The Ramifications of Devolution on Environmental Governance in the Lake Victoria Basin: Tanzania, Kenya and Uganda in a Comparative Perspective

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Abstract

The three East African countries of Tanzania, Kenya and Uganda ratified the Protocol for Sustainable Development of Lake Victoria Basin in 2003 under the auspices of the East African Community (EAC), which among other things, aimed at improving the state of environmental governance in the basin. The actual implementation and enforcement of the Protocol takes place at the local government level, as the national governments support, monitor and provide the overall policy and legal instruments. Despite the different trajectories of devolution in the three riparians, there is failure to implement and enforce the Protocol by the local governments. In this article, I disentangle the puzzle: how and why the different trajectories of devolution in the three riparians lead to environmental governance failure at the local level. The findings reveal that what leads to failure, in the case of Tanzania and Uganda, is insufficient powers that are devolved to the local governments. In Kenya, sufficient powers are devolved to the local governments. The problem, however, is that the local governments have had insufficient time to develop the required capacities to implement and enforce the Protocol.

Introduction

Lake Victoria is the second largest freshwater lake in the world with the lake's surface covering 68,800 km^2. The Lake Victoria Basin (LVB) has the size of 194,200 km^2 with a shoreline of approximately 3,450 km long (LVBC 2007; 2012). The basin area is shared between the riparian states of Tanzania (44%), Kenya (22%), Uganda (16%), Burundi (7%) and Rwanda (11%) hence making it one of Africa's largest transboundary water resources (LVBC 2007; 2010). The lake itself is shared between Kenya (6%), Tanzania (51%) and Uganda (43%).

The lake is one of the most important shared natural resource in the East African region. The key natural resources in the basin include fish, biodiversity, water, land, forests, wildlife, and minerals. These resources have made it possible for fisheries, tourism, transport, energy production, agriculture as well as trade to be the main economic activities in the basin. Mkumbo, Tumwebaze and Getabu (2005) reveal that

the lake provides the region with the largest inland water fishing sanctuary with a total harvestable fish biomass of between 700,000 metric tons to 1,000,000 metric tons. The annual income peaks at US$ 500 million equivalent to nearly US$ 1.4 million per day (LVFO 2007). The fishery industry provides employment to over 2 million people living in the basin (Okurut and Weggoro 2011). The lake is the source of drinking water to the human population living in the basin and beyond, and it serves as an important transport and trading conduit between East African Member States and beyond.

Despite its significance to the livelihood in the region, Lake Victoria Basin (LVB) has experienced a serious decline over the years, consequently affecting its resources and productivity. Land degradation and poor land management due to population pressure, eutrophication, biodiversity, and fisheries decline, as well as poverty, are the common problems facing the lake and its basin. For instance, between 2000 and 2003, about 7,084 hectares of the Mau forest, which is considered the water tower of Lake Victoria, were destroyed in Kenya (LVBC 2007; 2010; NEMA 2010). In Tanzania and Uganda, the high population density of humans and animals has caused serious soil erosion and accelerated land degradation.

In 1997, the Summit of the Heads of State of the East African Community (EAC) designated the Lake Victoria Basin as a Regional Economic Growth Zone meaning that it could be exploited jointly by the states sharing the basin (EAC 1997; 2000; LVBC 2007; 2012). This was necessitated by the alarming rate of environmental and resource decline in the basin, which obliged the EAC Partner States to intervene. The intervention efforts aimed at restoring and preserving environmental conditions of the LVB and its entire ecosystem (EAC 1997; 2000; 2011; LVBC 2006; 2012).

The Treaty for the Establishment of the EAC in Article 114, 2 b (vi) establishes a body for the management of the Lake Victoria Basin. This body is established through a Protocol for Sustainable Development of Lake Victoria Basin (Protocol henceforth), which came into effect on 29 November 2003. Indeed, the Protocol is a key policy document, which highlights and sums the intent by the EAC Partner States to sustainably manage the Lake Victoria Basin (LVB henceforth). Likewise, it is the

main instrument that governs the EAC Partner States (Tanzania, Kenya, Uganda, Rwanda and Burundi) cooperation in the sustainable development of the LVB.

Article 3 of the Protocol provides for 14 areas of cooperation among the EAC Partner States in the management of the Lake Victoria Basin (See Annex 1). The Protocol spells out the mandate of the Lake Victoria Basin Commission (LVBC) and recognizes that of the Lake Victoria Fisheries Organization (LVFO). Out of the fourteen areas of cooperation, thirteen are under the mandate of the Lake Victoria Basin Commission (LVBC), which is supposed to promote, facilitate and coordinate interventions among various implementers. One area, specifically the promotion of sustainable development and management of fisheries resources is under the mandate of the Lake Victoria Fisheries Organization (LVFO).

The EAC riparians have to implement and enforce the Protocol in their respective jurisdictions as per the regional agreement. Among other things, they have to develop policy guidelines, laws and regulations, monitor the implementation of the Protocol and submit annual reports to the EAC on their compliance with, and progress, in implementing and enforcing the Protocol (EAC 2004). At the respective riparians level, the actual implementation and enforcement of the Protocol takes place at the local governments, which are in the LVB. As shall become apparent, the local governments in the three riparians are the ones responsible for the management of environment and water resources in their respective areas of jurisdiction. Indeed, the local government authorities in the three riparians play a key role in the implementation and enforcement of the Protocol as much as environmental governance falls under their jurisdiction, function-wise.

The article is motivated by one research question, which is, how and why the different trajectories of devolution in the three riparians lead to environmental governance failure at the local level. Since the ratification of the Protocol in 2003, the local governments, and the riparians in that regard, have experienced failure in implementing and enforcing the Protocol on multiple indicators. Fisheries have continued to decline (Matsuishi et al., 2006; Turyaheebwa 2014), water quality has experienced decline (Lubovich 2009; LVBC 2007) and water imbalance has continued to be a serious and persistent problem in the LVB (Kiwango and Wolanski

2007; Kull 2006; Lubovich 2009; Okurut and Weggoro 2011). In fact, these indicators reveal that environmental and resource crisis in the LVB has become more severe with the implementation and enforcement of the Protocol. Consequently, conflicts between resource beneficiaries of the LVB have intensified (Gettleman 2009; Shaka 2013; UN2; UN4; TB1; KB2).

In tackling environmental governance problems with the multi-level nature, the governance units at the grassroots are of paramount importance. If the units (local governments) are well equipped to cope with their functions and discharge them effectively, then success can be registered. It is at this juncture that devolution sets in. From a theoretical perspective, devolution is viewed as the best way to empower the local governments to discharge their functions in the management of environment and resources in their respective localities (Ferguson and Chandrasekharan 2005; Sayer et al., 2005; UNDP 1999). Against this backdrop, any problems in devolution have some serious bearings on environmental governance at the local level and, eventually, the national level.

In answering the research question, I employ a number of methods. First, I conducted expert interviews during data collection in the three riparians between March and June 2015. The interviewed respondents came from a number of categories, and play a very essential role in the implementation and enforcement of the Protocol. The major respondent categories include (i) regional level officials (East African Community, Lake Victoria Basin Commission and Lake Victoria Fisheries Organization), (ii) national level officials from the ministries responsible for the implementation and enforcement of the Protocol at the riparians level (ministries of water, environment, fisheries, local governments), (iii) local government officials, and (iv) fishers' organizations (Beach Management Units), NGOs and private sector. Further, I analyze various documents, media reports, and scholarly literature on the question at hand to draw some major comparative findings. The responses from the interviews are coded and provided where relevant.

In the following sections I proceed as follows; I briefly highlight the devolution and environmental governance nexus, which is followed by the discussion on the legal foundation and structure of devolution in the three riparians. I then delineate the four

main drivers of failure by the local governments in the LVB to spur environmental governance in the context of devolution and the Protocol. Thereafter, I compare the different trajectories of devolution between the three riparians and show why they all end up with the same outcome.

