

VERTICAL INTEGRATION AND LEARNING FOR LOW-EMISSION DEVELOPMENT IN AFRICA AND SOUTHEAST ASIA



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Climate Change Governance in Kenya

By adelphi and the Institute of Law and Environmental Governance (ILEG)



Preface

The V-LED project (Vertical Integration and Learning for Low-Emission Development) aims to strengthen multi-level climate governance processes in Kenya, South Africa, Philippines and Vietnam. The project is part of the International Climate Initiative (IKI) from the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) and is implemented between 2015 and 2019.

Throughout these four years, the consortium is observing and analysing national climate governance processes in the countries with the aim to understand what factors stimulate climate action at the local level and how coordination across and between government levels can enable local climate action.

Towards the end of the project, the consortium will present its research findings in four country studies and one synthesis report.

This input paper for the V-LED Regional Workshop Africa shares some of our observations and preliminary findings as a starting point for discussion.

We very much welcome your comments and suggestions – during the workshop or by writing to: v-led.team@adelphi.de.

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Introduction

In 2010, through a fascinating process that has put participation at the centre of its governance system, Kenya adopted a new constitution. The nation thus embarked on a devolution path with a complex matrix of national and devolved functions, aimed at steering the country towards achieving its sustainable development blueprint as captured in the Vision 2030. This vision calls for appropriate climate change adaptation and mitigation responses. Indeed, climate impacts are increasingly felt across Kenya: extreme events occurring at a higher frequency and long term changes eroding the country's shores, natural resource base and livelihoods.

Climate change clearly cuts across geographical boundaries, sectors and levels of governance. This begs critical pertinent questions: How can the devolution processⁱⁱ, the vision of economic growthⁱⁱⁱ, and the necessity to embark on a low carbon climate resilient pathway^{iv} be simultaneously achieved? At what scales is climate change governed and action implemented? What actors are needed across the different levels of governance?

This paper examines some of the critical issues germane to climate change governance in Kenya's devolved system. The first section will present how devolution and climate resilient development interplay; the second section will discuss what the expanding range of actors working on climate change bring to the table; and finally the third will argue that there is a "missing link" in the equation when addressing the associated scale of transboundary ecosystems in climate governance and action.

Climate Change Governance in Kenya

The Constitution of Kenya (2010) provides the overarching framework upon which the ongoing devolution process is anchored. The nation has developed a comprehensive climate change governance system (described in Box 2) guided by the National Climate Change Action Plan's (NCCAP) understanding that "climate change is a crosscutting issue to be mainstreamed in national planning and

development processes, and in policy decisions across all sectors of the economy" and that both adaptation and mitigation should be addressed^v. There is a growing effort to guide and support county governments to translate the national vision into local climate action.

Box 1. What is Multi-Level Climate Governance?

"Multi-level climate governance encompasses the structural and institutional setting in which different levels of government distribute roles and responsibilities, coordinate and cooperate on climate action; as well as the specific instruments that are implemented at different levels of government to support and implement local climate action".

Devolution and the low carbon climate resilient pathway

The devolved governance system established by the Constitution of Kenya (2010) has significantly restructured the heavily centralised State. It created a two-tier governance system with a national government and 47 semi-autonomous county governments with executive and legislative powers. The 2013 elections marked the official launch of one the fastest and most ambitious devolution processes in the world^{vi} with the election of county governors and the establishment of county assemblies.

The interesting conundrum of devolution and climate change is that "climate change [impacts] on the functions and sectors devolved to the county governments and devolved functions and sectors [also impact] on climate change"^{vii}. Climate change also cuts across several sectors and adaptation and mitigation choices in one sector, or at one level of government, can impact another sector or another level of government. Therefore, local climate action requires suitable planning and allocation of resources for climate action by both government levels.

Box 2. Kenya's Climate Regime

Main Climate Impacts

- High regional variability of precipitation and differentiated exposure to extreme events such as drought and floods and to rising sea levels, coastal erosion and coastal storms.
- It is estimated that 42% of Kenya's GDP and 70% of overall employment is derived from natural resource related sectors which are highly sensitive to climate change and variability^{viii}.

