and resources and not ownership over land or resources (Cassidy, 2000). These incentives consisted mainly the right of communities to obtain from government leases to carry out hunting and tourism

activities in specific areas, the right to sublease these activities to safari operators and the right to retain all income and other benefits derived from the hunting and tourism activities (Jones, 1999).

With time and experience, CBNRM was adopted as a development approach which had the potential to bring about improved livelihoods through income and employment generation activities (GOB, 2007). Botswana's revised National Policy for Rural Development undertakes to 'promote natural resources utilization (wildlife and veldt products) to generate income and improve livelihoods of remote communities and recommends the further pursuit of the integrated CBNRM approach (GOB, 2002). The National Strategy for Poverty Reduction includes CBNRM as one of the six sustaining livelihoods programme whose purpose was to 'enhance income earning opportunities for the poor and to provide economically sustainable employment opportunities. The strategy further outlines the objectives of the CBNRM programme as 'to increase the benefits to be gained by communities participating in CBNRM and to strengthen and diversify the resource base on which CBNRM activities are based' (GOB, 2003). The country's development blueprint, Botswana Vision 2016 also recognizes the role of CBNRM and states that 'communities will be involved in the use and preservation of their environmental assets, and will benefit directly from them. It also stipulates that the wildlife of Botswana will be managed for the sustainable benefit of the local communities (GOB, 2006).

(ii) Wildlife Policies and Legal Provisions for CBNRM

Botswana's Wildlife Conservation Policy (1986) aims to 'encourage the development of a commercial wildlife industry that is viable on a long term basis.' (GOB,1986). The policy has three specific objectives, to;

- realise the full potential of wildlife resources
- develop a commercial wildlife industry in order to create economic opportunities, jobs and incomes for the rural population and to enable more rural dwellers to enter the modern wage economy, and
- increase the supply of meat as a consequence of further development of wildlife commercial utilisation.

The Policy entrenched the concept of Wildlife Management Areas (WMAs) which had been established through the Tribal Grazing Land Policy of 1975. WMAs are areas of communal land

that are set aside for alternative land use including wildlife. WMAs are first approved by District Councils and District Land Boards before they are officially declared in the Government Gazette. Once gazetted, regulations and a management plan are then developed for each WMA and a policy of sustained wildlife utilisation appropriate for each area implemented (Jones, 1999).

Wildlife utilisation plans in WMAs include hunting, game ranching and farming, live capture, venison processing and photographic safaris. The Wildlife Conservation Policy (1986) states that wildlife utilisation and management is the primary form of land use in a WMA and other forms of land use should only be allowed if compatible with wildlife. It, however, notes that WMAs should only be established in areas marginal for livestock. The Wildlife conservation Policy (1986) specifically provides that WMAs are tools for keeping migratory routes of certain wildlife species open and establishing buffer zones for protected areas, while at the same time providing economic opportunities for local communities. The policy further describes the relationship with Controlled Hunting Areas (CHAs). Some CHAs may fall within WMAs, while others fall outside. However, there is no control over other activities in CHAs even if they are detrimental to wildlife. WMAs are considered a form of land use while CHAs are not.

The Wildlife Conservation and National Parks Act (1992) enacted the Wildlife Conservation Policy (1986). It provides for wildlife utilisation in all areas of Botswana by dividing the country into 163 CHAs. The management of each CHA varies according to whether it is a commercial (private) operator area of community area; a multipurpose area (both hunting and photography tourism) or a photographic area (non-consumptive wildlife use); is inside a WMA or outside; and is on State land or Tribal Land.

The National Parks and Game Reserves Regulations (2000) gave communities living in or adjacent to national parks and game reserves the right to enter them without paying a fee. Where appropriate, it provides for community use zones to be demarcated and these communities given some user rights such as collection of firewood for sale to guests at public campsites or game lodges. Special use rights for subsistence hunting are provided for bona fide

and indigenous residents of Central Kgalagadi Game Reserve for specific animal species and veldt products (Cassidy, 2000).

Botswana's Wildlife Management Area Regulations (1998) established new hunting allocation from single game licenses and special game licenses to group/CBO licenses in CHAs. Most CHAs are found within WMA and communities living within WMA are normally given the hunting quota for a particular CHA where they live or nearby not because of the community's right to the animals but rather in recognition that communities near wildlife are more likely to use the wildlife wisely if they stand to benefit from it (Cassidy, 2000). These regulations are particularly important for CBNRM because hunting quotas gives the community control over access to and use of the animals in the quota. The community can exclude other people from access to the wildlife but they have an obligation to allow 'outsiders' equitable access to hunting any animals issued on Small Game licences for that area (Jones, 1999).

The regulations provide that communities that wish to use the hunting quota in the CHA for their own subsistence do not need a lease, as this is seen as a use of the land falling under customary law and not use of wildlife under common law. However, communities that wish to use the CHA for commercial hunting or photography need to have a lease.

The regulations allow communities to sub-lease their hunting quotas. Other rights that the regulations provide include giving the community the right to control access into its CHA. Outsiders may enter the area for natural resources use through a designated 'passage' route only. However, to travel beyond this route, the outsider would need permission from the CBO. The regulations allow the community to levy charges on outsiders harvesting natural resources from their CHA as well as for commercial uses such as tourism activities.

The regulations serve to extend the Natural Resource Management Lease that enables community participation in CBNRM by extending its control and exclusion rights. Thus communities with leases outside WMA have less control over outsiders' access and use of natural resources since the regulations do not apply outside the WMA (Cassidy, 2000).

(iii) Tourism Policies and Laws for CBNRM

The Botswana Tourism Policy (1990) aims at 'providing local communities with direct and indirect benefits from tourism activities. By doing so, the policy encourages communities to appreciate the value of wildlife and its conservation and the growing opportunities in rural areas for participation in wildlife based industries, including tourism' (Cassidy, 2000). The Policy objectives contribute towards CBNRM by generating employment and raising incomes in rural areas in order to reduce urban drift, promoting rural development and stimulating the provision of other services in remote areas of the country (GOB, 1990). The Tourism Policy makes provisions for leases for hunting and photographic tours where rights conferred on the lessee are exclusive except where local people or others have traditional or legal rights to use the land.

The Tourism Act (1992) brings into effect the Tourism Policy. It defines tourism as a commercial activity that include operations that offer facilities on and off-site, such as tourist camps, lodges, caravans, hunting camps and tented tourist camps, which also operate tours which require that services of professional guides or professional hunters licensed under the Wildlife Conservation and National Parks Act (1992) (GOB, 1992). The Act provides that no community or CBO may carry out tourism activities without a license and where communities sub-let their tourism activities to a Joint Venture Partner, the partner must obtain a license. These licenses are issued by the Tourist Industry Licensing Board in the Department of Tourism.

The Joint Venture Guidelines (1999) were issued by the Department of Wildlife and National Parks to guide communities engaging in CBNRM for commercial use of natural resources. The guide provides that under the CBNRM communities receive user rights of the natural resources so that they can gain benefit from their financial value. The guide provides different ways in which communities can work with private sector.

The Savingram on Minimum Conditions for Communities Seeking Hunting Quotas and Resources Lease (1995) is an important government document that sets out the government's approach to giving rights over wildlife quotas, hunting and tourism concessions to communities (Jones, 1999). It is a government directive addressed to the District Council, District Land Board

and Tribal Authorities based on the Wildlife Conservation Policy (1986), the Tourism Policy (1990) and the Wildlife Conservation and National Parks Act (1992).

The Savingram sets out the minimum conditions that communities need to meet before they can be awarded community wildlife off-take quota by the Department of Wildlife and National Parks or a resource use lease for any tourism or hunting development activity from a Land Board. The conditions of the community are;

- The community must have a management group or entity that is representative and accountable
- It must demonstrate that the needs of Special Game License holders are being met in a way that is acceptable to them
- District authorities must have observed and sanctioned the process by which a representative and accountable management group or entity was established
- All activities proposed by communities must be conform to the to the prevailing Land Use Plan
- Where the community resides in a WMA the proposed activity must be in conformity with the published recommendations of the management plan

(GOB, 1995)

The Savingram gives communities the right to sub-lease to tour operators. However, this right must be carried out in terms of the Joint Venture Guidelines. It further gives conditions on the length of time a community can sub-lease. For a first or second time lease, the community may only sub-lease for a maximum of one year. For a third time lease, it may sub-lease for a maximum of three years. The intention of the condition is to protect the community from being locked into a bad arrangement. However, it places a limit on the rights of communities and stops them from being able to make long-term plans and attracting Joint Venture Partners who are prepared to put in long-term commitments into the community (Cassidy, 2000).

(iv) Land Policy and Legislation

In Botswana there are three types of land, freehold, State and Tribal (Cassidy, 2000). Tribal land is communally owned and is held in trust by the citizens of Botswana rather than on behalf of a specific tribe or people living in a specific area (Jones, 2007). Botswana has developed the National Land use Map (1996), which defines nine land use categories for all

the land in Botswana. These are national parks, game and forest reserves, Ranches, freehold farms, leasehold farms, wildlife management area (WMAs), proposed WMAs, Pastoral/Arable/Residential (communal grazing areas) and commercial arable block (GOB, 1996). There are three land use options most relevant for CBNRM in Botswana. These are Wildlife Management Areas, communal grazing areas and national parks and reserves (Cassidy, 2000).

(v) *Community Based Natural Resource Policy (2007)*

The CBNRM Policy acknowledges that CBNRM was adopted throughout the country without the guidance of a formal policy. The policy is intended to 'guide and facilitate the strengthening of, and support to, existing and future CBNRM initiatives; to safeguard the interest of communities in natural resources management and to attract investment in natural resources based enterprises (GOB, 2007). The policy's objectives are to:

- i. specify the land tenure and natural resources user rights which may be devolved to communities
- ii. establish a framework that provides incentives for communities to manage natural resources in sustainable manner
- iii. create opportunities for community participation in natural resources management
- iv. promote conservation and CBNRM strategies that are based on sound scientific principles and practices
- v. enhance the relationship between protected areas' management and CBNRM
- vi. protect the intellectual property rights of communities with regard to natural resources and the management of such natural resources
- vii. encourage communities to participate meaningfully in the monitoring of CBNRM
- viii. facilitate capacity building within communities to engage in natural resources-based tourism
- ix. establish institutional support framework for the implementation of CBNRM; and
- x. promote communication and public awareness on CBNRM

The Policy vests its implementation in the Ministry of Environment, Wildlife and Tourism. The Policy delineates the land tenure and natural resources user rights that apply to the policy. These are that the communities may obtain 15-year Community Natural Resources Management Lease from the relevant Land Authority for the Commercial use of natural resources. This lease is known as a 'Head Lease'. It is subject to an approved Land Use and Management Plan for the area specified in the Lease, is subject to the payment of an annual

land rent payable to the Land Authority and a resource utilisation royalty payable to the Ministry of Environment, Wildlife and Tourism (GOB, 2007).

The policy allows communities to sublease or otherwise transfer any commercial natural resources user rights to one or more joint venture partners with prior written permission of the Land Authority. The policy directs that 35% of the proceeds of the sale of natural resource concessions and hunting quotas may be retained by the community CBO, while 65% shall be deposited with the National Environment Fund (GOB, 2007). The purpose of the Fund is to finance community based environmental management and ecotourism projects throughout the country. The Policy also directs that communities shall ensure that all decisions regarding the use of proceeds or benefits derived from the use of natural resources shall be sanctioned by all members of the CBO or community.

(vi) *The impact of CBNRM policy and law in Botswana*

In Botswana, wildlife policies and laws empower communities with the right to control access to legally defined land in the wildlife management areas (WMAs) and controlled hunting areas (CHAs), and the right to use (consumptive or non-consumptive) wildlife for their benefit (GOB,1992). Communities obtain these rights through legal entities community trusts. By 2003 there were 67 registered community trusts which included 120 villages and 103,000 people. The community trusts generate an average of US \$ 200,000 annually from hunting concessions in northern Botswana (Nelson and Aggrawal 2008).