Devolution and Environmental Governance Nexus

Devolution refers to the transfer of governance responsibility for specified functions to sub-national levels, either publicly or privately owned, that are largely outside the direct control of the central government (Ferguson and Chandrasekharan 2005). The central government relinquishes certain functions by transferring them to autonomous lower-level units that are legally constituted as separate governance bodies (Ferguson and Chandrasekharan 2005; UNDP 1999).

According to UNDP (1999), devolution in its purest form has certain fundamental characteristics. First, local units of the government are autonomous, independent and clearly perceived as separate levels of government over which central authorities exercise little or no direct control. Second, local governments have clear and legally recognized geographical boundaries within which they exercise authority and perform public functions. Third, local governments have corporate status and power to secure resources to perform their functions. Fourth, devolution implies the need to develop local governments as institutions in the sense that they are perceived by local citizens as organizations providing services that satisfy their needs and as governmental units over which they have some influence. Finally, devolution is an arrangement in which there are reciprocal, mutually beneficial, and coordinate relationships between central and local governments. Devolution, often contrasted with other forms of decentralization, is hailed as the best and genuine model of decentralization (Ferguson and Chandrasekharan 2005; Kauzya 2007; Ndegwa and Levy 2004; UNDP 1999).

As much as devolution entails the transfer of governance responsibility from the central government for specified functions to sub-national levels, it, therefore, bodes well with the management of natural resources and the environment by the citizens and institutions that are located in their respective localities. Other forms of decentralization, such as deconcentration, delegation and divestment/privatization are

ill suited for this task and seem to stifle local governance of natural resources and environment (Ferguson and Chandrasekharan 2005; Sayer et al., 2005).

Devolution in Tanzania, Kenya and Uganda: Legal Foundation and Structure

The three countries, which are members of the East African Community (EAC), have rolled out devolution as a reform strategy for a number of reasons. By and large, the reasons boil down to enhancing and promoting good governance and improve service delivery to the citizens in their respective localities. Devolution reforms, therefore, were geared towards promoting, among other things, the involvement of the local citizens and institutions in the management of natural resources and environment in their respective areas of jurisdiction. I briefly discuss the devolution agenda in the three countries under comparison.

Uganda

In Uganda, devolution was first enshrined in the Local Government (Resistance Councils) Statute of 1993. This was followed by the 1995 Constitution of Uganda, which gives a clear constitutional basis for devolution on chapter 11. The Constitution is further supported by the Local Government Act of 1997, which was enacted to cement and consolidate devolution in Uganda. The local government system is formed by a five-tier pyramidal structure, which consists of the village (level I), parish (level II), sub-county (level III), county (level IV), and district (level V) in rural areas, and the village (level I), ward or parish (level II), municipal division, town, or city division (level III), municipality (level IV), and city (level V) in urban areas (Steiner 2006). Therefore, the district and the city are the highest local government levels, while the county, sub-county, municipality, municipal division, town, and city divisions are referred to as lower local government levels. The remaining entities are classified as administrative units (Kauzya 2007; Ndegwa and Levy 2004; Steiner 2006).

The major difference between higher and lower local governments on the one hand, and administrative units on the other is that only the former and not the latter are the corporate bodies with perpetuate succession and a common seal that can sue or being sued in their corporate name (Steiner 2006). It is important to observe that local

governments and administrative units in Uganda are made up of a set of political and administrative structures that are of different magnitudes.

As much as the district/the city is the highest local government level, the administrative structure at this level is more comprehensive than the one in lower local governments. The districts/cities have a number of directorates that are responsible for different sectors such as production, works and technical services, education and sports, health services, finance and planning, and community-based services. Additionally, there is district/city service commission that is tasked with hiring and firing of local civil servants and district/city tender board in charge of local tenders (Steiner 2006). It is important to observe that except for some technical staff, administrative units lack well-established administrative structures (Ndegwa and Levy 2004; Steiner 2006).

The 1997 Local Governments Act comprehensively defines the roles of the local governments in Uganda. The Act stipulates clearly that the local governments and administrative units are responsible for those functions and services that the respective higher levels are less able and appropriate to fulfill. Therefore, local governments and administrative units in Uganda are assigned all the functions that are not assigned to the central government. The central government is responsible for the provision of national public goods, such as defense, security, foreign relations, and the elaboration of national guidelines for policy-making, whereas local authorities deliver local public goods and services as well as managing the facilities (Steiner 2006).

As such, district councils are in charge of water services, all education services except tertiary education, and all health services except referral hospitals. On the other hand, urban councils are responsible for street lighting, ambulance services, and fire brigade services, while lower local governments are in charge of the provision of primary education, agricultural ancillary field services and the control of soil erosion (Kauzya 2007; Steiner 2006).

In carrying out their functions, the local governments are entitled to levy, charge, and collect local taxes and fees, as well as receiving some intergovernmental grants

(Obwona et al 2000). District and urban local governments are allowed to impose property tax and several forms of non-tax revenue from marketing dues, trading licenses, parking fees as well as education contributions. The 1997 Act stipulates that these taxes and fees are to be retained locally and shared between different levels of local government and administrative units but not with the central government.

Tanzania

Tanzania embarked on devolution reforms in 1998 following the adoption of the 1998 Policy Paper on Local Government Reform. The 1998 policy paper stipulates that Tanzania's embarkment on Decentralization by Devolution (D-by-D) is the policy option, which could deliver improved governance and service delivery within the socio-economic and institutional context in Tanzania. The 1998 devolution covers four main policy areas, which include (i) political decentralization, which implies creation of real, multi-functional governments at the local level, (ii) financial decentralization, in which local governments are empowered to pass their own budgets reflecting their own priorities, (iii) administrative decentralization, in which local councils will have powers to recruit and fire their own personnel in order to improve service delivery, and (iv) changed central-local relations, in which the role of central government vis-à-vis local councils will be changed into a system of intergovernmental relations with the central government having the over-riding powers within the framework of the Constitution.

Articles 145 and 146 of the Constitution of the United Republic of Tanzania (1977) provide the legal basis for local government authorities in Tanzania. Moreover, in April 1982, five Acts were enacted to pave the way for the re-establishment of local government authorities which were disbanded for the period of ten years from 1972 to 1982. They include the Local Government (District Authorities) Act No. 7 of 1982, the Local Government (Urban Authorities) Act No. 8 of 1982, the Local Government Finances, Act No. 9 of 1982, and the Local Government Services Act No. 10 of 1982, and the Local Government Negotiating Machinery Act No. 11 of 1982. The local government system is formed by a three-tier pyramidal structure, which consists of the village (level I), ward (level II), and district (level III) in rural areas, and streets (level I), ward (level II), and town/municipality/city in urban areas.

Article 146 of the Constitution of Tanzania stipulates the functions of the local authorities, which are to involve the people in the planning and implementation of development programmes within their respective areas, to ensure the enforcement of law and public safety of the people, and to consolidate democracy within their areas and to apply it to accelerate development of the people. Moreover, the Local Government (District Authorities) Act No. 7 of 1982 further stipulates that local governments would have three basic functions, which are; maintenance of law, order and good governance, promotion of economic and social welfare of the people within their areas of jurisdiction, and ensuring effective and equitable delivery of qualitative and quantitative services to the people within their areas of jurisdiction. It is important to observe that the local authorities in Tanzania are responsible for five sectors in their areas of jurisdiction, which include education, health, roads, agriculture and water.

In carrying out their functions, the local governments are entitled to levy, charge, and collect local taxes and fees, as well as receiving some intergovernmental grants as spelt out by the Local Government Finances, Act No. 9 of 1982. District and urban local governments are allowed to impose tax from trade, industries, works, services, and licenses granted from their respective areas of jurisdiction. Other sources include funds from renting public houses owned by district/urban councils as well as fees and fines imposed by the local authorities in line with the respective Act (No. 9 of 1982).

