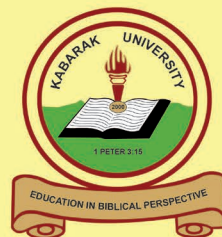


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An Overview of the Fisheries Resources Institutions in Kenya

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Abstract

There has been a steady evolution and growth of fisheries institutions in Kenya. The enactment of the Fisheries Management and Development Act (FMDA), 2016 led to the establishment of the Kenya Fisheries Service (KFS), a state corporation, backed by other institutions such as the Kenya Fisheries Council (KFC) and the Kenya Fish Marketing Authority (KFMA). The establishment of these institutions is especially important because of the current focus on the fisheries sector in the country and beyond. However, it is contended in this paper that the institutions cannot deliver on their mandates unless all the governance instruments are put in place including the Fisheries Management and Development (Marine and Inland Fisheries) Regulations, the Beach Management Units (BMU) Regulations, and the Fish Safety regulations. What is more, the archaic Fisheries Policy, 2005 should be reviewed and updated in line with the present legislation and the African Union (AU) Africa Blue Economy Strategy, 2019. Lastly, there is need to streamline and harmonise the functions and mandates of all institutions. For instance, the certificate and diploma courses on fisheries currently being offered by Kenya Wildlife Service (KWS) should now be transferred to the newly established KFS where the course should naturally belong. In terms of reform areas, the FMDA, 2016 needs to be amended to create a formal intergovernmental consultative forum in line with the intentions of its section 2.

Key words: Fisheries Resources, Fisheries Institutions, Fisheries Governance, Blue Economy, Fisheries Management and Development Act.

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1. Introduction

The Blue Economy (BE) or the Ocean Economy (OE) (the two words are used interchangeably in this paper) is increasingly gaining prominence as the next frontier of economic development both locally and globally. The term BE has its roots in the 2012 Rio de Janeiro United Nations Conference on Sustainable Development and at its heart is the idea of separating socio-economic development from environmental degradation.¹ There is no one universal definition of BE but Smith-Godfrey borrowing from Rio+20 Green Economy Initiative and the World Bank (WB) concludes that BE can be defined as ‘the sustainable industrialisation of the oceans to the benefit of all’.² This working definition is also adopted in this paper.

The scope of BE is also vast and cannot be limited to fisheries resources. According to the Organisation for Economic Cooperation and Development (OECD), the OE consists of industries such as shipping, fishing, offshore wind and marine biotechnology as well as natural assets and ecosystem services including fish, shipping lanes and CO₂ absorption.³ The contribution of the BE in the world economy as estimated by the OECD in 2010 is USD 1.5 trillion or 2.5% of the world’s Gross Value Added (GVA).⁴ The excerpt below aptly captures the economic value of the fisheries resources sector:⁵

The fisheries are vital in creating employment opportunities, mostly rural-based, thereby helping to reduce rural-urban migration. Fish is also a rich source of animal protein for human consumption and provides raw material (fishmeal) for processing animal feeds. The fish industry contributes to GDP and has continued to be an important source of foreign exchange earned from fish exports. Besides, the fish industry contributes to the national and local government revenues through levying of various taxes, levies and license fees. The sector has also contributed directly and indirectly to the improvement of physical infrastructure and social facilities, such as roads, schools and hospitals, particularly in remote fishing communities.

The BE is also central to African economies. In November 2018, the country hosted the very first BE conference in Africa themed, *Blue Economy and the 2030*

¹ S. Smith-Godfrey, “Defining the Blue Economy” [2016] 12:1 Maritime Affairs: Journal of the National Maritime Foundation of India 58, 59.

² Ibid, 60.

³ Organization for Economic Cooperation and Development *The Ocean Economy in 2030 (OECD Publishing Paris 2016)* 13. According to the OECD report, the ‘Future of Ocean Economy’ project is aimed at exploring the growth prospects for the ocean economy, and its capacity for employment creation and innovation.’

⁴ Ibid.

⁵ Konstantine Odongkara, Richard Abila, & Paul Onyango ‘Distribution of economic benefits from the fisheries of Lake Victoria’ (Researchgate 2014) 2, available at <https://www.researchgate.net/publication/261133649_Economic_Benefits_of_Lake_Victoria_Fisheries> accessed on 21st February 2020.