CBNRM policy and law in Botswana devolves power to communities. The communities gain use rights but not ownership rights through the natural resource management leases given to community trusts (Cassidy, 2000). These leases are granted for 15 years by the government and through the lease communities make all the decisions about how and with whom they will carry out their tourism and commercial hunting activities. They decide how they will distribute the benefits and what the benefits will be used for. These decisions are subject only to the terms of the NRM Lease, the Savingram (1995) and the CBNRM policy.

Since the commencement of implementation of CBNRM in Botswana wildlife population of most species in Botswana has remained stable while steenbok, impala and elephant numbers

have increased by up to 5%. In addition, incidences of poaching in CBNRM areas in Botswana are low as data collected from the Ngamiland region shows that poaching takes place mostly outside CBNRM areas (Jones 2007).

4.1. 3 Philippines

In the Philippines, CBNRM is mostly practiced in the forestry, coastal and communal irrigation areas (Kho *et al.*, 2000).

(i) Forest Policy and Legal Provision for CBNRM

Community- based forest management (CBFM) was officially integrated in forest management and utilisation in the Philippines following the issuance of Executive Order No. 263 in 1995 by President Fidel Ramos 'Adopting Community Based Forest Management as the National Strategy to Ensure Sustainable Development of the Country's forestlands Resources (Kho *et al.*, unpublished). The Executive Order decrees that the government shall, at all times, take into account the needs and aspirations of local communities whose livelihood depends on the forestlands (Sec 2). It also acknowledges and supports the 25-year Master Plan for Forestry Development which recognizes the indispensable role of local communities in forest protection, rehabilitation, development and management. The Executive Order provides that participating communities may be granted access to forestland resources under long-term tenurial agreements provided they employ environment-friendly, ecologically sustainable, and labour intensive harvesting methods (Sec 3).

The Executive Order further establishes the institutional mechanism for CBFM. CBFM is placed under the auspices of the Department of Environment and Natural Resources (DENR) which implements it through Community and Provincial Environment and Natural Resources Offices in coordination with local government units and the Department of Interior and Local Government (DILG). The Order further establishes a CBFM Steering committee comprising DENR, departments of Agriculture, trade and Industry, Finance, Science and Technology, DILG, NGO coalition groups and Offices of Northern a Southern Cultural Communities. The CBFM

Steering Committee role is to formulate and develop policy guidelines that will create incentives and conditions necessary for effectively carrying out CBFM strategy.

In 2004, Executive Order No 318, Promoting Sustainable Forest Management in the Philippines was passed by the President. The decree aims at sustainable management of forests and forestlands in watersheds based on six key principles including community-based forest conservation and development. The decree retains CBFM as the primary strategy in all forest conservation, development and related activities.

The government institutions mandated with the implementation of CBFM in the Philippines have passed a number of administrative strategies and Orders to guide the implementation of the strategy (Pulhin *et al.*, 2005). These include:

- The Rules and Regulations for the Implementation of CBFM Strategy (DENR Administrative Strategy No. 96) passed in 1996. It mandates all local communities to prepare their respective Community Resource Management Frameworks for participation in CBFM with the assistance of DENR, local government units and NGOs. The strategy indicates that CBFM shall apply to all areas classified as forestlands including allowable zones within protected areas and integrates all people oriented forestry programs of the government.
- These were revised by the 2004 Revised Rules and Regulations for the Implementation of the CBFM Strategy (DENR Administrative Order No 29.) This Order allowed more flexibility to participating communities such as revising the requirement for an Annual Work Plan to a Five-Year Work Plan.
- The DENR and DILG passed the Joint Memoranda Circular No. 98-01 (1998) which is the Manual of Procedures on Devolved and other Forest Management Functions. This manual operationalises and makes effective the devolution of forest management functions from the Department of Environment and Natural Resources to the local government unit. It also seeks to strengthen and institutionalize DENR-DILG-local government unit partnership and cooperation on devolved and other forest management and related environmental concerns.

- The DENR and DILG joint Memorandum Circular No 2003-01 (2003) on Strengthening and Institutionalizing DENR-DILG-local government Partnership on Devolved and other Forest Management Functions. The Memorandum provides guidelines and instructions for the three government institutions in accelerating collaboration, partnership, coordination and institutionalization of its working relations on forest management and related environmental concerns.

(ii) Environmental Policy and Environmental Code

The Philippine Environmental Policy is contained in Presidential Decree No 1151. It recognizes the right of people to a healthy environment and provides that it is the responsibility of each individual to contribute to the preservation and enhancement of the Philippine environment. The Philippine Environmental Code, Presidential Decree No 1152 provides that the National government through the DENR shall establish a system of rational exploitation and conservation of wildlife and forest resources and shall encourage citizen participation in the maintenance and/or enhancement of their continuous productivity (Sec 28, 29). It further mandates local government units and private individuals to actively participate in the environmental management and protection programs of the government (Sec 58).

(iii) The Local Government Code of the Philippines (1991)

A major step towards limiting open access to fisheries in the Philippines coral reefs was the delegation of central power to a municipal forum by the introduction of the Local Government Code of the Philippines in 1991. This empowered municipal mayors with the right to issue permits to all fishermen operating within municipal waters enabling restriction of fishing by outsiders (Helge and Willoughby, 1998). The Local Government Code of the Philippines (1991), in its declaration of policy, states that ' the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities...toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization' (Sec 2).

(iv) *The impact of CBNRM policy and law in the Philippines*

Benefits to communities engaged in CBNRM in the forest and marine sectors in the Philippines can be deduced from four indicators increase in income, increase in economic rate of return, increase in government savings and decrease in poverty incidence (Braganza, and Erdmann, 2012). Case studies show that there has been increased income for communities engaged in community based forestry management in Philippines of 144% and 65% in community based marine fisheries. Where government savings have been measured in CBNRM projects an increase in government savings for example estimates of PhP 127 million (US\$ 3million) for forestry protection. There was also decrease in poverty incidence where CBNRM is implemented. Over 2 million Filipino benefited directly with a potential of 20 million (US\$ 476,190.4) more with the continuation of the project (Braganza, and Erdmann, 2012).

In the Philippines, CBNRM policy and law have embraced decentralisation of power from central government to the local government units through the Local Government Code (1991). Local government units were given the mandate to manage, control and enforce forest laws in community based forests. The result of this devolution was twofold, one, some governors and mayors (such as Governor Coscuella of Negros Occidenta, Governor Agbayani of Nueva Vizcaya and Mayor Calingin of Misamis Oriental) took the lead in promoting community forestry, creating new reforestation and watershed programmes and putting in place necessary mechanism for supporting participation especially of marginalised upland dwellers. Two, some local government units neglected community-based forestry and other sustainable forestry concerns in favour of entirely different priorities (Guiang *et al.*, 2001). An important approach in the Philippine CBNRM policy was enhancing cooperation and collaboration amongst the different actors in government in the natural resources sector. The Executive Order No 263, the Philippines primary policy on community based forestry, established the institutional mechanism for CBNRM. The main government institutions charged with CBNRM are the Department of Environment and Natural Resources (DENR) and the Department of Interior and Local Government (DILG). In addition a Steering Committee comprising in addition to the two department, agriculture, trade and industry, finance, science and technology departments, NGO coalition groups and cultural communities is also established by the Order. In order to

ensure better collaboration in CBNRM, the two institutions DENR and DILG have passed joint rules and regulations (Pulhin, *et al.*, 2005).

With regard to resource conservation there is a general perception that there has been an improvement since implementation of CNRM projects at the project level. However, due to lack of data and follow up monitoring it cannot be concluded that the increase of forest cover nationally has been a direct result of CBNRM (Braganza and Erdmann, 2012).

4.2 The status of legal, policy and institutional provision for CBNRM in Kenya

4.2.1 Constitution of Kenya (2010)

The Kenyan constitution acknowledges and highlights the importance of the environment and natural resources. From the preamble, the people of Kenya pledge to be respectful of the environment, as their heritage, and determine to sustain it for the benefit of future generations. Land and natural resources have always been very important to the Kenyan people. Land is a basis for national identity (Kameri- Mbote, 2008) and natural resources form the basis for Kenya's economy (Kenya Vision 2030). The constitution delves into great detail on land from principles of land policy, classification and management to obligations of the state and citizens on the environment, delineation and enforcement of environmental rights clearly indicating the value placed land, environment and natural resources. It goes on to constitution to include environmental rights in the bill of rights and states that every person has the right to a clean and healthy environment including to have the environment protected for the benefit of present and future generations (Art 42). The constitution promotes access to environmental justice by granting any person who alleges that her/his right to a clean and healthy environment has been, is being or is likely to be violated can seek redress in court without having to necessarily demonstrate actual loss or injury suffered (Art 70). In addition, it provides for establishment of a court to deal with environment and land issues (Art 162 (2) b).

CBNRM is about public participation, the Constitution explicitly provides for public participation and involvement in the legislative process at the national level (Art 118) and at the county level (Art 196). It further provides every person with the right to petition Parliament to consider any

matter including to enact, amend or repeal any legislation (Art 119). The constitutional right for citizens to participate in the legislative process is important as one of the roles of the national government is protection of the environment and natural resources with a view to establishing a durable and sustainable system of development (4th Schedule (22)) and the county government is mandated to implement specific national government policies on natural resources and environmental conservation (5th Schedule Part 2 (10) and to receive and approve plans and policies for the management and exploitation of the county's resources (Art 185 (4) a).

The constitution provides every citizen with the right of access to information held by the State and information held by another person and required for the exercise or protection of any right (Art 35 (1)). CBNRM requires that all stakeholders, especially communities participate from an informed point of view. Freedom of association is guaranteed in Art 36 (1) which includes the right to form, join or participate in the activities of an association of any kind. This right is critical for successful CBNRM as local community institutions are the basis by which communities can participate.

The constitution outlines various principles that are critical for effective CBNRM. These include equitable access to land and security of land rights (Art 60 (1) a and b), sustainable exploitation, utilisation, management and conservation and equitable sharing of accruing benefits (Art 69 (1) a). It also mandates the State to encourage public participation in the management, protection and conservation of the environment (Art 69 (1) d) and utilise the environment and natural resources for the benefit of the people of Kenya (Art 69 (1) h).

For CBNRM, the issue of property rights with respect to land and natural resources is critical and the constitution makes clear definition of where the rights lie. Under the constitution, natural resources and the land on which they lie, including forests, game reserves, water catchment areas, national parks, animal sanctuaries and specially protected areas; all rivers lakes and other water bodies; territorial sea, and all land between high and low water mark are classified as public land (Art 62 (1)). This public land, where natural resources of interest in

CBNRM are found, is held by the national government in trust for the people of Kenya and administered by the National Land Commission.

The constitution also classifies land as community land and private land. Community land is land vested in and held by communities identified on the basis of ethnicity, culture or similar community of interest (Art 63 (1)). The right of ownership of natural resources found on community land including forests and grazing areas is guaranteed (Art 63 (1) d). However, if that community land is not registered, then it is held in trust by the county government on behalf of the communities for which it is held, (Art 63 (3)).

Apart from natural resources found on registered community land, one can draw the conclusion that that ownership of natural resources is basically vested in the State. This position is retention of the status quo from the previous constitution of Kenya. The only difference here is that the current constitution clearly vests the radical title of land to the people of Kenya collectively as a nation, as communities and as individuals. It clearly indicates that the national government holds public land 'in trust ' for the people. In practice however, under CBNRM, the state, through the various government institutions will still continue to extend certain rights to communities to use, manage and benefit from natural resources. In this regard, legislation to give effect to the provisions of the constitution for public participation in natural resources management, protection, conservation, sustainable utilisation and equitable benefit sharing is required to provide clarity on the extent of rights for communities and for the national government. A CBNRM policy is key for the development of this legislation and attendant institutional framework.