Kenya

Following the promulgation of the 2010 Constitution, Kenya's has the newest and distinct version of devolution compared to its fellow riparians in the Lake Victoria Basin. Chapter 11 of the 2010 Constitution sets the legal foundation for the devolved local governments, alias county governments, in the context of Kenya. It is noteworthy that the 2010 Constitution of Kenya is more clear on devolution and devolved government structures, their roles, and the central-local (county) power relations. It grants the devolved governments clear autonomy in carrying out their functions without encroachment from the central government.

Articles 174 and 175 of the 2010 Constitution stipulate the objectives of devolution and the principles of devolved governments. Among other things, the objectives of

devolution of government in Kenya are to give powers and self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them, to recognize the right of communities to manage their own affairs and to further their development, to promote social and economic development, and, the provision of proximate, easily accessible services throughout Kenya.

Kenya has a total of 47 county governments as established by Article 176 and the first schedule of the Constitution, and each county government has a county assembly and a county executive committee. Part 5 of Chapter 11 addresses the functional relationship between the national and county governments, which it stipulates to be the one taking the nature of intergovernmental relationship. The functions and powers of the counties are provided for in the fourth schedule of the Constitution and one specific function is the management of natural resources and environmental conservation including soil and water conservation (See Annex 2). Moreover, Article 187 of the Constitution permits the transfer of functions and requisite resources for their delivery between government levels.

Articles 201 and 202 of the Constitution addresses the financing of the activities of the two levels of government towards an equitable society based on openness, accountability and public participation in public finance management. Article 209 stipulates that the taxation burden and the resulting revenues are to be shared fairly across the two government levels for the attainment of inclusive, equitable development. Article 206 establishes the Consolidated Fund, with which all government revenues must first be paid into before they are withdrawn. Moreover, Article 203 provides the criteria for sharing out the annual government revenue ring-fenced for county governments, which is set at a minimum of 15 percent of all revenue collected by the national government. Lastly, Article 204 provides for initial 20 year Equalization Fund of 0.5 per cent of annual national revenues to be spent with advice from the Commission on Revenue Allocation (CRA), for redressing primary social and physical infrastructure inequalities in marginalized areas as stated in Articles 215, 216 and 217 (KSICJ 2013; Nyanjom 2011).

Other important pieces of legislation with regard to devolution in Kenya include the County Government Act of 2012, the Intergovernmental Relations Act No. 2 of 2012, the Transition to Devolved Government Act No. 1 of 2012, the National Government Co-ordination Act No. 1 of 2013, the Public Finance Management Act of 2012, the Urban Areas and Cities Act of 2011, and the Constituencies Development Fund Act of 2013.

It is pertinent at this juncture to posit that the legal foundation for devolved governments in Kenya is far more robust than the two fellow riparians. Moreover, given the fact that Kenya has the newest constitution in the region, a lot of supporting legislations on devolution have been enacted recently. It is also important to observe that from the legal foundations, the local governments in all the three riparians are responsible for the management of water, natural resources and environment in their respective jurisdictions.

Four Main Drivers of Environmental Governance Failure at the Local Level

Following the devolution reforms, it is apparent that in the three riparians, the local governments are responsible for the management of the environment and water resources in their jurisdictions. Therefore, they are key stakeholders in the regional interventions in the basin through the Protocol. Their involvement and the way they participate in the environmental and resource governance has a significant bearing on the regional interventions.

The role of the local governments in the context of the Protocol is to ensure the actual implementation and enforcement of the Protocol in their respective jurisdictions. It is at the local government level, on the shores of the lake, that a lot of intervention efforts are targeting. The policies that are made at the regional and the national level, including the Protocol, are tangible at the local government level. It is the level where operationalization of the interventions takes place. For instance, as one of the objectives of the Protocol is to arrest illegal fishing, the local governments have to ensure that the fisherfolk, in their respective jurisdictions, use the fishing nets of the regionally agreed size (not below 50 cm total length).

I analyze the failure of local governments to spur environmental governance in the context of devolution and the Protocol in the three riparians by focusing on (i) the context of the devolution process, (ii) bureaucratic capacity, (iii) fractious relations between local governments and other stakeholders, and (iv) corruption.

The Context of the Devolution Process

The context of the devolution process in the three countries is indicative of the local governments' performance with regards to the implementation and enforcement of the Protocol. Whereas in Tanzania and Uganda the devolution process happened in the mid-1990s, in Kenya, the promulgation of the 2010 Constitution is the firm premise for devolution. The context in which the devolution reforms were deemed necessary and pursued in the three countries varies, with Uganda and Tanzania exhibiting some similarities as opposed to Kenya.

In Uganda and Tanzania, devolution was carefully crafted to ensure that the central governments continue to exert power and influence on the devolved governments. This is owing to the material reality preceding devolution reforms in both the two countries. The very material reality preceding devolution in the two riparians would ensure that the reforms would not erode the powers of the central government, and that, the devolved governments at the lower level continue to be the extension of the center.

To begin with Uganda, it should be borne in mind that devolution reforms were intensely political and very much tied to the National Resistance Movement (NRM) pursuit of legitimacy after capturing power in January 1986. The NRM, under the leadership of President Museveni, formed local councils (called “resistance councils” at that time) during and after its guerrilla warfare in the first half of the 1980s to resist the incumbent government before NRM came to power, and to maintain social order and peace after capturing power (Steiner 2006).

Against this backdrop, devolution best suited the NRM cause to retain the local councils (“resistance councils”) on three fronts, as summed up by Ndegwa and Levy (2004), which are (i) the collapse of a brutal central state made possible a critique (and for the incoming regime already a praxis) that made devolution desirable, (ii) the

significant collapse of the state provided institutional fluidity that made devolution less resistible by vested interests, and (iii) the NRM proved itself to be a regime both strong and astute enough to insist on devolution and to author compromises that neutralized friction and thus furthered its purposes.

In this context, it can be deduced that the NRM government carried out devolution reforms to solely serve its purposes and ensure regime stability. Under such circumstances, it is illogical to assume that the true intent of the regime (central governments) would be to devolve powers so as to empower the local governments to manage and govern the resources and environment. The local governments in this setup are expected to act as the buffer zones for the central government, which ascended to power by overthrowing the previous regime.

In Tanzania, the socialist (centralized) state, which was making way to trade liberalization policies, preceded the devolution reforms. As the former centralized state grappled to ensure that liberal policies are steered in such a way that the state and the only ruling political party clings to power, devolution reforms were unleashed in a well-crafted manner. It is noteworthy to observe that during the single party supremacy era in Tanzania, the deconcentration reforms took place between 1972 and 1982, during which the local councils were abolished in Tanzania. This came as a result of the 1967 Arusha Declaration, in which Tanzania embarked on socialism ideology, alias *Ujamaa* (ALAT 2011; Kessy and McCourt 2010; Mawhood 1983). The abolishment of the local councils (governments) in Tanzania lasted for ten years until when local governments were reinstated in 1982 (ALAT 2011; Kessy and McCourt 2010).

Kessy and McCourt (2010) find out that the continuing influence of the legacy of deconcentration reforms of the *Ujamaa* period, which have remained intact in Tanzania, are among the main factors frustrating the current devolution reforms in Tanzania. They argue that as the *Ujamaa* policy settled into place, it created its own vested interest in the form of the local agents of central government whom that policy had empowered. Therefore, it was expected that those local agents would not give up powers unless compelled to, and the 1998 devolution reforms did not compel them. Furthermore, they argue that unless those vested interests are confronted, the local

agents of central government are likely to continue using the means available at their disposal to oppose any new policy, which threatens them.

As much as the then ruling party has continued to be in power since the heyday of *Ujamaa* in Tanzania, and much as it spearheaded the reinstatement of local governments, which it had disbanded in the first place (1972-1982) after deeming them a threat to the prosperity of a socialist state, one must wonder about the political expediency that accompanied the ruling party in embarking on the devolution agenda in 1998. The motives and incentives for the ruling party to control the grassroots, which are the potential avenues and breeding grounds for the opposition parties, were looming large following the reintroduction of plural politics in 1992 in Tanzania.