Agenda for Sustainable Development. The conference ‘was dedicated to realizing the untapped potential found in our oceans, seas, lakes and rivers.’⁶ Africa is indeed a big player in the blue economy because it has about 38 coastal and island states and a coastline of over 47,000 km.⁷ One of the outcomes achieved during the conference was that the African Union Commission (AUC) committed to expand its portfolio of the Department of Rural Economy and Agriculture (DREA) with the task to coordinate the development of BE growth in Africa and the African Union Inter-African Bureau for Animal Resources (AU-IBAR) was charged with the specific task to coordinate the formulation of the Africa BE Strategy.⁸

The Africa BE Strategy, 2019 (African Strategy) estimates that the BE currently generates about USD 296 billion and 49 million jobs. In Africa, these figures are expected to increase in 2030 and 2063 and the projections are estimated to be as follows: for 2030, USD 405 billion and 57 million jobs; and in 2063, USD 576 and 78 million jobs (representing about 5% of the active population in 2063).⁹ Accordingly, the Africa Strategy predicts that the BE will remain steady and it will create more employment and that aquaculture will grow steadily in the next decade.¹⁰

The African Strategy further observes that the main drivers of change in the BE will be: African population and growth which is expected to be 3 billion in 2063 from the current 1.6 billion; regional/international integration through trade agreements which will increase the free flow of trade and services within and without the continent; nationally determined contributions in line with the 2015 Paris Agreement concerning adaptation and mitigation measures in carbon capture and storage; environment and biodiversity protection; sustainable blue energy for addressing energy demands; ocean mining for meeting global demand and national economic development; innovative industries for accelerating economic development benefits; and large companies and countries transport strategies.¹¹

⁶ Ruth Waruhiu ‘Blue Economy can be a Lifeline for Africa’ (Africa Renewal December 2018 – March 2019) available at <<https://www.un.org/africarenewal/magazine/december-2018-march-2019/blue-economy-can-be-lifeline-africa>> accessed on 21st February 2020.

⁷ Ibid.

⁸ African Union *Africa Blue Economy Strategy (AU-IBAR Nairobi 2019) in. The document is part of a number of African and global policies and initiatives, including the African Union’s Agenda 2063; the 2014 Africa’s Integrated Maritime Strategy (2050 AIMS); the 2014 Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS); the 2015 UN Agenda 2030 (Sustainable Development Goals, SDGs); and the 2016 African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter).*

⁹ Ibid, 3.

¹⁰ Ibid, 3-4.

¹¹ Ibid, 7-9.

The African Strategy also outlines the key strategic challenges likely to be faced in this sector as follows: blue governance, which means that there is still significant institutional and governance challenges and hence poor policy and regulatory framework; economic and social challenges since many coastal and lake communities in Africa are poor and disempowered among other things; nutritional meaning that exporting food product denies local population nutritional needs and that out of 55 countries 35 countries in Africa operate fish production deficit today bringing with it opportunities for trade; and environmental factors and the need to build resilience and reduce vulnerability of the communities to climate change and variability to ensure food and livelihood security.¹² The African Strategy further identifies areas of interventions to include governance and institutional changes (as a cross-cutting area) whose strategic objective is to strengthen the institutions for policy environment and governance to coordinate African BE among other things.¹³

Kenya is one of the countries in Africa that is trying to leverage on the BE to boost its economy in line with its *Vision 2030* blueprint.¹⁴ In this regard, the country is reforming the sector and has currently has put in place elaborate measures to develop and manage the fisheries resources sector including by way of enactment of the Fisheries Management and Development Act, 2016.

The key institution that is driving this change at the national level is the Ministry of Agriculture, Fisheries and Cooperatives and specifically, the State Department for Fisheries, Aquaculture and the Blue Economy.¹⁵ The functions of the department are as follows: fisheries policy; fisheries marketing policy; fishing licensing; development of fisheries; fish quality assurance; co-ordination of development of policy, legal, regulatory and institutional framework for the fisheries industry and the blue economy; enhancement of technical cooperation with partner states; co-ordinating maritime spatial planning and integrated coastal zone management; protection and regulation of maritime ecosystems; management and licensing of local and foreign fishing trawlers in Kenya waters; protection of the maritime resources in EEZ; overall policy for exploitation of agro-based maritime resources; policy on development of fishing ports and associated infrastructure; and capacity building for sustainable exploitation of agro-based maritime resources.¹⁶

¹² Ibid, 10-11.