Largest Sources of GHG Emissions

Table 1: National GHG Emission Trends by Sector (1995 to 2030)^{ix}

Sector	Baseline Emissions (MtCO _{2e})							
	1995	2000	2005	2010	2015	2020	2025	2030
Agriculture	24	23	26	30	32	34	36	39
Electricity Generation	0	1	1	1	1	12	24	42
LULUCF	10	21	18	21	26	25	23	22
Transportation	4	4	4	7	9	12	16	21
Energy Demand	4	5	5	6	7	8	9	10
Industrial Processes	1	1	1	2	3	4	5	6
Waste	1	1	2	2	2	3	3	4
TOTAL	44	55	57	70	80	96	115	142

Key Climate Policies

- National Climate Change Response Strategy (NCCRS 2010)
- National Climate Action Plan (NCCAP 2013-17), currently being updated
- National Adaptation Plan (NAP)
- Nationally Determined Contributions (NDC)
- Green Economy Strategy and Implementation Plan (GESIP) (2016-2030)
- Climate Change Act (2016) and Draft National Policy on Climate Finance
- 2nd national communication to the UNFCCC (2015)

Key Climate Governance Bodies

- Since the enactment of the Climate Change Act 2016 much is still in transition. The Act created the National Climate Change Council (NCCC), chaired by the president, as a multi-stakeholder platform and overarching coordination mechanism.
- The Climate Change Directorate (CCD) under the Ministry of Environment serves as the secretariat to the NCCC and is the principal government agency on national climate actions and operational coordination. It provides technical assistance to subnational governments.
- The National Environment Management Authority (NEMA) is tasked with overseeing monitoring and implementation.
- The Act envisages the setup of climate change units in all government departments and agencies to mainstream climate change.

Key Climate Finance Mechanisms

- The Climate Change Act 2016 created a National Climate Change Fund vested in National Treasury.
- The National Treasury is Kenya's Green Climate Fund National Designated Authority (NDA) and oversees GCF funded projects in the country.
- NEMA is the National Implementing Entity (NIE) for the Adaptation Fund (AF) and is an accredited entity for the GCF.
- The National Treasury is developing a Climate Change Budget code for tracking climate finance.
- At the subnational level, Makeni County is the first to enact a County Climate Change Fund (2015).

Climate change is not listed as a function of either the national or county governments in the Constitution's Fourth Schedule. In accordance with the Constitution, this suggests that climate change is a function of the national government. However, many actions required for climate change adaptation and mitigation require the exercise of functions by county governments, such as agriculture, development planning and others. Climate change governance hence involves concurrent jurisdictions across both levels of government.

Whereas county governments play an important role in implementing national strategies and policies, counties do not have jurisdiction^x over some sectors relevant to climate action such as the use of water resources which are managed by the Kenyan Water Tower Agency^{xi}. In terms of forestry^{xii} and soil and water conservation, the county is in charge of implementing the national policies. These functions remain with the national relevant institutions, such as the Kenya Wildlife Service (KWS) or the Kenya Forestry Service, which largely maintain their presence at the county level. This creates a duality of function and attendant conundrum for planning and budgeting of climate action at the county level.

Planning

With devolution, county governments have been granted the authority and responsibility to plan the development of their county according to local needs and priorities. They are mandated to prepare a 5-year County Integrated Development Plan (CIDP), a 10-year county spatial plan and county sectoral plan as the basis for all budgeting and spending in the county. Both the Constitution and the County Government Act (2012) provide for mandatory public participation in the county planning process.

The county plans have to be aligned with the national five-year development plans of Kenya's long-term development strategy (Kenya Vision 2030). The Climate Change Act 2016 further requires county governments to mainstream climate change in their sector plans and policies and it establishes that each county should nominate a member of its county executive committee (CEC) to act as a focal point for climate change issues.

In the context of climate change, the prevailing scenario begs a number of pertinent questions: To what extent are county sector plans aligned to national climate change, green economy or sustainable development objectives? Knowing that everything cannot be integrated into everything, what are the entry or leverage points for mutual benefit between sectoral development and climate resilience? What would ensure that climate resilient investment choices are financed through the annual county budgets?