Unlike Tanzania and Uganda, which have experienced the implementation of devolution reforms for roughly the past two decades, Kenya's version of devolution reforms has been experienced for the very few years since the promulgation of the Constitution on 27 August 2010. Further, the devolution process in Kenya, unlike in Uganda and Tanzania, was not carried out by the central government in a manner that serves its purpose. The major issue at play that drove the devolution agenda in Kenya is the 2007 post-election violence. The 2007 post-election violence necessitated Kenya to draft the new constitution, which established the counties through devolution (Saati 2015).

As the 2007 post-election violence was mobilized and galvanized along ethnic cleavages, it was deemed necessary to introduce counties so as to bring the government more close to the people and address the questions of ethnicity while also increasing accountability and improving service delivery (GoK 2010; Nyanjom 2011). Thus, the precipitator for devolution in Kenya is different from Tanzania and Uganda. Much as the 2010 Constitution making process in Kenya was participatory (KSICJ 2013; Saati 2015), the then government of Kenya found it extremely difficult to meddle and interfere with the process, so as to design and warrant devolution reflecting its own interests.

This is because the constitution reform process was established by the signing of the National Accord and Reconciliation Act in February 2008, by the warring parties

(ODM and PNU) in the 2007 post-election violence. By signing the Act, the ODM (Orange Democratic Movement) and PNU (Party of National Unity) agreed to constitutional reform (Saati 2015). Against this backdrop, it was apparent that any attempt to meddle and interfere with the process by the PNU-led government would be a violation of the National Accord and Reconciliation Act (2008) and the Constitution of Kenya Review Act (2008), which would throw the country back into chaos exacerbated by the fact that the ODM party, which agreed to form the government of national unity with the PNU, would take umbrage.

Thus, the constitution making process, and devolution process in that regard was not meddled with, in the first instance, as the government was composed of both the ruling and the main opposition party, and the opposition had the leverage of walking out of government. Indeed, one of the major achievements of the government of national unity in Kenya was to deliver the 2010 Constitution (Nyanjom 2011; Saati 2015). It is not surprising that the devolved governments in Kenya, from the legal and policy setup, as well as practice, enjoy more autonomy as compared to those in Tanzania and Uganda.

It is noteworthy to observe that, however ideal the devolution process has been undertaken in the context of Kenya, the elements and attempts by the central government to encroach the devolved governments/counties are still at play and evident. The two former institutions that were in existence prior to the devolved governments in Kenya, the Provincial Administration and the Local Authorities still exist parallel to the devolved county governments. Although these two institutions are not as powerful as the county governments in their respective jurisdictions, they have continued to be present as the agents of the national government.

The main reason for their continued existence is political expediency, which made Kenya's Constitution makers to equivocate on the fate of the two institutions, the view that is also shared by Nyanjom (2011). The Constitution makers did not overtly declare the abolition of the two institutions because their widespread membership across the country could have undermined a "Yes" outcome at the August 2010 referendum to pass the Constitution. However, the institutions have lost their significance and they are unpopular with the county governments. This is because

their employees are agents of the central government and they are seen as being in place to further the interests of the central government in the counties. There are claims that the only reason they continue into being is because they continue to receive financial support from the national government based in Nairobi, but their influence has progressively waned. The reason for the waning influence is because the counties are the ones with the autonomy that is rooted in the supreme law of the land.

At the outset of the analysis, it was of profound importance to highlight the context of the devolution process in the three riparians under comparison. This is because the context of devolution at the macro level (state level) affects the micro level (local governments) performance in implementing and enforcing the Protocol in the basin.

Based on the context of the devolution process, the local governments in Tanzania and Uganda are not empowered as they are granted very limited autonomy to effectively discharge their functions in the implementation and enforcement of the Protocol. As shall become apparent in the course of the discussion, the Kenyan local authorities (counties) are ideally best suited to efficiently discharge their functions with regards to the Protocol as they are granted the required autonomy, but suffer from the fact that they have had no sufficient time to develop the required capacities to implement and enforce the Protocol as devolution was fast-tracked. Relatedly, the autonomy that is granted to the county governments seems to be a cause of constant wrangles between the county governments and the national government.

Bureaucratic Capacity

By and large, the fourteen areas of cooperation as stipulated by the Protocol, and the functions of the local governments in the three riparians imply that the actual implementation and enforcement of the Protocol in the Lake Victoria Basin falls under the jurisdiction of the respective local governments in the three riparians. In the framework of devolution, the local governments are the ones in charge of water resources and environmental management in the three riparians.

For the local governments to succeed on the subject, they need to have adequate bureaucratic capacity. The fourteen areas of cooperation vary widely, and if the objectives of the Protocol are to be attained, the local governments have to deliver on

all fronts. This varies from having adequate and skilled staff in different fields such as environment, hydrology, geology, forestry, fishery and climatology; adequate working gears; as well as adequate budgets to finance the activities related to the implementation and enforcement of the Protocol at the local level.

The local governments in the three riparians have the lowest bureaucratic capacity compared to the needs to implement and enforce the Protocol in their jurisdictions. For Tanzania and Uganda, the problem is highly associated with the failure of the devolution process, which has left the local governments in short supply of the required, adequate and skilled staff to oversee the implementation and enforcement of the Protocol as well as shortage of the necessary working gears (TP2, TL2, UN4, UL2). In Kenya, the problem is associated with lack of preparation by the counties that are located on the shores of the basin to discharge their functions with regards to the Protocol (KN1, KN2, KN4, KL2).

The local governments in the three riparians, for instance, lack adequate and skilled hydrologists that are required for proper management of water resources both in the lake and its catchment areas (TN1, KN2, UN2). The skilled experts are by and large limited to the central governments, and in some cases, the central governments are not well equipped as they are in inadequate supply.

In Tanzania and Uganda, the ministries of water, which are responsible for the overall implementation and enforcement of the Protocol at the country level have on numerous occasions been forced to ask for the services of academic hydrologists from the leading universities, University of Dar es Salaam and Makerere University, to assist them with the management of Lake Victoria water systems in the implementation of the Protocol (TN1, UN2). The ministries of water are the central government institutions specifically designated to deal with water, but they are struggling. The problem can only become more severe as one moves from the center to the periphery. In fact, the hydrologists and other skilled staff are in short supply in all the 113 local government authorities in the LVB in the three riparians (EAC2, LVBC1, LVFO1, TN1).

Owing to the context of devolution in Kenya, the counties in the basin such as Kisumu, Bomet, and Narok, to mention but three, suffer the same ordeal like their counterparts in Tanzania and Uganda. The reason accounting for this is that with the promulgation of the 2010 Constitution, the counties were fast-tracked, and there was no enough time for them to prepare and appreciate the volume of their operations (KN2, KP2, KL1) that was not only limited to the Protocol but also on the profusion of other important tasks (Annex 2). Recall, devolution came into force after the 2013 election in Kenya (Africa Confidential 2016).

Indeed, from the time they were envisioned (2010) to the time that they came into being (2013), one would not expect the counties to be ready to discharge their set functions by the Protocol effectively. One of the main challenges facing devolution process in Kenya is poor planning of the takeoff stage (KN1, KN2, KN4, KL2). The transfer of autonomy to the counties did not go hand in hand with preparing them to match their set objectives (KN2, KN4, KP2). For instance, the recruitment of the necessary staff by the counties in fields directly related to the Protocol was not planned in advance in a manner that would enhance and promote efficiency and effectiveness (KN2, KP2).