4.2.2 International Law Instruments for CBNRM

The Constitution of Kenya is a progressive document with regard to CBNRM. It recognises the role of international environmental law in promoting sustainable development. Article 2 (6) declares that any treaty or convention ratified by Kenya shall form part of the Kenyan law.

Treaties that Kenya has ratified that are important for effective CBNRM include the Convention on Biological Diversity (CBD).

The CBD mandates each contracting party to 'subject to its legislation, respect, preserve and maintain knowledge, innovations and practises of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wide application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage equitable sharing of benefits arising from the utilisation of such knowledge, innovations and practices' (Art 8 (j)).

Rio Declaration on Environment and Development whose principle 10 states that 'environmental issues are best handled with the participation of all concerned citizens'. In addition Principle 22 states that ' indigenous people and their communities, and other local communities, have a vital role in environmental management and development...States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.'

4.2.3 Environment Management and Coordination Act (EMCA), 1999

EMCA (1999) is Kenya's framework environmental law whose aim is to provide a coordinated approach to environmental management in Kenya. It established a number of institutions including the National Environment Council (NEC) as the highest policy formulation organ, the National Environment Management Authority (NEMA) as the principle government institution for the general supervision and coordination over matters relating to the environment, Provincial and District Environment Committees (PECs & DEC) for the discussion and decision making of matters of environment at provincial and district level among others (Angwenyi, 2008). In addition to these institutions, EMCA, 1999 provides for NEMA to discharge some of its mandate through lead agencies. These include government ministries, departments, parastatals and local government bodies who have mandates in the environment sector such as water, forests and wildlife.

The Act also sets out the principles of environmental management and sustainable development as a conceptual basis for the measures to be taken by the above mentioned institutions and by citizens in the management of the environment. One of the principles is the principle of public participation. EMCA, 1999 prominently promotes the maximum participation of people in the development of policies, plans and processes for the management of the environment. This principle is further complimented by two other principles, that is, the principle of environmental awareness and education and the principle of access to information (EMCA Sec 5(a), 9(l),(h),(m), (n) and (p)). The Act provides that environmental awareness is treated as an integral part of education at all levels and makes publishing information on environmental quality and resource use a legal requirement. A population that is not aware and does not have access to information cannot participate effectively in the management of its surrounding environment (Angwenyi, 2008).

Although EMCA, 1999 provides for the establishment of an appropriate legal and institutional framework for the management of the environment, it nevertheless, only provides the skeleton for environmental governance. The flesh of such governance is provided by the requisite subsidiary legislation in the form of regulations and guidelines promulgated to enforce the provision of the framework law (Angwenyi, 2008). Several regulations have been developed and operationalised including the Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006. These regulations prescribe measures that shall be taken to conserve biological diversity, to access genetic resources and sharing of benefit that accrue from the utilisation of genetic resources between permit holders and Kenyan citizens and institutions.

Following the promulgation of the Constitution of Kenya 2010, efforts have been put in place to review the EMCA, 1999 so that it may be in tandem with it. The Constitution gives prominence to public participation in the management and benefit sharing of the environment and natural resources – CBNRM and it is expected that the Revised EMCA will follow suit and strengthen its existing provisions for CBNRM.

4.2.4 Environment Policy

Kenya has never had an environmental policy, although environmental concerns have always been incorporated in the development planning cycles of the country. For example, the Draft Sessional Paper No. 6 of 1999 entitled 'Environment and Development' which led to the legislative process that brought forth the EMCA, 1999 as Kenya's first framework environmental law, is a case in point. There is consensus on need for an environmental policy as a basis for addressing the ever increasing environmental challenges facing Kenya, while at the same time, enabling the country to sustainably manage its finite natural resources on which economic development and people's livelihoods depend (National Environment Policy, Draft of January 2012).

In 2007, the Ministry of Environment began the process of developing an environmental policy for Kenya. The process proceeded fairly well but stalled along the way. The process has, however, picked up in 2012 and it is expected that the policy, with the added advantage of being in line with the Constitution will be enacted before the close of the year. Although the final draft is not yet out for public debate and discussion, a look at the draft of January 2012 shows that one of the objectives of the policy is to provide a framework for wide participation in the management of environment and natural resources. Unfortunately, the current draft does not go further to make specific policy statements that promote public participation in the management and governance of specific natural resources and benefit sharing in their utilisation, that is, providing the mechanism for comprehensive CBNRM. Considering that the policy is still a draft and much input is yet to be made, it is expected that the final policy will adequately address CBNRM in the wider environment context.

4.2.5 Forest Policy and Law

(i) Forest Policy

Kenya's Forest Policy (2007) aims at improving livelihoods through sustainable use, conservation and management of forests and promoting the participation of communities and other stakeholders in forest management. It also aims to conserve water catchment areas, create employment, reduce poverty and ensure the sustainability of the forest sector. Through specific policy statements the policy provides for

- the empowerment of local communities to manage forests through community forest associations.
- the promotion of participatory forest management approaches in the management of indigenous forests
- support to community forest associations to rehabilitate degraded and over-exploited forests
- support to communities to develop and implement forest management plans and to manage community forests

(ii) Forest Law

The preamble of the Forests Act (2005) recognizes the vital role that forests play in the stabilization of soils and groundwater, protection of water catchment areas and in moderating climate by absorbing greenhouse gases. Forests are the main locus for Kenya's biological diversity, are a major habitat for wildlife and are the main source of wood fuel for Kenyans.

When the Forests Act 2005 was enacted, it repealed the Forest Act 1942 (Cap 385) which was focused on a command and control approach to forest management. This was a major constraint to forest conservation and development of a sustainable forest industry (Situma, 2008). The 1942 statute gave exclusive forest responsibility to the government with no input from the private sector or communities. This alienated them from custody and use of forests and forest produce. The consequences of this was massive destruction of forests in the country due to increased illegal logging and unsustainable extraction of forest produce as well as illegal conversions of forest land into farmland by communities bordering forest (Situma, 2008). The Forest Act 2005 takes a different approach for forest management giving prominence to the role of communities in sustainable forest management and laying a framework for community based forest management.

The Forest Act (2005) established the Kenya Forest Service (KFS) as the primary institution mandated with forest management and governance in Kenya. The Act specifically mandates KFS to collaborate with other organisations and communities in the management and conservation of forests and for the utilisation and of biodiversity and to promote the empowerment of associations and communities in the control and management of forests (Sec 4 (l) & (m)).

The Act establishes a Board as the highest decision making organ of KFS whose composition reflects and represents a wide variety of stakeholders and interests in the forest sector including persons associated with or in an area that contains one or more forest communities (Sec 5 2(c)(ii)). Among its many functions, the Board is to develop modalities and guidelines for joint management of forests between the service, local authorities, forest communities, government agencies and other private sectors (Sec 6(j)). The Act empowers the Board to establish forest conservation areas for the proper and efficient management of forests, and these may be divided into forest divisions and stations. Each conservancy is to be managed by a Forest Conservancy Committee whose composition is to be representative of the different stakeholders of the forest sector. This includes one member nominated jointly by members of the timber industry operating in the area and four members knowledgeable in forestry matters nominated by forest associations operating in the conservancy area, at least one of whom shall be a woman and one shall be a youth (Sec 4 (d) and (e)). The Act further establishes a Forest Management and Conservation Fund which is to be used for, inter alia, the development of community forest-based projects and the maintenance and protection of sacred trees and groves and other areas of cultural, ethno-botanical or scientific significance (Sec 17).

The Forest Act 2005 is a one of the most progressive legislation with regard to CBNRM. Section 45 - 48 empowers persons who are members of forest communities or persons resident in the same area to register a community forest association under the Societies Act. Forest Associations permitted by the Director of KFS to participate in the management and conservation of forests have specific statutory functions which are:

- a. protect, conserve and manage such forest or part thereof pursuant to an approved management agreement entered into under this Act and the provisions of the management plan for the forest;
- b. formulate and implement forest programmes consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria;
- c. protect sacred groves and protected trees;
- d. assist the Service in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce;
- e. with the approval of the Board enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of forests;

- f. keep the Service informed of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity;
- g. help in fire fighting; and
- h. do any other that is necessary for the efficient conservation and management of the forest

The Act, however, incorporates the concept that the relative importance of local values of a forest will influence the appropriate level of community participation. A forest management agreement confers upon the association several forest user rights which include collection of medicinal herbs, harvesting of honey, harvesting of timber or fuelwood, grass harvesting or grazing, collection of forest produce for community based industries, ecotourism and recreational activities, scientific and educational activities, development of community based wood and non-wood forest based industries (Sec 46 (2)). The Act allows a community forest association, with the approval of the Director, to assign any or all of its rights to a suitably qualified agent on mutually agreed terms (Sec 47 (1)).

4.2.6 Wildlife Policy, Law and Institutional provision

(i) Wildlife Policy

Kenya's wildlife policy is embodied in the Sessional paper No 3 of 1975 entitled '*A Statement on Future Wildlife Management Policy in Kenya*'. The Wildlife (Conservation and Management) Act Cap 376 was enacted to provide a legal and institutional framework for the implementation of this policy. However, there have been efforts to review both the wildlife policy and law as the existing framework does not adequately address current threats and challenges facing wildlife conservation and management in Kenya. Some of these challenges include the rapid change of tenure and land use in wildlife rangelands, institutional governance that has not integrated various stakeholders in wildlife conservation and management and the need for decentralisation of wildlife management to the lowest possible level and enlist the participation of the private sector, NGOs and community based organisations (CBOs). The Ministry of Forestry and Wildlife has produced a draft Wildlife Policy (July, 2011) which seeks to address the inadequacies of the existing policy and is aligned to the Constitution of Kenya 2010.

The draft policy makes a good attempt at incorporating CBNRM. One of the policy's guiding principles is that benefits accruing from wildlife will be shared equitably among stakeholders, especially paying due regard to communities living within wildlife areas (3.3.1(e)) and that a coordinated and participatory approach to wildlife conservation and management will be enhanced to ensure that the relevant government agencies, local authorities, private sector, civil society and communities are involved in planning, implementation and decision making processes, while respecting the jurisdiction and responsibilities of various government agencies and the rights of communities and individual land owners (3.3.1 (h)).

The policy incorporates key principles of international law, specifically the CBD to which Kenya is a signatory. The Convention's Programme of Work on Protected Areas incorporates community- conserved areas (CCAs) and lays down targets and activities for establishing the rights, participation and benefits of indigenous and local communities in the full range of activities relating to protected areas. The policy provides that the government shall rationalise, maintain and develop the existing Protected Areas and where appropriate establish new Protected Areas (terrestrial and marine) with stakeholder and community involvement. It also provides that the government shall establish collaborative management arrangements and joint ventures that enhance local community and private sector management in the Protected Areas and develop an effective mechanism for sharing benefits including revenue with communities living adjacent to Protected Areas.

Wildlife is a fugitive resource and is not confined to government protected conservation areas (Kameri-Mbote, 2008). Wild animals disperse to areas outside Protected Areas where land is largely under the control of private owners and communities and is subject to a multiplicity of uses including agriculture. Human- wildlife conflict has increased in Kenya owing to wildlife encroaching on private and community land following the continued shrinking of wildlife dispersal land and blockage of migratory routes as land use changes (Kameri-Mbote, 2008). The draft Policy addresses this by providing that government shall support land owners and communities to set aside wildlife conservation areas and sanctuaries outside Protected Areas and provide adequate incentives to support land owners, local communities and other

stakeholders to invest in wildlife conservation and management as a viable land use. One of these incentives is wildlife user rights. The draft policy provides tourism, cultural aesthetic, scientific and educational, game farming and game ranching as user rights for people living with wildlife to participate effectively in decision making processes for the management and conservation of wildlife. It further provides for the integration of wildlife conservation committees and community wildlife associations in the review, granting and monitoring of wildlife user rights.