¹³ Ibid, 13.

¹⁴ Kenya Vision 2030 (undated), available at < <http://vision2030.go.ke/economic-pillar/>> accessed on 2nd February 2020.

¹⁵ Ministry of Agriculture, Fisheries and Cooperative, State Department for Fisheries, Aquaculture and the Blue Economy available at <http://www.kilimo.go.ke/?page_id=376> accessed on 28 February 2020.

¹⁶ Ibid.

The ministry is led by a Cabinet Secretary (CS). Below the CS are three principal secretaries in charge of agriculture, livestock and fisheries. Below the Principal Secretary for Fisheries there are three (3) directorates, namely: Directorate of Aquaculture Technology Development; Directorate of Fisheries Policy Research & Regulations; and Directorate of Fisheries Resources Development & Marketing.¹⁷

It is against the foregoing background that this paper provides an overview of the institutional framework for fisheries management and development in Kenya as an important first step to clarifying this important sector of the economy.

2. The Current Fisheries Outlook and Budgetary Prioritisation in Kenya

The Kenyan economy is expected to benefit from the fisheries resources sector. It is because of this reason that *Vision 2030* expressly includes fisheries development and management under the agriculture sector, which is part of the economic and macro pillar. The *Vision 2030* also provides that fisheries development and management 'will be achieved through expanding the area of fish farming from the current high potential areas to Arid and Semi-Arid Lands (ASALs) and developing fisheries related infrastructure and strengthening of monitoring, control and surveillance systems.'¹⁸ The expected impact of the project is stated under the *Vision 2030* as: stock assessment & set reference points increased fish production from capture and culture fisheries; reduced fish post-harvest losses per annum; increased exports of marine products.

Kenya's vast fisheries resources transcend marine, inland and aquaculture. In terms of marine fisheries resources, Kenya has about 420 km marine zone in length and its Exclusive Economic Zone (EEZ) area is about 230,000km².¹⁹ Fishing activities in the marine region has produced about 4,000 – 10,000 tonnes each year valued at KES 500 million.²⁰

Inland or fresh water fisheries resources covers about 10,500 to 11,500km² of the Kenyan territory and it is estimated that fish production ranges between 120-130,000 tonnes per annum, which is about 96% of the total national fish production.²¹ Lake Victoria fish stock has been valued at USD 800 million annually

¹⁷ Ibid.

¹⁸ Kenya Vision 2030 n 10.

¹⁹ David Japp *Kenya Fisheries Governance (IRFS Report/Rapport: SF/2012/9 August 2011)* 13.

²⁰ Ibid.

²¹ Ibid, 14.

and it is arguable that additional income could be realised via processing and vigorous marketing.²² Indeed, Kenya boasts of companies focused on fish processing and export.²³ The fish from Lake Victoria is allegedly free from pollutants despite recent scathing reports about the contamination of the lake.²⁴ Alongside Kenya's fish are the Chinese fish imports proving that there is a huge demand for fish supplies in the lake region and beyond.²⁵ The high demand for fish in the Western market or lake region and beyond has also seen many fish import companies set up shop in Kisumu to meet the demand alongside fish export companies.²⁶ According to government figures, the total local fish production in Kenya is at 180,000 tonnes a year as against a demand of about 500,000 tonnes and that the existing demand gap is covered through imports.²⁷

Aquaculture is arguably the main strategy being employed by the government to boost fish production in Kenya today. According to some statistics, an estimated 722.4 ha, including dams, are under aquaculture representing fish production of about 4,300,000 kg, which is about 1% of fish production in Kenya.²⁸ Currently, there is a robust programme to develop aquaculture in order to increase fish production by 10% annually.²⁹ This is in line with the Africa Strategy that projects that African Aquaculture has grown fastest in the world, averaging about 10% annually between 2006 and 2018.³⁰ Aquaculture is expected to be one of the solutions to deal with the growing fish supply-demand gap that currently exists.³¹

²² Konstantine Odongkara et al n 5, 2-3.