Relatedly, the local authorities require sufficient budgets to implement and enforce the Protocol. The local governments in the three riparians, with some minor exception of Kenya since devolution came into force in 2013, have continued to receive shrinking budgets from the national governments and, indeed, have very weak resource base (TP2, TL2, KP1, KL2, UL2, UN4). Among other things, sufficient budgets empower the local authorities to attract and recruit competent and skilled staff, motivate them better, and have in place the required working gears. As opposed to their central governments, the local governments in the three riparians have limited budgets due to limited sources of income. Consequently, this translates to the failure to attract and recruit the already rare, skilled staff needed for the efficient implementation and enforcement of the Protocol.

If and when available, such staff are recruited by the central governments or the private sector (KN3, UN2). The situation worsens as one moves from urban-based local governments to rural-based local governments in the basin. For instance, the

study by Tidemand and Msami (2010) reveals that by 2006, the vast majority of the local government staff (70 %) that were directly employed by the local governments in Tanzania were teachers.

This reveals that the local governments struggle to attract, recruit and retain the rare professions such as environmental scientists and hydrologists, who are instrumental for the efficient implementation and enforcement of the Protocol. The study also reveals that wealthier and urban local governments continue to attract and retain more staff as opposed to remote, rural, and marginalized local authorities. It is important to observe that Kenya, which is relatively better off on the budgetary component, due to the facts that specific funds and allocation formulas for sharing out the annual government revenue are ring-fenced for county governments by the Constitution (Article 203), is also struggling as it lacks adequate and skilled staff that are required in the counties, on the shores of the LVB (KP1, KP2, KN2). The reasons behind this are the competing priorities on the scarce resources at the county governments, as well as competition from the central government and the private sector in attracting and retaining the much-required staff (KP2, KL2).

The same is the case for the working gears needed to implement and enforce the Protocol (UP1, UL1, TP1, TL2, KL2). These include, but not limited to patrol boats, water laboratories, landing sites, data availability and data sharing, as well as modern weaponry to fight illegal fishers. This stifles the local bureaucratic capacity to a great extent. In the case of Uganda, for instance, the 2000 Local Government Finance Commission (LGFC) study found out that collection of local taxes and fees is extremely low, about less than one-half below the potential. Among other things, this is caused by wide reluctance of populations to pay tax due to arbitrary and sometimes forceful collection practices, collusion between tax collectors and taxpayers, as well as lack of administrative capacity at the local level (LGFC 2000; Steiner 2006; Francis and James 2003). This is not a healthy situation for the implementation of the Protocol as local authorities lack sufficient funds necessary to provide the required working gears and motivate their staff.

Fractious Relations between Local Governments and Other Stakeholders

The local governments in the three riparians exhibit all sorts of fractious relations with other stakeholders (Beach Management Units, NGOs and private sector), which stifle efficient implementation and enforcement of the Protocol. The pattern seems to stem from the two major reasons. The first reason, which applies to the local authorities in all the three riparians, is lack of education by the local government leaders. The second reason is lack of resources by the local government authorities in the case of Tanzania and Uganda, and in the case of Kenya, insatiable appetite for more resources and autonomy by the county government leaders despite the fact that they continue to get their priorities wrong with regards to the Protocol.

The important specific local stakeholders in this context include the Beach Management Units (BMUs henceforth), NGOs and private sector. The Protocol spells out their roles and the way in which they have to collaborate with government actors both at the national and the local level to ensure its efficient implementation.

The BMUs are registered and legal institutions, which are made up of fishers around the LVB. They are present in all the three countries as they were initiated from the regional level as part of the Lake Victoria Environmental Management Project. The BMUs select their own leaders through a democratic process from the village to the national level. Therefore, the BMUs strengthen community participation and representation in decision-making and they play a central role in policy formulation and enforcement at different levels. Among other things, the BMUs are entrusted with the role of ensuring that they stop illegal fishing and promote sustainable fishing practices in their respective jurisdictions.

The entry point for the BMUs to work in partnership with the national governments is through the local government authorities in their respective jurisdictions. It is at this level that the local government authorities in the three riparians have failed to effectively recognize and involve the BMUs in their daily operations with regards to the implementation of the Protocol (TP2, TN5, UP1). It is important to observe that BMUs cannot be effective in arresting illegal fishing without cooperating with the local authorities. The same is the case for local authorities, which cannot be effective is arresting illegal fishing without cooperating with the BMUs. The interviewed BMU

leaders in the three riparians complained repeatedly about being snubbed by the local government leaders in Lake Victoria governance efforts in their respective jurisdictions (UB1, TB1, TB2, KBI, KB2). This was also echoed by the Lake Victoria Basin Commission and Lake Victoria Fisheries Organization (LVFO1, LVBC2).

The coordinators of the Lake Victoria Environmental Project Phase II (LVEMP II), which has been carried out since 2009 in the riparians, pointed out that the major reason for the failure of the project was the local government authorities (UP1, TP1, KP1, KP2). This is because, aware of the fractious relations between the local governments on the one hand and the stakeholders on the other, the project attempted to go directly to the communities at the grassroots. However, it failed to get enough support from the local authorities. The local authorities wanted to be the ones in control of all the project resources in their areas of jurisdiction. Thus, there were a lot of hitches and conflicts especially between the BMUs and the communities that were involved in the project on the one hand, and the local authorities, on the other.

As the local governments are too protective of their powers, the NGOs and private sector have also been dealt with the same fate as the BMUs. The private sector, which includes fish processing factories, as well as the NGOs that are specifically advocating for the environmental cause of the LVB, have continued to be overlooked by the local governments (UNGO1, UPS1, TNGO1, KPS1). At the local level, the concept of public private partnerships (PPP), which could help to restore the environment and ecosystem of the lake through alternatives such as development of aquaculture, is yet to be fully explored (LVFO1, LVFO2, TPS1, and KNGO1).

Lack of resources by the local authorities in Tanzania and Uganda, due to retarded devolution, seem to be the main reason at play. The implementation and enforcement of the Protocol, as the package of environmental intervention in the basin, offers a leeway for the local authorities in the two riparians to access resources through the Lake Victoria project funds. For instance, a lot of donor and government funded environmental projects have been carried out in the local authorities as part of the implementation and enforcement of the Protocol. For this reason, and much as the local governments tend to benefit from resources of such projects, the local government leaders deem potential partners (BMUs, NGOs, private sector) as a threat

to their control over resources (TP2, KP1, KNGO1, UNGO1). The main reason why the LVEMP II attempted to circumvent the local authorities and go directly to the communities was because of this persistent problem, which was experienced during the LVEMP I, which was implemented between 1997 and 2005 (TP2, KP1, KP2).

Unlike Uganda and Tanzania, the county governments in the Kenyan part of the basin have a guaranteed flow of resources from the central government, although insufficient, which is ring-fenced by the 2010 Constitution. Thus, on top of the insufficient assured resources, the newly formed counties also get funds for specific projects in the basin. It is important, however, to observe that this is not to say the local governments in Kenya have sufficient resources (KL1, KL2, KP2, KN4).

Due to sufficient powers that have been granted to the county governments in Kenya, there are fractious power relations between the county governments and the national/central government (KN3, KP1). To be sure, the implementation and enforcement of the Protocol by the county governments in Kenya is more challenging than in the local authorities in Uganda and Tanzania. This is due do poor oversight of the counties compliance with the Protocol by the national government (KN3, KP1).

The problem of insufficient oversight is exacerbated by the ignorance of some county governors in Kenya, who hold the position that in line with the 2010 Constitution, soil and water management are the functions devolved to the county governments. Therefore, they claim that the central government has no mandate over water resources in their (counties) respective jurisdictions in the LVB (KN2, KN3, KP1). Recall, it is the national government of Kenya that has ratified the Protocol at the regional level and the one that is responsible for the overall implementation and enforcement at the country level.

Apparently, some county governors seem to be overwhelmed with powers to the extent of claiming that, Kenya has 48 governments, that is 47 county governments and 1 national/central government, which is the 48th government, and that, the 48th government, which is the central government based in Nairobi, has no constituency regarding the management of water and natural resources in the LVB (KN2). The conflict between the central government and the counties is bad for the

implementation and enforcement of the Protocol since it implies the failure by the national government to monitor and enforce the Protocol in the respective counties. It bears noting that there are incessant power squabbles between the county governments and the national government in Kenya since their onset in 2013 (KN2, KN3).