The draft policy acknowledges the importance of wildlife security and makes provision to address the current overlapping and conflicting mandates of different agencies in wildlife conservation areas. It further provides that the government shall establish and build the capacity of local communities to bolster security in wildlife conservation areas, including establishing and maintaining security bases. Whereas the draft policy vests the overall responsibility for wildlife conservation and management in the Kenya Wildlife Service, it acknowledges its mandate is broad and centralised a situation which has contributed to the current challenges facing wildlife conservation in Kenya. To address this, the draft policy provides for decentralisation to the lowest level in order to empower communities and other stakeholders to participate effectively in the conservation, planning, implementation decision-making through establishment and support of devolved wildlife management institutions at regional and /or ecosystem) and community levels. It acknowledges that effective public participation in the sector requires access to technical, social and economic information and promotes the use of indigenous knowledge. To this end the government shall build the capacity of regional wildlife conservation committees and community wildlife associations.

The draft policy promotes participation of the private sector through leases and contractual arrangements with management plans and performance indicators as an avenue for revenue generation to support the sector. It acknowledges the role of non-state actors, NGOs and private sector in wildlife conservation, decision making and implementation.

(ii) Wildlife Law

The Wildlife (Conservation and Management) Act Cap 376 was enacted in 1976 (and has several amendments including in 1989 and in 2010) to govern the management and conservation of wildlife for the benefit of nation generally and in certain areas in particular. The Act vests powers of management and control of wildlife in the state under the Kenya Wildlife Service (KWS). The law provides for four types of protected areas, national parks, game reserves, national reserves, and local sanctuaries (Sec 6-9, Sec 18, Sec 19) which are vested in the central government, managed by KWS.

Game reserves are wildlife conservation areas vested in local authorities (County Councils) who administer them under the Minister of Local Government. The County Councils hold the game reserves in trust for the residents of the area. Game reserves were established by the Wild Animals Protection Ordinance of 1951 and the Act provides for their continued existence but

The Act makes almost no provision for community based wildlife management save for the management of game reserves by local authorities which is meant to facilitate local participation in both wildlife conservation and benefit sharing accrued from wildlife (Kameri-Mbote, 2008). Game hunting in Kenya was banned in 1977 vide Wildlife Conservation and Management) (Prohibition on Hunting of Game Animals) Regulations (Kenya Gazette Supplement May 20, 1977). Prior to the ban, the Act made provisions for owners of private land to open up their land to for game ranching and cropping. The ban reduced the value of land for communities that had earned revenue through granting hunting concessions (Kameri-Mbote, 2008). The law does not provide for wild-life user rights for local communities except tourism based activities. Local communities' and individuals' ownership of land resources is circumscribed by the limitations of having wildlife on it. Whereas, the 2010 amendment to the Act seeks to address compensation for victims of wild animal attacks, landowners bear the liability for wildlife without commensurate benefit from it (Kameri- Mbote, 2008).

In a bid to align the wildlife law with the constitution, the Ministry of Forests and Wildlife and the Kenya Wildlife Service have drafted the Wildlife Bill 2011 which, if passed into law, would repeal the Wildlife (Conservation and Management) Act Cap 376. The Bill vests ownership of all

wildlife in the state on behalf of and for the benefit of the people of Kenya. It acknowledges that a coordinated and participatory approach to wildlife conservation and management of wildlife is essential and that all stakeholders should derive benefits from such involvement.

The Bill further provides for the establishment of county wildlife conservation areas for the purpose of proper and efficient ecosystem management and wildlife conservation committees for each conservation areas. Among other functions, the conservation committee is to provide a platform for collaboration between the KWS, communities, county governments, landowners and other stakeholders, facilitate communities and landowners to benefit from revenues and other rights derived from use of wildlife resources and assist communities and land owners to set aside critical wildlife habitats, corridors and dispersal areas for the conservation and management of wildlife. The conservation committee will have at least 10 members, four of whom, not being public officers and knowledgeable in wildlife matters will be nominated by community wildlife associations in the area through an elective process.

The Bill explicitly provides for the establishment of community wildlife associations. It states that 'communities, landowners, groups of landowners and existing representative organizations may establish a community wildlife association and register it under the Societies Act'. The wildlife association is to be established to 'facilitate conflict resolution and cooperative management of wildlife within a specified geographic region or sub-region' and its application form must contain:

- a) list of the wildlife conservancy, sanctuary or other wildlife conservation activities in which they are involved in
- (b) for associations, the constitution with clear governance structures;
- (c) a draft plan for the association
 - (i) type of wildlife resources in their area and type of wildlife conservation initiatives being undertaken;
 - (ii) measures and type of wildlife conservation activities that are being proposed;
 - (ii) type of wildlife user rights being proposed that will enhance conservation and survival of wildlife in their area;
 - (iii) land use practices in the area and proposed measures to ensure land use compatibility with wildlife conservation;
 - (iv) methods of monitoring wildlife and wildlife user activities;
 - (v) community wildlife scouting scheme that will help to provide wildlife surveillance and assist in addressing problem animal control; and

(vi) any other aspect deemed necessary.

The functions of community wildlife associations will be to protect, conserve and manage wildlife conservancies and sanctuaries under their jurisdiction pursuant to their respective approved management plan(s); assist the KWS in combating illegal activities including poaching and bush meat trade; keep the regional wildlife conservation area committee informed of any development changes and occurrences within their area that may adversely affect wildlife conservation; help on problem animal control through community wildlife scouts drawn from among their membership or employees; and do any other act that is necessary to enhance community participation in wildlife protection, conservation and management.

The Wildlife Bill (2011) provides for the following non consumptive user rights wildlife-based tourism; commercial photography and filming; educational purposes; research purposes; cultural purposes; and religious purposes. Any person may seek a general permit for these rights from the Kenya Wildlife Regulatory Authority, which the Bill proposes to establish to regulate the wildlife sector, upon successful registration with the Wildlife Conservation Area Committee. It will also provide for the following consumptive wildlife uses - game farming; game ranching; live capture; research involving off-take; cultural activities involving hunting; cropping; and culling. The Authority will grant license to an applicant for these user rights again upon successful registration with the Wildlife Conservation Area Committee.

In the fifth schedule, the Wildlife Bill (2011) makes provision for benefit sharing from wildlife resources including assisting community projects through supplementation of facilities such in regard to education, health, social services, mitigation of human-wildlife conflict and conservation initiatives. It provides for the purchase or payment of a fair rent of wildlife corridors on community of private land for the dispersal of wildlife from KWS managed protected areas. However, communities have to be legally constituted to ensure fair and equitable distribution. It also provides that, with the approval of the Cabinet Secretary, license fees should be paid to pastoral communities who facilitate sharing of their grazing lands with wildlife where agreements that arable agriculture will not be undertaken and farmers who agree to allocate their land to facilitate wildlife grazing and browsing.

The Bill further provides that where tourism facilities are provided for under a management plan, adjacent to protected areas, the adjacent communities should be provided the opportunity to participate in the tourism enterprise. In addition, where communities require a professional partnership to undertake such tourism ventures, then the KWS should ensure equitable sharing of rents and profits. KWS shall provide guidelines for this purpose.

The Bill makes provision for payment of ecosystem services indicating that where protected area land under KWS management contribute to national environmental services , the KWS shall negotiate a charge with the Institutions or Agencies benefitting from the resource. In addition, where neighbouring communities contribute to the maintenance of the environmental service, the charge will be shared between KWS and the Community.

(vii) Institutional Strategy for CBNRM in the Wildlife Sector

The Kenya Wildlife Service (KWS), is the state institution mandated with the management of wildlife. It established the Community Wildlife Service Department in 1992. The department was charged with ensuring good wildlife management outside protected areas for the benefit of communities who interact with wildlife, create trust and dialogue between KWS and communities, help communities benefit from wildlife, protect them from losses caused by wildlife and initiate collaboration with other sectors (KWS, 1992). KWS also channels financial benefits to communities for construction of amenities such as schools, hospitals, and cattle dips (KWS, 2012). Until 2002, the department would grant wildlife user rights to communities with land rights and private land owners for cropping wildlife, hunting for home consumption, live animal capture for translocation, game farming and bird shooting (Kameri- Mbote, 2008).

In a bid to promote communities engagement in and benefit from wildlife conservation and management, KWS established the Community Enterprise Department. The Department aims at providing technical assistance and capacity building to community groups and individuals hosting wildlife on their land to establish and manage economically nature based enterprises (KWS, 2012).

4.2.7 Water Policy and Law

Water is an important factor/resource in promoting development in all sectors of the economy and hence efforts have been made to ensure supply to all sectors (Akech, 2008). Prior to the water sector reforms of the late 1990s, the sector was governed by a number of legislations including the Water Act (Cap 372), the Agriculture Act (Cap 318), the Irrigation Act (Cap347), Local Government Act (265), Mombasa Pipeline Board Act (Cap 373), Tana and Athi River Development Authority Act (Cap 443) and the Lake Basin Development Authority Act (Cap 443). A large number of institutions were established to manage water including the Water Resources Management Authority, Catchment Boards, Regional Water Committees, Water Apportionment Board, Local Water Authorities and Water Undertakers (Akech, 2008). The water sector reforms aimed at addressing the legal and institutional deficiencies including over concentration of power on the Minister, lack of coordination and overlapping or conflicting of institutional responsibilities and mandates, and lack of participation by stakeholders such as the water users in decision making.

The National Policy on Water Resources Management and Development, Sessional Paper No 1 of 1999 was promulgated as a policy response to address the problems in the water sector. The policy sought to address organisational shortfalls in the sector and provided for institutional reforms. The policy acknowledged that communities had been marginally involved in water management. It provided for community based water committees at district levels whose role would be to manage water delivery services.

The Water Act 2002, was passed to provide a legal framework to implement the National Policy on Water Resources Management and Development. It provides two levels for community participation in water resource management, the water catchment committee and the water resources users associations. The water catchment committees were established to manage the use, development, conservation, protection and control of water resources within catchment areas and constitute, among others, representatives of farmers or pastoralists within the catchment area, representatives of the business community, representatives of NGOs and

other persons who have demonstrated competence in matters relating to management of water resources within the catchment areas.

The Water Resource Management Rules 2007, (Legal Notice No. 171) gives further details on Water Resource User Associations defining them as 'an association of water users, riparian land owners, or other stakeholders who have formally and voluntarily associated for the purposes of cooperatively sharing, managing and conserving a common water resource'. The Rules provides that WRUAs must be registered by the Water Resources Management Authority after having met the prescribed conditions which are, that they be legally registered, have a constitution conducive to collaborative management of the water resources of a particular area and which promotes public participation, conflict mitigation, gender main-streaming and environmental sustainability. Upon receipt of registration certificate by the Authority, the WRUA may enter into a Memorandum of Understanding (MoU) for the purposes of collaborative water resource management of the water resources. The MoU may provide for administrative, technical or financial support to the WRUA by the Authority in respect of activities related to the collaborative water resource management.

The Water Act (2005) also provides for community projects which shall be proposed by persons owning or occupying at least two thirds of the particular area concerned in the project. It states that community projects shall take precedence over all other schemes for the use of water except state schemes.

The Water Resources Management Strategy (NWRMS) 2007 -2009 sought to provide the mechanism for the implementation of the National Policy on Water Resource Management and the Water Act 2002. It provides clear roles for the Institutions established by the two documents for water management including the Catchment Area Advisory Committees and the Water Resources Users Associations.