Budgeting

County governments are allocated at least 15 per cent of national budget revenue, giving them considerable scope to influence local investments, including investments on climate change responses. Indeed, some counties have set up County Climate Change Funds (CCCF). In Makueni, for instance, the public finance management act 2015 set aside 1% of the annual budget for climate actions. Many more counties are grappling with efforts towards the same end. Generally, however, climate actions are usually given low priority during budgeting processes due to low levels of awareness and weak political support.

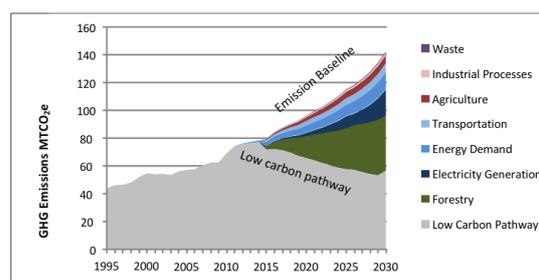
Projects and budgets need to be approved by the county assembly. As in many parts of the world, election cycles tend to shape decisions of elected officials, favouring visible, quick-fix solutions over future-looking longer term investments needed to respond to climate change. Ojwang *et al.* (2017) note in their research on local climate change governance in three coastal counties, that the local governments “have no systematic approach to making evidence-based decisions on adaptation. Most activities being implemented are a response to community demands and largely informed by expert knowledge of county officers. These are often valid, but counties run the risk of underestimating the gravity of some climate risks and poorly conceptualizing responses, potentially leading to maladaptation”^{xiii}.

Emerging new actors: the climate change monopoly of donors is challenged

For many years, Kenya’s climate change architecture was strongly driven by bi- and multi-lateral agencies working with the national government and implementing programmes at the sub-national level, often through project management units that sometimes by-passed the subnational governance structure. But, the devolution process, coupled with donor investment at the “meso” level - now the county – has since created a stronger county level sovereignty on how climate actions are to be implemented.

Next to stronger subnational governments, non-state actors are also increasingly playing a role. The abatement potential of the different sectors (see fig. 2 below) means new business opportunities. Consequently, new actors that understand climate risks, but also the benefits of low carbon, climate resilient development, are entering the scene: some multi-national food and horticulture industry (e.g. Syngenta) and the giant mobile network operator SAFARICOM who not only invests in renewable energy (MKOPA) but also inspires and supports the national government in drafting appropriate mitigation policies.

Figure 2: Composite abatement potential for all sectors for Kenya (technical potential) in MtCO₂e^{xiv}



The insurance sector is also increasingly interested in insuring people and infrastructure against climate risks and can work hand in hand with banks and other financial institutions.

As a consequence, the variety of actors involved in climate change governance and action is growing. These actors often speak different “languages” and shape the climate agenda from different perspectives. How does

the national and county government interact with these new actors in a concerted manner?

Next to the emerging role of private actors in climate change governance and action, the devolution process has opened up democratic space for citizen participation in decision making. This is clearly stipulated in legal instruments such as the Constitution of Kenya (2010), the County Government Act (2012), and the Public Finance Management Act (2012).

By strengthening citizens' knowledge of their rights, coupled with "the presence of NGO's, networks and resource user-groups [...] the capacity of communities to understand and articulate climate change issues has the potential of driving realignment of local priorities with projected climate risks"^{xv} and empower citizens and CSOs to hold their county and national government accountable.

However, since climate change is not clearly demarcated as a specific function of either level of government and given that the devolution process is still ongoing, county governments need clarity on their mandates and functions related to climate change, so that they can respond to the citizens' demands. In turn, the national government should provide the enabling environment, the clarity of mandates, the knowledge base for sound investment choices by both the county assembly and its executive committee including when new actors enter the playing field.

Box 3. Vertical coordination of county actions with the national system takes place through various mechanisms, including the Climate Change Act. It acknowledges the complimentary roles of the national and county governments in climate change issues and aims to "integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between the national and county governments"^{xvi}.