²³ See examples at AFIPEK available at <<https://www.afipek.org/>> accessed on 20th February 2020. Afipek registered as the Kenya Fish Processors and Exporters Association is a national association formed to promote the development of the fisheries resources trade in both the domestic and export markets.

²⁴ Victor Raballa 'Lake Victoria Fish has No Toxins, is Safe to Eat, PS Says' *Daily Nation (Nairobi, 2 March 2020)* available at <<https://www.nation.co.ke/news/Lake-Victoria-fish-is-safe-Agriculture-PS-says/1056-5473970-90s2whz/index.html>> accessed on 4th March 2020.

²⁵ Paul Wafula 'Chinese Fish Found with 427 Times Recommended Amount of Lead' *Daily Nation (Nairobi, 16 February 2020)* available at <<https://allafrica.com/stories/202002190426.html>> accessed on 20th February 2020. Indeed, the 2019 Budget Policy Statement lists fish importation from China as one of the policy issues to be addressed.

²⁶ Ibid, 97.

²⁷ Republic of Kenya *Medium Term: 2019 Budget Policy Statement (The National Treasury and Planning, 2019)* 109.

²⁸ Ibid.

²⁹ Xinhua 'Kenya Outlines Measures to Lift Fisheries Sector' *Standard (Nairobi, 26 November 2015)* available at <<https://www.standardmedia.co.ke/business/article/2000183639/kenya-outlines-measures-to-lift-fisheries-sector>> accessed on 2nd March 2020.

³⁰ Africa Blue Economy Strategy n 8, 5.

³¹ Ibid.

Kenya is currently ranked as the 4th major aquaculture producer in Africa.³² There are also efforts at developing sea ranching alongside aquaculture because it is seen as capable of doubling the country's fish production from the current levels.³³

A proper institutional and governance structure is required to be able to manage the vast fisheries resources sector in the country more effectively. From the analysis above, it is clear that the government is serious about the fisheries resources sector in the country and has indeed aligned it to its Vision 2030 and AU Agenda 2063 as well as the Africa Strategy.

The fisheries governance in Kenya has historically focused on the inland sector and therefore its marine sector (and aquaculture) is still weak.³⁴ A weak governance system in the country has led to 'non-performance' of the sector.³⁵ It is, therefore, incumbent on Kenya to develop a comprehensive, modern legal and regulatory framework.³⁶ Suffice to note, the modern legal and regulatory framework should not only focus on inland but also marine and aquaculture fishing in Kenya. Indeed, the governance framework for the fisheries sectors also includes the institutional framework.

3. Fisheries Institutional Framework in Kenya

The formative stages of fisheries management in Kenya may be traced in the Fish Industry Act and the Fisheries Act. Both pieces of legislation are now repealed but they provide an important insight in relation to how the management of the fisheries sector started in the country and the progress that has been made so far. The fisheries sector has grown in terms of management from a Chief Fisheries Officer in 1968, a Director of Fisheries in 1991 and now the KFS among other institutions pursuant to the Fisheries Management and Development Act, which was enacted in 2016. The long title of the Act provides that it is 'AN ACT of Parliament to provide for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of communities dependent on fishing and to establish the [KFS]; and for connected purposes.' From its long title, the creation

³² KMFRI 'Kenya's Aquaculture Brief 2017: Status, Trends, Challenges and Future Outlook' (Kenya Marine and Fisheries Institute, Mombasa, 2017) 2, available at <https://www.kmfri.co.ke/images/pdf/Kenya_Aquaculture_Brief_2017.pdf> accessed on 4 March 2020.

³³ Ibid.

³⁴ Japp n 19, 7.

³⁵ Ibid.

³⁶ As above.

of the KFS is undoubtedly a key achievement of the Act worth highlighting. Other institutions established under the Act include the Kenya Fisheries Council and the Fish Marketing Authority. There are also other institutions that are crucial but are not established under the Act including the Kenya Marine and Fisheries Research Institute among other regional and international institutions as canvassed below.