Following the promulgation of the constitution of Kenya 2010, the Water sector has begun the process of reviewing the sector law, policy and strategy to be in line with the constitution. The draft National Water Policy (March 2012) reiterates that the water sector embraces a

participatory approach in the management of the resource to ensure its optimal use and better conflict resolution as one of the guiding principles for integrated water resources management. It further provides for community participation and empowerment in point source and very small piped system water services provision and sets out to comply with the constitutional provision for public participation in natural resources management. While stating that the water sector has increased public participation, it embarks to improve representation at all levels such as representation on boards of Water Sector Institutions.

4.2.8 Fisheries Policy and Law

The fisheries sector has not had a policy but the process of developing one commenced but is yet to be completed. The Kenya Fisheries Policy (draft), 2005 makes an attempt at/of incorporating CBNRM in the sector by acknowledging the role of fishermen, small, medium and large scale fish traders, civil society organisations and NGO's role in the management of the sector. It nevertheless decries the lack of strong cooperatives for fishermen and a fledgling BMU concept to integrating community participation in the sector. The Policy states that one of its objectives is to involve the fishing communities in fisheries management. Besides indicating that the Department of Fisheries shall encourage community participation in resource management to ensure that fishing activities do not have adverse impact on the ecosystem; that a co-management approach to fisheries management shall be adopted; and that, BMUs shall be mainstreamed in fish data collection systems, the policy is rather weak on CBNRM.

Fisheries resources are governed by the Fisheries Act (Cap378) of 1985 revised in 1991 and the maritime Zones Act (Cap 371). The legislations make no mention of public participation despite the fact that a sizeable percentage of the sector is driven by small and medium fishermen and traders. The Ministry of Fisheries Development, the Institution mandated to manage the sector acknowledges that the Fisheries Act needs to be reviewed to provide a strong legal and institutional framework.

In 2005, The Fisheries Department introduced subsidiary regulations under the Fisheries Act, 'The Fisheries (Beach Management Units (BMUs)) Regulations of September 2005, under "Implementation of Fisheries Management Plan for Lake Victoria and Co-Management Working

Groups” which were gazetted in 2007 (Legal Notice, 402). BMUs are an innovative co-management (CBNRM) tool for small-scale fisheries initially developed and gazetted in Tanzania in 2003 for the Lake Victoria Region. (Signa *et al.*, 2008). The objective of the BMU Regulations was to facilitate the establishment of a BMU for each fish catch landing station/beach in order to:

- strengthen the management of fish landing stations, fishery resources and the aquatic environment;
- support sustainable fisheries development;
- help alleviate poverty and improve livelihoods of BMU members through good governance and democratic participation and self reliance;
- recognise roles of different sections of the community including women;
- ensure high quality fish products;
- build management capacity of BMU members;
- reduce conflicts in the fisheries sector.

Further, in 2006, the Department of Fisheries further developed the BMUs guidelines in a bid to incorporate fisheries resource users and stakeholders in the management of the resource. In addition the three East African region states were harmonizing BMU Guidelines and Kenya did not have national guidelines to draw from. The Guidelines aim at assisting the stakeholders in the fisheries sector participate in sustainable exploitation of fisheries resources in Kenya. The Guidelines harmonise procedures for establishing and operating BMUs in the country as the Government’s legal structure for institutionalising the sharing of responsibilities and benefits of fisheries resources amongst different stakeholders.

4.2.9 Wetlands Policy and Law

Wetlands are defined as areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres (Convention on Wetlands of International Importance, 1971). Wetlands occupy about 3 – 4% (14,000Km²) of the land surface of Kenya, which sometimes extends to 6% of the land surface (Kenya Land Alliance, 2006). Wetlands are important ecosystems providing critical ecosystem goods and services including habitats for species of fauna and flora some of which are endemic. They play

an important role in the hydrological cycle in maintaining a hydrological balance, water purification, water storage and recharging of underground aquifers. They also provide a source of livelihood for many communities through fisheries and source of materials for artefacts, foodstuffs medicines and other socio-cultural activities (Odote, 2008).

Internationally, wetlands have not always been seen for their utility and importance often being referred to as wastelands unless converted to other uses like agriculture and settlements (Odote, 2008). The Convention on Wetlands of International Importance, especially as Waterfowl Habitats (Ramsar Convention) is the principle treaty at the international level that governs the management of wetlands. Kenya acceded to the Convention in 1990 and became party to its requirements. This included designating five lakes (Nakuru, Baringo, Elementaita, Bogoria & Naivasha) as wetlands of international importance and resolving to include wetland conservation and wise use in Kenya's natural resources planning and international cooperation with regard to transboundary wetlands, shared water systems and development projects affecting wetlands (Art 3(1) & (20), Art 5).

Kenya does not have a specific law that governs wetlands. However, wetland management is incorporated in legislations governing land, environment and water resources. Sec 42 of the EMCA, 1999 deals with the protection of rivers, lakes and wetlands. In 2009, the government enacted the Environmental Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Rules to, inter alia, provide for the conservation and sustainable use of wetlands and their resources and provide a framework for public participation in the management of wetlands. The Regulations make provision for an individual, registered civil society organisation or government institution to recommend to the Minister to declare of any wetland to be protected on the basis of its national and international importance for its biological diversity, ecological importance, landscape, natural heritage or aesthetic value. The regulations also make provision for the development of wetland management plans to govern the management and wise use of wetlands in Kenya. However, public participation in the development and implementation of wetland management plans is not explicitly provided for in the regulation but can be inferred.

The Water Act, 2002 includes wetlands in its definition and it deals with ownership, control and use of water. The Act establishes community based institutions for the management and use of water resources, including wetland resources, that is, the Water Resource Users Associations (WRUAs) as well as the Catchment Area Advisory Committees (CAACs).

Kenya does not have a policy on wetlands but the process of developing one has been ongoing since 1997. The current draft, Sessional Paper on National Wetlands Conservation and Management (May 2012), while acknowledging the significance of wetlands for communities' livelihoods, the draft policy makes no policy statements or provisions for public participation in the management and governance of the resources.

4.2.10 Land Policy and Law

(i) Land Policy

Kenya's land policy is found in the Sessional paper No 3 of 2009. The policy calls for the implementation of a number of constitutional provisions with regard to land including the participation of citizenry in decision-making processes on land matters. The policy vests the radical title of land to the people of Kenya and defines three categories of land ownership, private, public and community land. The policy vests all land based renewable and non renewable natural resources in State to be held in trust for the people of Kenya. However, it calls for the alignment of tenure of land based natural resources to the different categories of land, and, where these resources are on privately or communally held land, then the resource tenure shall be to the private or communal owners.

The policy calls for the State to provide incentives for communities and individuals to invest in income generating resource conservation programmes and to recognize and protect the rights of forest, water dependent or other natural resources dependent communities and facilitate their access, co-management and derivation of benefits from the resources. The policy further acknowledges the concept of benefit sharing from land based natural resources for communities and calls for the government to establish strategies for sharing benefits taking into account the nature of the resources involved and the contribution that diverse actors make to the management of the resources. It calls for

- the enactment of legislation that recognises community and private rights over renewable and non-renewable land-based natural resources and incorporate procedures for access to and sustainable use of these resources,
- putting in place legislative and administrative mechanisms for determining and sharing of benefits emanating from land based natural resources by communities and individuals, and
- making benefit-sharing mandatory where land based resources of communities and individuals are managed by national authorities for posterity.

(viii) Land Acts

Upon promulgation in August 2010, the Constitution of Kenya provided eighteen months for the enactment of legislation on land and five years for both community land and regulation of land use and property. Subsequently three legislations - The Land Act, 2012, The National Land Commission Act, 2012 and The Land Registration Act (2012) - were recently passed repealing eight legislations that governed land including the Land Titles Act (Cap 282), The Registration of Titles Act (Cap 281), The Registered Land Act (Cap 300) and the Land Acquisition Act (Cap 295).

The Land Act, 2012 was passed to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; and, to provide for the sustainable administration and management of land and land based resources. The legislation highlights the guiding values and principles for the governance and management of land including participation, accountability and democratic decision making within communities, the public and Government, and democracy, inclusiveness and participation of the people.

4.3 Challenges and Opportunities for communities under the current framework for CBNRM in Kenya: Case of Ngare Ndare Forest Community

4.3.1 Ngare Ndare Forest Trust

Ngare Ndare Forest Trust was formed as a community – led initiative to protect and conserve the flora and fauna of the Ngare Ndare Forest Reserve and surrounding areas and reduce the poverty of the local community through community conservation projects.

(i) Establishment of Ngare Ndare Forest Trust

In the 1980s, Kenya's forest sector began to steadily decline as the Forest Department's ability to manage forests reduced considerably. This was brought about by lack of political support, inadequate budgetary allocations and changes in staff attitude, skills and motivation (Mbugua, 2003). By 1999, the problems in the forest sector had reached unprecedented levels, including among others, poor management, planning and governance. Foresters were relegated to the side-lines as important decisions on forestry were made by politicians, government ministry officials and provincial administration (Mbugua, 2003). There was massive illegal logging in both natural and plantation forests facilitated by both forest department staff and provincial administration officials, corruption, encroachment by communities for agriculture, grazing and settlement, resulting in the loss of valuable indigenous hardwood trees e.g. *muhugu*, elgon teak, and sandalwood (Makoloo *et al.*, 2011).

The impact of this situation on Ngare Ndare forest, as in many other forests in the country, was the wanton destruction of the forest, increase of forest fires, high levels of human wildlife conflicts and significant decrease in water (Interview respondent, 2012). Communities living in the six villages adjacent to the forest, that is, Ngare Ndare, Mbujju, Suboiga, Kisima, Ethi and Manyangalo and owners of farms/ranches also adjacent to the forest, that is, Kisima Farm, Lewa Wildlife Conservancy and Northern Frontier Ventures mobilised and formed a Forest Working Group to address the problems in a bid to save the forest (Interview Respondent, 2012). In 1996, the Working Group, and especially through the efforts of the ranches/farms, got financial support from donors and with assistance from the British Army to put up an electric fence around the forest. This greatly reduced human wildlife conflict and illegal logging of timber from the forest.

In a bid to continue and formalise the efforts towards restoration of the forest, the Forest working group registered the Ngare Ndare Forest Trust under the Trustees Act in 2001. Representatives, one from each of the six villages and from Kisima Farm, Lewa Wildlife Conservancy and Northern Frontier Ventures were the Trustees. However, the period between 2001 and 2003 was turbulent for the Trust as communities, not fully understanding the

implications of the Trust, opposed its activities citing loss of free access to the forest and too much restriction of access to resources such as fuel wood and grazing. In addition, the then Forest Department was cautious and not fully supportive of the development since the law did not have provision for community participation in the management of forest resources. These wrangles led the Trustees to approach the Commissioner of Forests who established a fact finding mission that moved from village to village gathering perspectives of communities. It also provided opportunity for the Trust to create awareness as to the purpose of the Trust. Following this exercise, it was mutually agreed that the Trust would be restructured taking into consideration the community wishes and incorporating the Forest Department, the Kenya Wildlife Service and Provincial Administration as Trustees. A new Trust was registered in May 2004 replacing the Trust established in 2001.

(ii) Structure of the Trust

The Trust's highest decision making organ is the Board of Trustees which comprises a representative of the six villages and three Farms/Ranches surrounding the Forest (Ngare Ndare Trust deed). Trustees serve for three year terms for no more than three terms and are appointed through elections/nominations. The Trustees are mandated to hold an Annual General Meeting at least once a year, and a meeting with members of all the communities entitled to appoint Trustees. The Trust employs 17 officers who are the Trust Manager, the Accounts Officer, the Community Extension officer, 12 community scouts (two from each CBO), the Scout's in charge and the ecotourism Officer. The structure of the Trust is shown in Figure 3 below.