An anecdote of this situation happened with River Mara, which is an integral part of the Lake Victoria Basin and flows into the lake through Tanzania (KN2). From 2012, there were negotiations between the governments of Kenya and Tanzania on how to best manage the river. The Narok and Bomet counties in Kenya, where the river originates, were involved by the national/central government in all the discussions and negotiations with Tanzania as required by the Protocol. Moreover, they were also involved in the Nile Basin Initiative (NBI) efforts to help manage the river better (NBI1, KP2).

It is noteworthy that both the Bomet and Narok counties went to the discussions and negotiations involving Kenya and Tanzania with the thinking that they owned the river, and that they were not responsible for the downstream (Tanzania). During the negotiations with Tanzania, the Narok and Bomet delegations differed with the Kenyan country position and behaved like the fully-fledged riparian countries. As a result, the negotiations took longer than expected as the national government of Kenya had an arduous task of streamlining the two counties to buy into their country's position completely, and factor in the downstream position in the spirit of the Protocol during the negotiations (KN2).

Likewise, due to overwhelming powers granted to the county governments by the 2010 Constitution, there is lack of clarity about how to pay for the 14 devolved policy areas with a patchwork of functions (Annex 2), seemingly designed to cause maximum confusion and overlap, which is a recipe for central and county governments to blame each other for policy failures (Africa Confidential 2016). For instance, in May 2016, the Environment and Natural Resources Cabinet Secretary complained that only one of the 47 counties had finalized plans to devolve the forestry department’s functions from Nairobi, two years after they were announced.

Africa Confidential (2016) further reports that at the same time, the county governors continue to battle with the national government over the size of their budgets.

Corruption

The three riparians have an appalling record of corruption. The 2015 Corruption Perceptions Index (CPI) by Transparency International ranks Tanzania down at the 117th position (overall score of 30), whereas Kenya and Uganda are ranked at 136th position (overall score of 25 each). The 2016 CPI report ranks Tanzania at 116th position (overall score of 32), Kenya at 145th position (overall score of 26), and Uganda at 151st position (overall score of 25).

As much as government institutions are implicated and in some cases are at the forefront of corruption scandals, it warrants scrutinizing whether devolution also implies transfer of corruption from the center to the local governments and, whether, this has an impact on the implementation and enforcement of the Protocol. To be sure, the opinion poll conducted by Transparency International in 2015 found that 59% of Kenyans see corruption as the biggest threat to the success of devolution. As the Protocol ensures the provision of resources to the local governments and as the local governments are empowered in the framework of devolution to implement and enforce the Protocol, it is pertinent to focus on corruption in the context of the Protocol and highlight the main key issues.

The local government authorities in the three riparians exhibit some degree of corruption in the implementation and enforcement of the Protocol through a number of ways. These revolve around the issuance of fishing licenses and permits to unqualified fishers (LVFO1, KB1, KB2, UB1, UB2), colluding with fisherfolk who violate the set fishing standards by the Protocol and regional arrangements (TNGO1, UNGO1, UB1, KB2) as well as collecting tax from illegal fishermen (LVFO1, LVBC2, KP2, TP2, UB1). The consequence of corruption is the increase of illegal fishing practices, the collapse of the lake's ecosystem and the proliferation of mob justice incidents by the BMUs due to lack of faith in both the local and national institutions in dealing with illegal fishermen (UB1, TB1, TB2, KB1, KB2).

In all the local governments surrounding the lake, illegal fishing practices have increased dramatically. For instance, the 2013 LVFO study reveals an increase in the total number of illegal gillnets used in the lake from the early 2000s. The study reveals that in 2000 the total number of illegal gillnets used in the lake was 113,177. In 2012, the study reveals a dramatic increase of the illegal gillnets used in lake as the number stood at 200,689.

Also, harvesting and trading of the Nile perch, which is the leading income generating species from Lake Victoria, below the regional set standard of 50 cm total length has been allowed to flourish by the responsible authorities (LVFO1, LVBC2). This does not only imply the use of fishing nets that are below the set mesh size. It also implies harvesting fish that are not mature enough to reproduce (LVFO1, LVBC2, KP1, UN3). This signals an end to the existence of some main fish species in the lake.

The business involves the two parties, fishermen and buyers. A lot of fishermen who are involved sell the fish from some known landing sites to traders who smuggle the fish through the borders to the neighboring riparians' markets (LVFO1, LVFO2). It is important to observe that the culprits who are involved in the trade are known, and some of the landing sites in which the trade happens are known to the relevant state authorities (LVFO1, TP2, UPS1, UN3, UL1, KNGO2, KL2). The fact that the relevant authorities are not arresting and prosecuting the culprits indicates that they are involved and they benefit from the business in one way or another (LVFO1; LVBC2).

For instance, the BMU leaders (UB1, KB2, TB1) claimed that the fishing laws require, inter alia, that when arrested, the illegal fishers' gear, including small sized fishing nets, be burnt to discourage such activities from happening again. The three leaders claimed that on numerous occasions they had arrested illegal fishermen in their areas and handed them over to the state authorities for prosecution. Sadly, they claimed that after sometimes, they caught the same illegal fishers they had already handed to the relevant authorities, fishing using the same illegal gears.

One of the plausible explanations for this is that the authorities do not burn the illegal gears, as it is required by the law. This makes it easier for the illegal fishers to access

them, by either bribing the authorities or buying them. The BMU leaders (UB1, KB2, TB1) went further to point out that the manufacturers and suppliers of the illegal fishing gears are known to the state authorities, as the BMUs themselves had already reported them, but the authorities are lethargic to act according to the law.

Due to lack of trust in the state authorities and law enforcement institutions, the incidents of mob justice by the BMUs have increased in the LVB (UB1, TB1, TB2, KB1, KB2). The BMUs prefer to deal with the lawbreakers directly rather than handing them over to the state authorities that are responsible for law enforcement. This stance by the BMUs is culminated by the thinking that they are much more effective in dealing with illegal fishers rather than the law enforcement institutions (TB2, KB1, KB2).

The BMUs claimed that they were infuriated by the fact that the illegal fishermen they arrested and handed over to the state authorities are not charged (UB1, TB1, TB2, KB1). On a number of occasions, the illegal fishermen were back in the lake and continued fishing while mocking the BMUs that there was nothing that could be done against them (UB1, TB1, TB2, KB1). For this reason, the BMUs in the riparians unanimously agreed to deal with illegal fishermen head-on rather than handing them over to the law enforcement institutions.

The commonly deployed techniques by the BMUs when they arrest illegal fishers in their areas are assaulting and killing them (preferably by drowning them), confiscating their fish, and burning their illegal fishing gears. Considering how risky this is, some of the BMUs have organized themselves and bought some weapons (traditional and modern) to fight off illegal fishers (TB2, KB1). This is due to the fact that illegal fishers represent some powerful cartels that are well prepared for fighting whenever they conduct illegal activities in the lake.

The BMUs claimed that as assaults break out in the lake, they also have their own members killed. For instance, in 2015 alone, the BMU in Nyegezi, Tanzania (TB2), had lost three fishermen in the lake due to fighting that erupted involving some illegal fishermen. The leader of that BMU claimed that their BMU eventually defeated illegal fishers as they called for support from the neighboring BMU (TB2). Likewise,

in Kenya, the Dunga BMU (KB1) claimed that between 2014 and 2015 it had lost two members on a similar incident. It is important to bear in mind that some casualties happen because of targeting for revenge purposes (KB1). Some BMUs and illegal fishermen tend to plan some attacks so as to avenge the murder and losses suffered on previous assaults (TB2, KB1).