Missing scales in climate governance

With the emerging role of sub-national and non-state actors and with different sectors, functions and investment choices involved in climate resilient development, some questions

remain: At which scale is climate change governed and actions implemented? How are transboundary climate impacts managed?

Transboundary scales

Fig. 2 clearly shows that forestry has the biggest abatement potential, and table 1 shows that the highest emission increase between now and 2030 is electricity generation (from 1 to 42 MtCO₂e) and transport (from 9 to 21 MtCO₂e). On the other hand, forestry is not managed *by* the county government, but *at* the county level by institutions of the national government (i.e. KFS) and might clash with other sectoral priorities such as agriculture expansion, energy provision, or construction. How can we ensure that water towers that are protected by the forest can benefit from local climate action in a cross-sectoral manner when governance functions lay *both* at the national *and* sub-national level?

In order to manage the highly vulnerable natural resource base on which so much of the Kenyan economy and the people's wellbeing depend on, climate change governance needs to take into account the scale of transboundary ecosystems such as the water catchment, to manage both the climate impacts *on* and *from* different sectors and devolved functions.

Given this need, an important aspect of climate change governance in Kenya will be to strengthen the horizontal coordination and cooperation between counties in order to address climate change at the appropriate scale and find solutions to transboundary issues. Additionally, given the cross-sectoral nature of climate change, horizontal coordination across sectors and between mandates and functions of departments within a county is equally essential, as is the vertical coordination between government levels to address for example the climate impacts *on* and *of* national functions such as the mining, forestry and water sector.

The Kenya Water Tower Agency, for example, "co-ordinates and oversees the protection, rehabilitation, conservation, and sustainable management of water towers"^{xvii}. The agency collaborates with the Kenya Forestry Service on protecting the forest cover crucial to water conservation. One of the gazetted water

catchments to become a water tower is the “Shimba Hills” of Kwale County. The Shimba Hills share the same catchment area as the large Dams built by an international mining company and a national sugar factory. The national Kenya Water Resource Authority issues permits for the construction of these dams, and the prospecting or licenses are issued by the Mineral Rights Board and the National Land Commission. These national level decisions have a direct impact on the water catchment and compete directly with the livelihood and household use of the population of Kwale. The droughts and famine of 2016 is a sad illustration of the inadequate management of water resources.

The illustrated transboundary issue is an example of how some resources are governed by multiple actors at the national level; and the county level has limited direct mechanisms to engage in those decisions and processes. On the other hand, the county does have a clear mandate in planning and budgeting. How could we ensure that national decisions are coordinated with county processes and decisions? Which mandates for coordination need to be institutionalised?

Weak Urban Governance

Demands for electricity and transport increase with Kenya’s sharp population growth (about 1 million a year^{xviii}) and the ensuing rural-urban migration. However, with the devolution reform, cities and urban areas have been reclassified using population thresholds that have led to the elimination of virtually all urban local governments. This has “ironically reduced democratic representation and raised potential obstacles to effective urban management and for the governing of cities in general”^{xix}.

The decentralisation of county government functions and the provision of its services to urban and non-urban sub-counties are provided for in the Constitution, the County Governments Act 2012 and Urban Areas and Cities Act 2011 under which there are currently one city (Kisumu), two municipalities (Nakuru and Eldoret) and 103 towns. Cities as such are not responsible for service delivery as services are delivered by county or national government^{xx}. A question that remains is: how can this “missing” urban governance level be

addressed to enable effective urban planning for low carbon, climate resilient urban development?