STRUCTURE OF THE TRUST

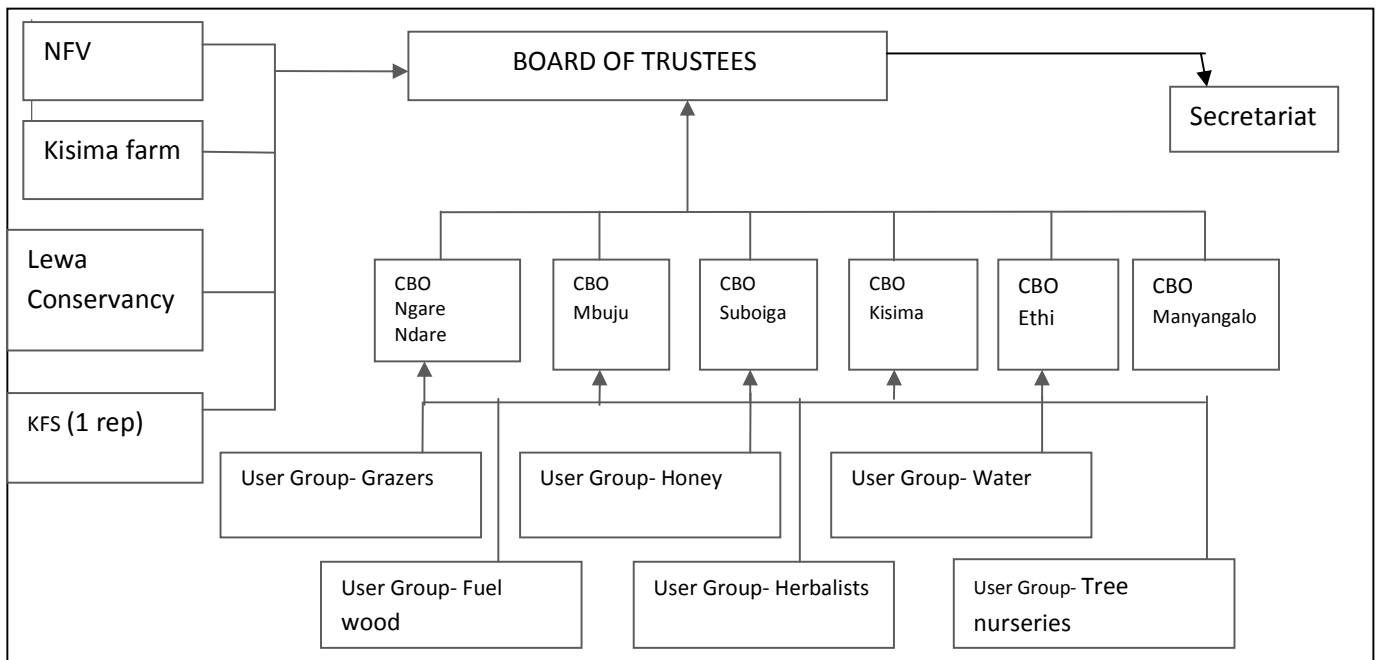


Figure 3: The Ngare Ndare Forest Trust Board of Directors is the highest decision making organ and has representation from each of the six communities, who are all registered as CBOs. Each CBO is constituted by representatives of the six forest resource user groups. The Northern Frontier Trust (NFT), Kisima Farm and Lewa Conservancy are also represented in the Board as neighbours of the forest and the government is represented by the Kenya Forest Service.

Source: Adapted from Ngare Ndare Trust Deed

(iii) Governance within the Trust

The process of electing a community representative to the Board of Trustees is rather elaborate with the aim of ensuring wide and inclusive representation. In each village a number of forest user groups were established and registered the main ones being the grazers, honey collectors/beekeeper, water users, fuel wood collectors, herbal medicine collectors and tree nurseries. Each of these user groups in each of the six villages is registered under the Ministry of Social Services and has a constitution that governs its operations. Each user group then nominates/elects nine members to the Community Based Organisation (CBO) for that village. The CBO is registered as a entity under the Ministry of Social Services. Each village CBO then nominates/elects one person to be the representative of the village/CBO in the Trust.

(iv) Opportunities and successes of the Trust as an mechanism for CBNRM

Ngare Ndare Forest Trust has achieved many things since it was established. There has been increased conservation of the forest and wildlife within (Interview Respondent, 2012). The

Trust maintains the electric fence that surrounds the forest keeping the wildlife within the forest; every year the communities replant tree seedlings in forest areas that have been degraded subsequently forest cover has increased significantly with large areas currently constituting closed canopy cover (Interview Respondent, 2012), however, no data has been collected with regard to the actual change in forest canopy cover over the years.

There is continuous monitoring of activities in the forest by the twelve scouts and community members engaged in forest activities such as the grazers. This has enhanced forest protection significantly reducing illegal logging and poaching of wildlife. There is more sustainable use of the forest resources as each village, through the trust, has been allocated a section of the forest from which they collect resources. In addition, each user group is responsible to develop a system where they rotate within their allocated area especially with regard to grazing, fuel wood collection.

The Trust has also established about 18 tree nurseries in the villages around the forest and to provide tree seedlings (Interview Respondent, 2012). Currently, over one million trees have been planted and grown in the forest and on farms. This has reduced the pressure on the forest for timber and wood fuel and also provide habitat for beekeeping. The Trust introduced improved breed of goats- Toggenburg- through a goat breeding programme which was meant to increased income. They also introduced low- wood consumption jikos. This has been very well received with almost 100% adoption in the villages also aimed at reducing the volume of wood fuel extracted from the forest.

(v) Challenges of the Trust as an mechanism for CBNRM

Ngare Ndare Forest Trust faces a number of challenges including inadequate financial and human resources, inadequate support from government as well as internal conflicts within the CBOs and amongst members.

The Ngare Ndare community established the Community Trust as the institution by which they would participate in CBNRM with government. However, due to the requirements of the Forest Act (2005) and the Water Act (2002), the community were obligated to register a Community Forest Association (CFA) to work with the Kenya Forest Service (KFS) and to register several

Water Resource Users Associations (WRUAs) to work with the Water Resources Management Authority (WRMA). In addition, the community are working with the Kenya Wildlife Service (KWS) and although the current law is does not preclude the Service to work with the Community Trust, the review drafts of wildlife policy and law indicate that a specific community institution for wildlife management will be a requirement. The multiplicity of community institutions is a challenge for the community in terms of governance and funds to maintain the institutions.

Having complied with the Forest Act, NNFT has various roles and responsibilities with regard to the management and benefit sharing of the forest resources. Some of the resource management responsibilities include protection of the forest and its resources. To achieve this Trust has employed community scouts who monitor, on a daily basis, the use of resources, i.e. collection of firewood, grazing activity and other uses that the communities derive from the forest. They also monitor the movement of wildlife and ensure that the forest fence is not breached for the safety of both communities and wild animals. Through the user groups, the Trust ensures that the quantities of water, fuel wood, timber removed from the forest by communities is sustainable. With regard to sharing of benefits from the forest resources, the Trust does not receive any benefit from the arrangement with KFS. This is because the Trust bears the entire responsibility of managing the forest to the extent of performing the functions of KFS. They are not compensated in any way for these tasks by the government.

In a bid to generate revenue to support the forest sector, KFS put in place mechanism by which communities and interested parties would bid for concessions to run ecotourism ventures within the forests across the country. NNFT put up a spirited fight and were successful to win concession rights for 33 years from 2009 to 2041 and renewable for a further 33 years. The concession grants them the right to put up eco tourism facilities such as camp sites, game viewing and sporting facilities which is expected to boost income primarily as a direct benefit to the communities adjacent to the forest as prescribed in the constitution. The concession also confers on the Trust responsibility to manage and conserve the forest.

Following the signing of the concession, the Trust received a three year grace period in which concession fees were waived by KFS. This waiver was in a bid to give the Trust adequate time to put in place the infrastructure necessary for running the ecotourism ventures. Through its marketing efforts, NNFT has been able to generate about Kes 1.2 million annually in profit. Unfortunately, for the Trust, the grace period for payment of concession fees has elapsed and the Agreement requires that they pay to KFS Kes 1.2 million for the fourth and fifth year which then increases by Kes 50,000 every 5 years. Should the Trust not be able to raise the annual concession fee, then KFS may withdraw the concession right and put it up for bidding. In the negotiation of the concession, KFS did not consider forest conservation and management services that the community had done in Ngare Ndare such as putting up and maintaining the electric fence, nor such services rendered in the future. These ought to have been considered for compensation either by a reduction of the concession fee or should another organisation win the concession, this paid to the community by the new concession holder.

(vi) Challenges and opportunities of Ngare Ndare communities under the current framework for CBNRM

The current CBNRM framework has had both positive and negative impact on individual members of the communities and to the communities collectively. At the individual level, establishment of the Trust and its contribution to the management and conservation of the forest and other natural resources has played a key role in ensuring the availability of resources that sustain them. There is consensus among community members that there is adequate grazing, fuel wood, timber, water and other forest products to meet community needs, incidences of human wildlife conflict have decreased to a bare minimum and other benefits from the Trust such as sponsorship for educational opportunities for their children, building of social amenities such as a dispensary, livestock watering point, irrigation canals and classrooms for schools. Another benefit of the Trust is that it has improved their sense of ownership of the forest as a shared resource, reduced tribal differences and individual sense of responsibility for the forest as they are acutely aware of it as their main lifeline.

There are, however, challenges, under the existing CBNRM framework. Members of the communities around Ngare Ndare expressed dissatisfaction as they felt they bear an unproportional burden of the management of the forest resources. The success of the Trust has had resulted in the diminishing contribution from government institutions including KWS, KFS and WRMA. Communities feel that all that these institutions do is collect revenue from them. The process of CBNRM is not participatory enough, it is still top – down, the government decides what to do and when to do it. To illustrate this, a respondent gave the example of increase of fees for extraction of forest produce. Without any consultation of communities, KFS increased the cost of fuel wood collection from Kes 20 per head load per month to Kes 100. In the words of one respondent, ‘ the government owns the rules’. This is the fee applicable across the country whether communities participate in forest management or not negating the expectation by communities of an added advantage on the basis of their investment in the conservation and management of forest resources. Natural resources management is not a negotiated process.

CHAPTER FIVE: DISCUSSION AND RECOMMENDATIONS

Discussion

There were three main findings from the study. First, policy and law with clear CBNRM provisions are key to the success of the strategy. Second, CBNRM is more successful when incorporated into national development strategy. Third, CBNRM is more likely to succeed if it focuses on empowering communities and it is clear how they benefit from the strategy.

Of the three countries with best practice for CBNRM that were reviewed, Botswana and the Philippines have enacted specific policies for CBNRM. Botswana's *Community Based Natural Resource Policy* provides the country with a specific framework for CBNRM that clearly outlines land tenure and natural resources rights devolved to the community. It also establishes an institutional framework for both government and community for CBNRM. In the Philippines the Executive Order 26 – 'Adopting Community Based Forest Management' is the policy and legal provision that guides the implementation of CBNRM in the Forest sector. Whereas Namibia may not have one specific policy on CBNRM, they do, however, have several sectoral policies that were enacted to guide the implementation of CBNRM in the wildlife sector. These are the '*Policy on Establishment of Conservancies*', the '*Policy on Community Based Tourism Development*' and the '*Policy on Wildlife Management, Utilisation and Tourisms in Communal Areas*'.

Kenya's implementation of CBNRM is guided by fragmented pieces of policy and law found in different sectors. Generally, most of the natural resources policies and laws acknowledge and promote the right of communities to participate in the management of the resources. This can be seen in the Constitution, the Environmental Management and Coordination Act (EMCA), the Forest Policy and Forest Act, the Wildlife Policy and the Water Act. However, these provisions are not comprehensive and are subject to different interpretation in CBNRM implementation. This has resulted in each sector determining how communities will participate in the resource management. In addition, since there is no specific policy that anchors CBNRM in the country, there is no national consensus as to what the concept of CBNRM entails and what its principles

are. One can therefore conclude that there is no legitimate CBNRM practice in Kenya but rather an attempt at community participation by the different sectors.