It is also important to point out that insofar as the local government authorities in the basin have insufficient resources, and in the case of Kenya the central government is not capable of effectively monitoring the county governments, it then follows that the main preoccupation of the local governments in Kenya is to increase their resources, by all means, necessary (LVFO1, KN2, KN3, KP2). As the county governments in Kenya are entitled to collect tax in water resources and environment, and the more the tax collection, the more the resources are available to them, the county governments in the Kenyan part of the LVB have a tendency of collecting tax from the landing sites even when they are aware of the fish not meeting the 50 cm total length (for the case of Nile perch) and other set regulations, as well as collecting tax from illegal fishermen (LVFO1, KN2, KP2).

The crackdown on illegal fishermen by the county governments would have detrimental effects on the county governments' revenue from fisheries. This explains the lack of incentive and enthusiasm by the county governments to expose and deal with illegal fishermen head-on (KN2, KP2). Illegal fishermen also play their part well by bribing the local officials who are in need of the resources.

Comparison: Different Trajectories, Same Outcome

From the four drivers of environmental governance failure at the local level in the LVB, some similarities and differences can be observed in the three riparians. The first one is the fact that Tanzania and Uganda qualify to be grouped on one extreme based on the similar trajectory of devolution. Kenya, on the other hand, has a rather different trajectory of devolution.

From the context of devolution, it can be observed that all the three riparians intended to devolve powers from the national to the local governments. The forces and processes behind devolution in Tanzania and Uganda proved to be similar as opposed

to Kenya. The resulting situation is that the local governments in Tanzania and Uganda lack the sufficient powers that they require to effectively implement and enforce the Protocol in their respective jurisdictions.

Due to insufficient powers, the local governments in the two riparians are limited in terms of the bureaucratic capacity, which is essential in the implementation and enforcement of the Protocol. Their capacity to attract, motivate and retain the skilled staff as well as develop and maintain the working gears is severely hampered by the limited powers that are delegated to them by the central governments. The resulting situation is that the local governments in the two riparians are saddled with the tasks that they are required to perform by law but lack the required capacities.

In Kenya, the local governments have the sufficient powers and autonomy that is required based on the legal foundation. Indeed, they are well positioned and are protective of their powers in the implementation and enforcement of the Protocol. However, the sufficient powers have been granted to local governments abruptly and impulsively without appreciating the wide volume of their tasks and implication in its entirety. Subsequently, devolution in Kenya has ended up producing very powerful local governments without the required capacities to implement and enforce the Protocol. Akin to Tanzania and Uganda, the local governments in Kenya lack the required bureaucratic capacity to effectively implement and enforce the Protocol.

Regarding fractious relations with other stakeholders, the local governments in the three riparians are similar on this component. The relations between the local governments and the BMUs, NGOs and private sector are sour and poor. This has in turn stifled environmental governance in the respective localities in the context of the Protocol. The difference, however, is that in Kenya, there is absence of sufficient oversight by the national government on the local governments' compliance with the Protocol.

The reason accounting for this is the same one, which is the sufficient autonomy and powers that are devolved to the local governments in Kenya. As much as the local governments in Kenya are powerful and autonomous, it has proved very challenging for the national government to monitor their compliance with the Protocol. In

Tanzania and Uganda this does not seem to be the problem. The reason behind is that the national governments in the two riparians did not devolve sufficient powers to the local governments. As such, the local governments in Tanzania and Uganda are very submissive to the national government. Although this limits the capacities of the local governments on the one hand, it seems to be a healthy situation as it guarantees oversight by the central government on the local governments' compliance with the Protocol.

For this reason, it is not surprising that the local governments in Kenya are colluding with illegal fishers and tend to collect tax from them with impunity. The national government is in a difficult position to monitor and hold the local governments to account. Although the local governments in all the riparians are not performing well in the implementation and enforcement of the Protocol, Kenya seems to fall behind the rest of the riparians owing to the powerful and autonomous local governments, which cannot be monitored by the national government. This implies, in the context of the Protocol and environmental governance, that it is better to have powerless local governments that lack capacity because there is some oversight from the central government that is responsible towards the Protocol and the EAC (Tanzania and Uganda), than to have powerful local government without any capacities and without oversight (Kenya).

Conclusion

The article was motivated by one research question, how and why the different trajectories of devolution in the three LVB riparians lead to environmental governance failure at the local level. It began by highlighting devolution and environmental governance nexus as well as the legal foundation and structure in the three riparians. The article then delved into the four main drivers of environmental governance failure at the local level in the three riparians. From the four drivers, the analysis showed how different trajectories of devolution in the three riparians play out in the implementation and enforcement of the Protocol.

In the last section, the comparison between the three riparians was made based on the analysis of the main drivers. Tanzania and Uganda appear to be on the same extreme with somewhat similar trajectories of devolution as opposed to Kenya. The local

governments in Tanzania and Uganda have insufficient powers and capacities to implement and enforce the Protocol in their respective localities. This leads to the failure of environmental governance in the two riparians. Kenya, on the other hand, has powers but lacks the capacities to implement and enforce the Protocol. This is even detrimental for the implementation of the Protocol as it creates the problem of insufficient oversight mechanisms by the central government in Kenya.

Annexes:

Annex 1: Areas of Cooperation by the Protocol

Article 3 of the Protocol provides for 14 areas of cooperation among the EAC Partner States in the management of the Lake Victoria Basin. They include:

a) Sustainable development, management and equitable utilization of water resources;

b) Sustainable development and management of fisheries resources;

c) Promotion of sustainable agricultural and land use practices including irrigation;

d) Promotion of sustainable development and management of forestry resources;

e) Promotion of development and management of wetlands;

f) Promotion of trade, commerce and industrial development;

g) Promotion of development of infrastructure and energy;

h) Maintenance of navigational safety and maritime security;

i) Improvement in public health with specific reference to sanitation;

j) Promotion of research, capacity building and information exchange;

k) Environmental protection and management of the Basin;

l) Promotion of public participation in planning and decision-making;

m) Integration of gender concerns in all activities in the Basin; and

n) Promotion of wildlife conservation and sustainable tourism development.

Annex 2: Functions of County Governments in Kenya

The functions and powers of the counties are provided for in the fourth schedule of the Constitution, which constitute:

i) Agriculture services, including crop and animal husbandry; livestock sale yards; county abattoirs; plant and animal disease control; and fisheries,

ii) County health services,

iii) Control of air pollution, noise pollution, other public nuisances and outdoor advertising,

iv) Cultural activities, public entertainment and public amenities,

v) County transport,

vi) Animal control and welfare,

vii) Trade development and regulation,

viii) County planning and development,

ix) Pre-primary education, village polytechnics, homecraft centres and childcare facilities,

x) Implementation of specific national government policies on natural resources and environmental conservation including soil and water conservation; and forestry,

xi) County public works and services,

xii) Fire fighting services and disaster management,

xiii) Control of drugs and pornography, and

xiv) Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

References

Africa Confidential (2016). *Counties at the Crossroads.* Volume 57 No. 10, 13. May. 2016.

ALAT [Association of Local Authorities in Tanzania](2011). State of Local Democracy and Good Local Governance in Tanzania.

EAC (1997). First East African Cooperation Development Strategy. East African Community Secretariat Publications, Arusha, Tanzania.

EAC (2000). The Treaty for the Establishment of the East African Community 1999. East African Community Secretariat Publications, Arusha, Tanzania.

EAC (2004). Protocol for Sustainable Development of Lake Victoria Basin 2003. East African Community Secretariat Publications, Arusha, Tanzania.

EAC (2011). Consultancy Services on Development of Operational Linkages between Lake Victoria Basin Commission (LVBC) and Lake Victoria Fisheries Organization (LVFO).

Ferguson, I. and Chandrasekharan, C. (2005). "Paths and Pitfalls of Decentralization for Sustainable Forest Management: Experiences of the Asia Pacific Region" in Colfer, C. and Capistrano, D. (eds). *The Politics of Decentralization: Forests, Power and People*. London: Earthscan.