Conclusion on key learnings

- Multi-level climate governance in Kenya is still highly dynamic. After the launch of devolution, power dynamics in the country have shifted and many institutions are still gradually being set up. The Climate Change Act has equally created new institutional arrangements for governing climate change that are still being negotiated and formalized. The complex devolution of functions does take time, which also means that there is a transition period in which the division of mandates between the different levels of government is not entirely clear. There have been, however, many different efforts throughout the years to clarify these mandates^{xxi}.
- Since the adoption of the new Constitution eight years ago, there has been a significant increase of awareness and efforts in mainstreaming climate change in development planning processes. As counties are more and more in charge of planning their development and economic growth, they are also increasingly taking into account climate change concerns (whilst increasingly confronted with climate risks), and, as mandated by the Climate Change Act, are gradually creating institutional homes for climate change at the local level.
- Debates on development planning are increasingly picking on subjects of climate resilience and low carbon development, and there is a deliberate effort to learn from counties like Makeni.
- Despite that, there is no specific allocation or setting aside of resources for effecting the intentions. Newly built infrastructure is not climate resilient and there are so far no specific budgetary allocation matching the intentions. Climate change programming is still project-based and donor-led, even in the context of Makeni.
- The national climate change council is not fully operationalised yet and is working through questions of representation. It needs continuing process of integration, learning and confidence building as they seek to streamline their functions and increase their understanding and certainty in what works best in pursuit of low carbon climate resilience development.

ⁱ Eleni Dellas, Paola Adriázola and Dennis Tänzler 2018: Supporting Local Climate Action: Multi-Level Governance Instruments for Climate Change Mitigation and Adaptation at the Local Level. Berlin: adelphi.

ⁱⁱ Government of the Republic of Kenya (GoK) 2010a: Constitution of Kenya.

ⁱⁱⁱ GoK 2012: Kenya Vision 2030: A globally competitive and prosperous Kenya, Nairobi: Ministry of Planning and National Development and the National Economic and Social Council (NESC).

^{iv} GoK 2013: National Climate Change Action Plan 2013-2017. National Climate Change Action Plan: Ministry of Environment, Water and Natural Resources. The plan is currently under review.

^v Ibid.

^{vi} World Bank Group 2014: Accountable Devolution Program. Insights from the Governance Partnership Facility in Kenya. Retrieved 18.04.2018, from: http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/9059_GPFLearningSeries_Kenya_Web.pdf

^{vii} GoK (undated): Mainstreaming Kenya's National Climate Change Action Plan into the Devolved Government Structures. Retrieved 18.04.2018, from: http://www.kccap.info/index.php?option=com_phocadownload&view=category&download=206:mainstream-devolution-sector-brief&id=34:resilience.

^{viii} GoK 2015: Second National Communication to the UNFCCC. National Environment Management Authority. Retrieved 18.04.2018, from: <https://unfccc.int/resource/docs/natc/kennc2.pdf>

^{ix} Ibid.

^x GoK 2010b: Constitution of Kenya. Fourth Schedule Distribution of functions between National and the county governments.

^{xi} Kenya Water Tower Agency: <http://www.kwta.go.ke/>

^{xii} With the exception of community forests and private lands.

^{xiii} Ojwang, Lenice, Rosendo, S., Celliers, L., Obura, D., Mui, A., Kamula, J., and Mwangi, M. 2017: Assessment of Coastal Governance for Climate Change Adaptation in Kenya. *Earth's Future*, 5, 1119–1132.

^{xiv} GoK 2015: Second National Communication to the UNFCCC. National Environment Management Authority. Retrieved 18.04.2018, from: <https://unfccc.int/resource/docs/natc/kennc2.pdf>

^{xv} Ojwang *et al.*, 2017, p. 1128.

^{xvi} GoK 2016a: Climate Change Act.

^{xvii} Kenya Water Tower Agency: <http://www.kwta.go.ke/>

^{xviii} GoK 2016b: Green Economy Strategy and Implementation Plan 2016-2030 (GESIP), p. 9.

^{xix} M. Bassett, Ellen. 2016: Urban Governance in a Devolved Kenya. In book: *Governing Urban Africa*. 73-98.

^{xx} Commonwealth Local Government Forum (undated): Kenya Country Profile. The local government system in

Kenya. Retrieved 18.04.2018, from: http://www.clgf.org.uk/default/assets/File/Country_profiles/Kenya.pdf

^{xxi} Friedrich Ebert Stiftung 2013: Devolution made simple. A Popular Version of County Governance System. Retrieved 18.04.2018, from: <http://library.fes.de/pdf-files/bueros/kenia/10642.pdf>