The study shows that CBNRM is more successful when it is incorporated into national development as a strategy. Both Namibia and Botswana have adopted CBNRM as development strategies. Botswana has explicitly incorporated CBNRM through its national development strategy documents such as the *National Strategy for Poverty Reduction* which outlines the role that CBNRM is expected to play in national development and in its national development blueprint – *Botswana Vision 2016* – which recognises the role the CBNRM as a strategy plays. Namibia has incorporated CBNRM through a national program involving various stakeholders including government, NGOs and the private sector. CBNRM is coordinated at the national level. In the Philippines, CBNRM is devolved to the local governments as a development strategy. In contrast, CBNRM in Kenya is not yet perceived as a development strategy, rather as a stop gap measure as the various government institutions move away from command and control management of natural resources. In some cases, CBNRM is a government directive, for example in the water and forest sectors where institutional reforms required incorporation of communities in resource management, communities were instructed to form associations through which to participate. The value of CBNRM as a development strategy is yet to be appreciated and integrated in the development agenda through the strategy documents for the country.

CBNRM is more likely to succeed if it centres on empowering communities and there is clarity on how they benefit from the strategy. Namibia's CBNRM policies and laws provide very specific rights to communities and define how they benefit. These rights are provided to communities through conservancies which must have clearly defined boundaries, defined membership and a plan for equitable distribution of benefits. Through conservancies communities benefit from wildlife through consumptive use – hunting quotas and non-consumptive use – tourism ventures. The rights given to communities in CBNRM over wildlife in Namibia are broad and secure and even if they are conditional and can be revoked, they are not term-limited. In addition all benefits from wildlife are retained locally by communities with no

local government or state tax on revenue earned. In Botswana wildlife policies and laws empower communities with the right to control access to legally defined land in the wildlife management areas (WMAs) and controlled hunting areas. They also confer communities the right to use (consumptive or non-consumptive) wildlife for their benefit. Communities obtain these rights through legal entities called community trusts.

Whereas Kenya's policy and legal provisions for CBNRM outline some benefits for communities these fall way below what other communities in Namibia, Botswana and Philippines are entitled to. The Forest Act (2005) confers on communities the right to collect non forest product such as medicinal herbs, firewood and grass, grazing rights, ecotourism recreational activities. Communities are not entitled to timber harvesting rights in plantation forests even if they are in partnership with government in the forests' management. Kenya's wildlife policy and law both make no provisions for CBNRM and community benefits from wildlife. Whilst providing clear institutional structure for community participation in the management of water resources, the water policy and law do not clearly define the benefits.

As shown in the case study of Ngare Ndare, the community perception was that there was no benefit in engaging in CBNRM. On the contrary, the community felt that they bear additional responsibility to conserve and manage the forest resources which should ideally be borne by the state. Most of the revenue generated from ecotourism activities reverts back to the government as payment for concession fees while collection of forest products is charged at a fee. Empowerment of communities under CBNRM implies government enables communities to be part of the decision making with regard to management decisions over natural resources. This has not been the case for Ngare Ndare community since decisions are made by the government institutions and then communities are informed so that they can implement or comply. Empowerment also means enabling people to take charge of their own lives. This includes improving local level institutional governance and enhancing communities through social accountability and democratic processes. On this front, the Ngare Ndare community has been empowered as demonstrated by the CBOs, resource user groups and the trust where democratic elections and accountability is demonstrated.

These results are largely in agreement with scholars of CBNRM who emphasise that the policy and legal framework for CBNRM plays an important role in its success. There is also a general consensus that the role of communities is central in CBNRM but that community benefit from the strategy is the most significant aspect of community participation. Other scholars recommend that CBNRM needs to move away from the traditional aim of being a conservation strategy but rather embrace development for sustainability of the strategy.

CBNRM is an evolving concept that varies from country to country and from sector to sector. The implementation of CBNRM should be dynamic. However, this the dynamic evolution of CBNRM should be married with emerging global issues such as payment for ecosystem services (PES) and Reducing Emissions from Deforestation and Forest Degradation (REDD). This is an area that requires further research because it has the potential to completely overhaul CBNRM as is currently construed.

Recommendations

There is growing global consensus that CBNRM is a viable strategy for sustainable development and natural resources management. Kenya has made some strides in incorporating public participation but this study proposes some recommendations that would strengthen the CBNRM in Kenya for the benefit of communities, the environment and natural resources. These recommendations are;

1. The development and enactment of a CBNRM policy for Kenya would provide guidelines with regard to how public participation will be done across the natural resource sectors in Kenya. The policy would provide clear definitions and a clear standard for community institutions as well as what kind of benefits communities should expect.
2. CBNRM should be incorporated as a development strategy at the national and county levels. As a development strategy, the principles of CBNRM will then be streamlined into the different sectoral natural resources policies and laws which would then lead to

complimentarity and collaboration in the management of the resources. And since natural resources provide benefits and services to people in an integrated manner as ecosystems, this would foster an ecosystem approach to natural resources management.

3. In the review of Kenya's sectoral natural resources policies and laws in this study, there was discordance in the relationship between the policies and laws. In some cases there was a sectoral law but no policy for example the environmental law and the fisheries law. In other cases the law was enacted before the policy for example the forest law in 2005 and forest policy in 2007. And yet in other cases, the Act is reviewed without the review of the policy such as the wildlife policy and law. There needs to be some consistency in the development of policy and law. As the country is aligning the policy and legal framework to the new constitution, the policies should be developed and enacted first then the attendant laws. The process of policy development ensures that there is wide stakeholder participation both in different government institutions and in the different sectors of society. Wide participation ensures that there is reduced conflict and overlap in the laws enacted. In addition every natural resource sector in Kenya should have a guiding policy framework.

Conclusion

Kenya will continue to be highly dependent on natural resources for her economy and the livelihoods of the majority of Kenyans. The new constitutional dispensation ushered in 2010 brought in a new era of devolution of not only political power but also the management of resources. Although CBNRM is not new in Kenya, a well coordinated approach to it has not yet been embraced. Integration of CBNRM could be the mechanism that the country needs to ensure the democratic development and equality that Kenyans are striving for.

References

Agenda 21, The United Nations Program of Action from the United Nations Conference on Environment and Development, 3 to 14 June 1992, Rio de Janeiro, Brazil

Agrawal, A. and Gibson C. C., (1999), Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation, *World Development*, Vol 27, No. 4, pp. 629 -649

Agrawal, A. and Gupta, K., (2005), Decentralisation and Participation: The Governance of Common Pool Resources in Nepal's Terai, *World Development*, Vol 33, No. 8, pp 1101-1114

Akech, M., (2008), Governing Water and Sanitation in Kenya, in Okidi, C.O., Kameri- Mbote, P. and Akech, M., (Eds), *Environmental Governance in Kenya, Implementing the Framework Law*, East Africa Educational Publishers (EAEP), Nairobi

Angwenyi, A., (2008), An Overview of the Environment and Coordination Act in Okidi, C.O., Kameri- Mbote, P. and Akech, M., (Eds), *Environmental Governance in Kenya, Implementing the Framework Law*, East Africa Educational Publishers (EAEP), Nairobi

App, B., et al, (2008), USAID Support to the Community Based Natural resource Program in Namibia: LIFE Program Review

Armah F. A., Yawson D. O. & Johanna A. O., (2009), 'The Gap Between Theory and Practice of Stakeholder Participation: The Case of Management of The Korle Lagoon, Ghana', *5/1 Law, Environment and Development Journal*, p. 73

Awimbo, J., Barrow, E., and Karaba, M., (eds) (2004), *Community Based Natural Resource Management in the IGAD Region*, IGAD and IUCN, Scanhouse press Ltd

Bandyopadhyay, et al., (2004), *Do Households Gain from Community-based Natural Resource Management? An Evaluation of Community Conservancies in Namibia*, World Bank Policy Research Working Paper 3337

Braganza, G., and Erdmann, T.K., (2012), Proceedings Of The Consultative Workshop: Stocktaking Of CBNRM in the Philippines, Crowne Plaza Hotel, Pasig City, Philippines June 30, 2011

Brown, J. and Bird, N., (2011), *Sustainable Natural Resource Management in Namibia: Successful Community-based Wildlife Conservation*, Overseas Development Institute (ODI)

Boudreaux, K., (2007), *Community –Based Natural Resource Management and Poverty Alleviation in Namibia: A Case Study*, Mercatus Policy Series, Policy Comment No. 10, Mercatus Centre, George Mason University

Cassidy, L., (2000), *CBNRM and Legal Rights to Resources in Botswana*, CBNRM Support Programme, Occasional Paper No.4, IUCN/SNV CBNRM Support Programme, Gaborone

Clarke R. A., (2009), *Securing Communal Land Rights to Achieve Sustainable Development in Sub-Saharan Africa: Critical Analysis and Policy Implications*, *5/2 Law, Environment and Development Journal*, p. 130

Constitution of Kenya, (2010) Article 63, (1)

Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention), accessed at <http://www.unece.org/env/pp/documents/cep43e.pdf>

Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar (Iran), 2 February 1971, UN Treaty Series No. 14583, as amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987."

Corbett, A. and Jones, Brian T.B, (2000), *The Legal Aspects of Governance in CBNRM in Namibia*, DEA Research Discussion Paper, No. 41, Directorate of Environmental Affairs, Ministry of Environment and Tourism, Namibia

DANIDA, (2007), *Community Based Natural Resource Management*, Ministry of Foreign Affairs of Denmark, accessed at www.danida-publikationer.dk

Department of Provincial and Local Government (DPLG), Republic of South Africa,(2005), *National Policy Framework for Public Participation (draft)*,

Fabricius, C. and Collins, S., (2007), *Community-Based Natural Resource Management: Governing the Commons*, IWA Publishing, accessed at <http://www.iwaponline.com/wp/009S2/0083/009S20083.pdf>

Glesne, C. (1999) *Becoming Qualitative Researchers* (2nd ed.), New York

Government of Botswana, 2007, *Community Based Natural Resource Management Policy*, Government Paper No 2 of 2007, Gaborone

Government of Botswana, 2002, *Revised National Policy for Rural Development*

Government of Botswana, 2003, *Presidential Directive Cab 14/2003*

Government of Botswana, 2006, *Vision 2016*

Government of Botswana, 1986, *Wildlife Conservation Policy*, No. 1 of 1986, Gaborone

Government of Botswana, 1992, Wildlife Conservation and National Parks Act, Gaborone

Government of Botswana, 1990, Tourism Policy, No. 2 of 1990, Gaborone

Government of Botswana, 1992, Tourism Act, No. 22 of 1992), Gaborone

Government of Botswana, 1995, Savingram on Minimum Conditions for Communities Seeking Hunting Quotas and Resource Leases, Gaborone

Government of Botswana, 2007, Community Based Natural Resource Management Policy, Government Paper No 2 of 2007, Gaborone

GOK, Constitution of Kenya (2010)

GOK, Laws of Kenya, Environmental Management and Coordination Act

Golin, K.L. and Kho J. L., (2002), *After the Romance: Rethinking Community Participation and Sustainability, A Review of Philippine CBNRM*, Philippine CBNRM Review: Working Paper Series.

Guiang, E.S., Borlagdan S. B., Pulhin J. M., (2001) *Community-Based Forest Management in the Philippines: A Preliminary Assessment*, Institute of Philippine Culture, Ateneo de Manila University, Quezon City

International Law Association (ILA) Resolution 3/2002: New Delhi Declaration Of Principles Of International Law Relating to Sustainable Development , in *ILA, Report of the Seventieth Conference*, New Delhi (London: ILA, 2002). <http://www.ila-hq.org>

Jones, B. T. B., (2004), *Summary Report: Lessons Learned and Best Practices for CBNRM Policy and Legislation in Botswana, Malawi, Mozambique, Namibia, Zambia and Zimbabwe*, WWF

Jones, Brian T.B, (2004), *CBNRM, Poverty and Sustainable Livelihoods: Developing Criteria for Evaluating the Contribution of CBNRM to Poverty Reduction and Alleviation in Southern Africa*, Occasional Paper Series, Centre for Applied Social Sciences (CASS) University of Zimbabwe and Programme for Land and Agrarian Studies(PLAAS)University of Western Cape.