Francis, P. and James, R. (2003). "Balancing Rural Poverty Reduction and Citizen Participation: The Contradictions of Uganda's Decentralization Program." *World Development* 31(2): 325-337.

Gettleman, J. (2009). "Ripples of Dispute Surround Tiny Island in East Africa." The New York Times, 16 August 2009. Retrieved on 16/4/2016 from http://www.nytimes.com/2009/08/17/world/africa/17victoria.html

GoK [Government of Kenya] (2010). The Constitution of the Republic of Kenya, 2010.

GoU [Government of Uganda] (1993). The Local Government (Resistance Councils) Statute.

GoU [Government of Uganda] (1995). The Constitution of the Republic of Uganda, 1995.

GoU [Government of Uganda] (1997). The Local Governments Act, 1997.

Kauzya, J. (2007). "Political Decentralization in Africa: Experiences of Uganda, Rwanda, and South Africa." Discussion Paper. UN Division for Public Administration and Development Management, Department of Economic and Social Affairs.

Kessy, A. and McCourt, W. (2010). "Is Decentralization Still Recentralization? The Local Government Reform Programme in Tanzania." *International Journal of Public Administration* 33(12): 689-697.

Kiwango, Y. and Wolanski, E. (2008). "Papyrus Wetlands, Nutrients Balance, Fisheries Collapse, Food Security, and Lake Victoria Level Decline in 2000 2006." *Wetlands Ecology and Management* 16: 89-96.

KSICJ (2013). *Handbook on Devolution*. Nairobi: KSICJ.

Kull, D. (2006). Connections Between Recent Water Level Drops in Lake Victoria, Dam Operations and Drought. Retrieved on 12/2/2016 from https://www.internationalrivers.org/files/attached files/full_report_pdf.pdf

LGFC [Local Government Finance Commission](2000). Revenue Sharing Study: Sharing of Expenditure Responsibilities and Revenue Assignments (Centre Local Governments-Uganda). Report on Findings and Recommendations.

Lubovich, K. (2009). "Cooperation and Competition: Managing Transboundary Water Resources in the Lake Victoria Region." *Working Paper No. 5*. USAID and Foundation for Environmental Security and Sustainability (FESS).

LVBC (2006). Strategic Action Programme for Lake Victoria Basin Commission 2006. Lake Victoria Basin Commission Secretariat Publication, Kisumu, Kenya.

LVBC (2007). Regional Transboundary Diagnostic Analysis of the Lake Victoria Basin Report. Lake Victoria Basin Commission Secretariat Publications, Kisumu, Kenya.

LVBC (2010). Annual Report July 2008 – June 2009. Lake Victoria Basin Commission Secretariat, Kisumu, Kenya

LVBC (2011). The Draft Report on Harmonization of Regional Policies, Rules and Regulations Governing Utilization of Water Resources in the Lake Victoria Basin. Dar es-Salaam: Wema Consult (T) Ltd.

LVBC (2012). Trans–boundary Water Information Management. Presentation made during the 13th Water Information Summit, Joly Hotel: Ouagadougou-Burkina Faso.

LVFO (2007). Regional Catch Assessment Survey Synthesis Report. Lake Victoria Fisheries Organization Secretariat Publication.

LVFO (2013). Regional Status Report on Lake Victoria Bi-ennial Frame Surveys Between 2002 and 2012.

Matsuishi, T., Muhoozi, L., Mkumbo, O., Budeba, Y., Njiru, M., Asila, A., Othina, A. and Cowx I. (2006). "Are the Exploitation Pressures on the Nile perch Fisheries Resources of Lake Victoria a Cause for Concern?" *Fisheries Management and Ecology* 13 (1): 53-71.

Mawhood, P. (1983). *Local Government in the Third World: The Experience of Tropical Africa*. Chichester: Wiley.

Max, M. (1991). *The Development of Local Government in Tanzania*. Dar es Salaam: Education Publishers and Distributors.

Mkumbo, O., Tumwebaze, R. and Getabu, R. (2005). Trends in the Composition, Abundance and Distribution of the Fishes of Lake Victoria; In LVFO (2005): *Proceedings of the Regional Stakeholders Conference*, pp. 73-84.

Ndegwa, S. and Levy, B. (2004). "The Politics of Decentralization in Africa: A Comparative Analysis" in Levy, B. and Kpundeh, S. (eds). *Building State Capacity in Africa: New Approaches, Emerging Lessons*. Washington D.C: WBI Development Studies.

NEMA (2010). State of Environment Report for Uganda. Kampala.

Nyanjom, O. (2011). "Devolution in Kenya's New Constitution." Constitution Working Paper Series No. 4. Society for International Development (SID).

Obwona, M., Steffensen, J., Trollegaad, S., Mwanga, Y., Luwangwa, F., Twodo, B., Ojoo A. and Seguya, F. (2000). Fiscal Decentralization and Sub-National Government Finance in Relation to Infrastructure and Service Provision in Uganda. NALAD EPCR Main Report.

Okurut, T. and Weggoro, C. (2011). *Lake Victoria Basin: A new Frontier for Development of East Africa*. Nairobi: Twaweza Communications Ltd.

Saati, A. (2015). *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy*. Published PhD Thesis. Umeå, Print &Media, Umeå University.

Sayer, J., Elliott, C., Barrow, E., Gretzinger, S., Maginnis, S., McShane, T. and Shepherd, G. (2005). "Implications for Biodiversity Conservation of Decentralized Forest Resource Management" in Colfer, C. and Capistrano, D. (eds). *The Politics of Decentralization: Forests, Power and People*. London: Earthscan.

Shaka, J. (2013). "Migingo Island: Kenyan or Ugandan Territory?" *Journal of Conflictology* 4 (2): 34-37.

Steiner, S. (2006). "Decentralisation in Uganda: Exploring the Constraints for Poverty Reduction." GIGA Working Paper No. 31. GIGA Research Programme: Transformation in the Process of Globalisation.

Tidemand, P. and Msami, J. (2010). *The Impact of Local Government Reforms in Tanzania 1998-2008*. Special Paper 10/1, Dar es Salaam, REPOA.

Transparency International Kenya (2015). Pulling Together to Move Forward: A National Opinion Poll on Devolution and Governance in Kenya. https://tikenya.org/index.php/press-releases/366-corruption-biggest-threat-to devolution-more-kenyans-engaging-at-county-level (10.03.2017, 15:34).

Transparency International (2016). Corruption Perceptions Index 2016. http://www.transparency.org/news/feature/corruption_perceptions_index_20 6 (10.03.2017, 16:40).

Transparency International (2015). Corruption Perceptions Index 2016. https://www.transparency.org/cpi2015/ (10.03.2017, 17:40).

Turyaheebwa, N. (2014). Perception on Fishery Trend in Lake Victoria. Master Thesis in International Fisheries Management – The Arctic University of Norway.

UNDP (1999). Decentralization: A Sampling of Definitions. Working Paper Prepared in connection with the Joint UNDP-Government of Germany Evaluation of UNDP Role in Decentralization and Local Governance.

URT [United Republic of Tanzania] (1998). Policy Paper on Local Government Reform, 1998.

URT [United Republic of Tanzania] (2008) 'Local Government Reform Programme II (Decentralization by Devolution) Vision, Goals and Strategy', July 2008 June 2013.

URT [United Republic of Tanzania](1977). The Constitution of the United Republic of Tanzania, 1977.

URT [United Republic of Tanzania](1982). The Local Government (District Authorities) Act No. 7, 1982.

URT [United Republic of Tanzania](1982). The Local Government (Urban Authorities) Act No. 8, 1982.

URT [United Republic of Tanzania](1982). The Local Government Finances Act No. 9, 1982.

URT [United Republic of Tanzania](1982). The Local Government Negotiating Machinery Act No. 11, 1982.

URT [United Republic of Tanzania](1982). The Local Government Services Act No. 10, 1982.