Jones, Brian T.B, (2007), *Synthesis of the CBNRM Policy and Legislation in Botswana, Malawi, Mozambique, Namibia, Zambia and Zimbabwe*, WWF-SARPO Occasional Paper Number 16

Jones, Brian T. B., (1999), *Community-based Natural Resource Management in Botswana and Namibia: An Inventory and Preliminary Analysis of Progress*, Evaluating Eden Series Discussion Paper No. 6, IIED

Kameri-Mbote, P., (2008), *Aligning Sectoral Wildlife Law to the Framework Environmental Law in Okidi*, C.O., Kameri- Mbote, P. and Akech, M., (Eds), *Environmental Governance in Kenya, Implementing the Framework Law*, East Africa Educational Publishers (EAEP), Nairobi

Kenya Land Alliance, (2006), *Wise or Unwise Use: A Survey of Some Wetlands in Kenya*, unpublished

Kenya Wildlife Service, 2012 (website) www.kws.org

Kenya Wildlife Service, Report of the Proceedings of Strategic Planning Workshop for the Community Wildlife Service Department, held in Nairobi, Kenya 29 -1 July 1992

Kho, et al, (2000) *Community Based Natural Resources Management (CBNRM) in the Philippines: An Annotated Bibliography*, Draft Philippine CBNRM Review Working Paper, Ford Foundation

Lynch, O. and Harwell, E., (2002), *Whose Resources? Whose Common Good?: Towards a New Paradigm of Environmental Justice and National Interest in Indonesia*, Center for International Environmental Law (CIEL) in collaboration with HuMa, ELSAM, ICEL and ICRAF

Makoloo, M.O, Makutsa, P.W and Kapiyo, V.O, (2011), *The Ban on Logging: Legal Status and Its Impact on the Forest Sector and the Economy*, Institute for Law and Environmental Governance (ILEG), Nairobi, Unpublished

Malo M., Odera J., and Ochuodho, T., (2008), *Challenges And Opportunities In Community Based Dryland Natural Resources Management*, Regional Programme on Sustainable Use of Dryland Biodiversity (RPSUD), National Museums of Kenya, accessed at http://www.uneca.org/aec/documents/Meshack%20Malo_Jeff%20Odera%20Thomas%20Ochuodho.pdf

Mbugua, D. K., *The Forest Revenue System and Government Expenditure on Forestry in Kenya*, Working Paper: FSFM/WP/11, Food and Agricultural Organization (FAO), 2003 Available at: <ftp://ftp.fao.org/docrep/fao/008/af165e/af165e00.pdf> [Accessed 8 May 2011]

Medvey, J., (2010), *Benefits or Burden? Community Participation in Natural Resource Management in the Greater Kruger Park Area*, (A Thesis Submitted in Partial Fulfilment for the Degree of Master of Science, Environment and Resource Management) IVM, Vrije Universiteit, Amsterdam

Ministry of Environment and Tourism, Namibia, 1995 'Policy on Wildlife Management, Utilisation and Tourism in Communal Areas'

Ministry of Environment and Tourism, Namibia, 1995 'Policy on Community Based Tourism Development'

Ministry of Environment and Tourism, Namibia, Forest Policy Statement, accessed at <http://www.met.gov.na/Pages/PoliciesandLegislations.aspx>

Mwangi Geita, 'Threat to Rare Tree Species', Daily Nation, (Nairobi 11 April 1997)

Naidoo et al., (2011), Namibia's Community- Based Natural Resource Management Programme: An Unrecognized Payments for Ecosystem Services Scheme, *Environmental Conservation* 38 (4): 445-453

NACSO, (2011), Namibia's Communal Conservancies: A Review of Progress 2010, NACSO, Windhoek, Namibia.

NASCO 2012 (website), www.nasco.org.na

Nelson, F., and Agrawal, A., (2008), Patronage or Participation? Community- Based Natural Resource Management Reform in Sub-Saharan Africa, *Development and Change*, 39(4):557-585, Institute of Social Studies, Blackwell Publishing

Ngare Ndare Forest Trust, (2008), Ngare Ndare Forest Management Plan 2008 -2013

Nunan, F., Empowerment and Institutions: (2006), Managing Fisheries in Uganda, *World Development* Vol 34, No. 7, pp. 1316-1332

Odote, C.O, (2013), Governance of Community Land in Kenya, unpublished

Odote, C.O., (2008), Wise Use and Sustainable Management of Wetlands in Kenya, in Okidi, C.O., Kameri- Mbote, P. and Akech, M., (Eds), *Environmental Governance in Kenya, Implementing the Framework Law*, East Africa Educational Publishers (EAEP), Nairobi

Ostrom, E. (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*, New York: Cambridge University Press.

Patton, M. Q. (2002) *Qualitative Research and Evaluation Methods* (3rd ed.) Thousand Oaks, CA: Sage Publications.

Pulhin, J. M., Amaro, M.C., and Bacalla, D., (2005), *Philippines Community- Based Forest Management 2005*, Country Report presented during the Community Forest Forum Organised by the Regional Community Forestry Training Centre (RECOFTC) held on 24-26 August 2005, Bangkok, Thailand.

Rihoy, E. and Maguranyanga, B., (2007), *Devolution and Decentralisation of Natural Resources Management in Southern Africa: A Comparative Analysis of CBNRM Policy Processes in*

Botswana and Zimbabwe, Centre for Applied Social Sciences (CASS) University of Zimbabwe and Programme for Land and Agrarian Studies (PLAAS) University of Western Cape.

Roe D., Nelson, F., Sandbrook, C. (eds.) (2009), *Community Management of Natural Resources in Africa: Impacts, Experiences and Future Directions*, Natural Resource Issues No. 18, International Institute for Environment and Development, London, UK.

Rotha, K. S., (2005), Understanding Key CBNRM Concepts, in *The Development of Community Based Natural Resource Management (CBNRM) in Cambodia*, CBNRM Learning Institute, Cambodia

Rotha, K. S., (2009), Participatory Approaches Towards Sustainable Development: Is Public Participation an Answer, in, Beaupre P., Taylor. J., Carson, T., Han, K., & Chinda, H.,(Eds-English), *Emerging Trends, Challenges and Innovations in Community Based Natural Resource Management (CBNRM) in Cambodia*, Volume 2, CBNRM Learning Institute, Cambodia

Rozwadowska, A., (2010), *The Potential for Community Based Natural Resource Management (CBNRM) Affiliated with BC's Protected Area System*, (A Thesis Submitted in Partial Fulfilment for the Degree of Master of Arts, Department of Sociology, University of Alberta in 2002), University of Victoria.

Ruppel, O. C., and Ruppel-Schlichting, K., (Eds), *Environmental Law and Policy in Namibia*, Hanns Seidel Foundation Namibia and Legal Research and Development Trust of Namibia, OrumbondePress.na and Welwitschia Verlag Dr. A. Eckl, Essen

SARPO Regional Project for Community-based Natural Resource Management (CBNRM) Capacity Building in Southern Africa, accessed at http://www.tnrf.org/files/E-INFO_WWF_SARPO_CBNRM_Summary_Report_0.pdf

Segger M. C., Khalfan, A. and Nakjavani S., (2002), *Weaving the Rules for Our common Future: Principles, Practices and Concepts for International Sustainable Development Law*, Centre for International Sustainable Development Law, McGill University, Montreal Canada, p. 14 – 15

Sifuna, N., (2010), Community- Based Natural Resource Management – Suitability and Effectiveness, *Environmental Policy and Law*, 40/4, IOS Press

Signa,D., Tuda, P.M., & Samoilys,T., 2008, Social Economic and Environmental Impacts of Beach Seining Kenya: An Information Review and Field Study, Food and Agriculture Organisation (FAO) and Coastal Oceans Research and Development Indian Ocean (CORDIO) Eastern Africa

The World Bank, (1999), Report from the International CBNRM Workshop, Washington D.C., 10-14 May 1998, accessed at <http://worldbank.org/wbi/conatrem/>

World Commission on Environment and Development, (1987), *Our Common Future*, Oxford: Oxford University Press

Vogt, H. P and Willoughby, N. 1998, *Involving Fishing Communities in Marine Protected Area Development: The Establishment of Marine Reserves in Negros Oriental, Philippines*, The World Bank/WBI's CBNRM Initiative, accessed at <http://srdis.ciesin.columbia.edu/cases/philippines-001.html>

Appendices

Appendix 1

KEY INFORMANT INTERVIEW GUIDE COMMUNITY REPRESENTATIVE

1. When and why was the group formed?
2. Who initiated the formation of the group?
3. How does one become a member of the group?
4. How many members does the group currently have? How many are women, men, youth?
5. How are the leaders chosen for the group?
6. What is the physical area of coverage of the group?
7. Is the group legally registered? Under what law/ministry?
8. Which resource and how many other resources can the group get involved in?
9. Which government institution does the group work with?
10. What is (are) the role(s) of that/those institution(s) in the affairs of the group?
11. What is the responsibility of individual members of the group with regard to the resource?
12. How do individual community members in the group benefit from this arrangement?
13. How do non members in the community benefit from the resource?
14. What is the arrangement with regard to other resources in the same area in terms of management, utilization and conservation?
15. Are there members of the group who are members of other groups in the same area?
16. Do you experience any conflict between different groups in the area?
17. Are there any benefits/challenges of having many groups in the same area dealing with different resources?
18. Have anyone ever thought of having one community group that is involved in all the resources in the area with the different government institutions and ministries?

Appendix 2

KEY INFORMANT INTERVIEW GUIDE GOVERNMENT INSTITUTIONS' REPRESENTATIVES

1. Please provide a brief summary of what the institution's mandate is.
2. Do you work with communities in the management, utilization and conservation of the resource?
3. Are there mechanisms in place to ensure that communities are involved in the management of the resource?
4. Do you have any law or policy that guides the institution to involve communities in the management of the resource? If so, what are they?
5. Does the institution have a strategy for community involvement?
6. What are the requirements (legal or practical) for communities to get involved in the resource management?
7. Is the institution involved in the formation of community institutions that are aimed at resource management? If yes, what role does the institution play?
8. How do communities that are members such institutions benefit in the management of the resource? How about non-members?
9. In Ngare Ndare Forest, if the resident community already has an existing institution can your organization involve them directly or they need to meet certain threshold? If not, what are the requirements
10. How do you share benefits from the resource with communities?
11. Does your institution receive any benefit by involving communities in the management of the resource?
12. What are the challenges of involving communities in resource management? How do you overcome them?

Appendix 3

KEY INFORMANT INTERVIEW GUIDE NON GOVERNMENTAL ORGANISATIONS' REPRESENTATIVES

1. What is the role of the NGO sector in the management, utilization and conservation of natural resources in the area?
2. How does the NGO relate to the government institutions with regard to the resources?
3. How does the NGO relate to the community with regard to the resources?
4. What is your view of level of involvement of communities in the management, utilization and conservation of natural resources in the area?
5. How do communities benefit from the current involvement with government institutions in the management of the resource?
6. How do the government institutions benefit from involvement of communities in the management of the resource?
7. Do communities form different institutions for every type of natural resource in the area or is one institution sufficient to allow community involvement (given the different government institutions involved)?
8. What is your opinion of the current arrangements for community – government partnership in natural resource management?
9. What are the challenges in these arrangements?
10. In your opinion what would you propose as a viable option to ensure community involvement and benefit sharing in the management of natural resources in the area?