3.1 The Era of the Chief Fisheries Officer

This is arguably one of the first post-independence comprehensive legislation signifying that the fisheries sector was indeed taken seriously by the state beyond the Nyanza region. Indeed, this Act repealed the Fish Protection Act and the Control of Nets (Nyanza Province) Act, which as the name suggests applied only to the former Nyanza Province in Kenya. It is arguable that the Act targeted the fishing sector around Lake Victoria. The Fish Industry Act was sketchy and had only 15 articles (now sections). The Act was administered directly by the Minister assisted by the Chief Fisheries Officer and advisory councils established under section 4 of the Act. Other authorised officers under the Act included police officers of or above the rank of sub-inspector, an officer of the Kenya Navy or a person appointed by the Chief Fisheries Officer (may include Fisheries Officer, Senior Fisheries Officer or Fisheries Development Officers, or Honorary Fish Warden.)

3.2 The Era of Director of Fisheries

The now repealed Fisheries Act³⁷ was enacted ‘to provide for the development, management, exploitation, utilization and conservation of fisheries and for connected purposes.’ The Act was equally sketchy with only 27 sections in total focusing on administration, registration, licensing and enforcement provisions. A cursory view of the Act reveals that it lacked an elaborate institutional framework of governance. The administration of the Act was in the hands of a Director who was directed by a Minister pursuant to section 3 of the Act. It is clear from the Act that the institutional structure was lacking and needed to be revamped. Even though the enforcement provisions were progressive, the lack of an elaborate institutional structure may have been the biggest challenge in terms of the implementation of the Act. It is perhaps for this reason that the Act was repealed and replaced with the modern institutional framework, which is discussed below.

³⁷ Fisheries Act, 1991, Chapter 378 (Kenya).

3.3 *The Kenya Fisheries Service*

The FMDA vests all fisheries resources in the State and shall be conserved, managed and developed on behalf of the Kenyan people. According to the FMDA, the Kenya Fisheries Service is the main governance institution in the fisheries sector assisted by many other institutions established under the Act. Under section 7 of the Act, the Kenya Fisheries Service is responsible for the conservation, management and development of Kenya's fisheries resources. Unlike in the past, the Kenya Fisheries Service is not a government department but a body corporate with perpetual succession and is capable of suing and being sued among other things that a private company can do pursuant to section 7(2) of the Act. This, therefore, means that the Kenya Fisheries Service is an independent institution and its functions and powers, which are elaborate, are clearly spelt out under section 9 of the Act.³⁸ Section 8 establishes the headquarters of the Kenya Fisheries Council

³⁸ The functions of the Service shall be to— (a) ensure the appropriate conservation development of standards on management, sustainable use, development and protection of the fisheries resources; (b) formulate and monitor the implementation of policies regarding the conservation, management and utilization of all fisheries resources within the scope of this Act; (c) develop standards for the management of all fisheries and aquaculture activities and fishing related activities within the scope of this Act; ; (d) develop guidelines for the preparation of fisheries specific management plans for the Kenya fishery waters; (e) provide education to create public awareness and support for fisheries conservation, management, development and sustainable use; (f) set and meet goals for fisheries conservation, management, development and sustainable use; (g) in consultation with the Kenya Marine and Fisheries Research Institute, approve and coordinate research activities in relation to matters falling within the scope of this Act; (h) collect and analyse data in relation to resources and activities falling with the scope of this Act; (i) identify manpower requirements and recruit manpower at all levels for the Service; (j) liaise as appropriate with agencies and persons, including stakeholders, industry, government agencies, regional and international organisations and experts, whether local or foreign, on matters falling within the scope of this Act; (k) act on behalf of the government, subject to the Treaty Making and Ratification Act, 2013 in relation to any domestic or international agreement relating to fishing, fishing related activities or any matter falling within the scope of this Act, to which Kenya is or may become a party; (l) administer and co-ordinate international protocols, conventions and treaties regarding fisheries in all its aspects in consultation with the Cabinet Secretary pursuant to the Treaty Making and Ratification Act, 2013; cap 242 (m) subject to the Public Health Act and the Food, Drugs and Substance Act, control and regulate fish Cap 254 safety and quality; (n) raise revenue through levies, fees, investments and other means in accordance with this Act and the Constitution, including solicitation by public appeal or otherwise, and accept and receive subscriptions, donations, devices and bequests, whether of movable or immovable property and whether absolute or unconditional for the general or special purposes of the Service or subject to any trust; (o) undertake the development of appropriate fisheries infrastructure, that relates to its mandate under this Act and the Constitution; (p) facilitate investment in commercial fisheries, in collaboration with relevant agencies, persons or bodies, including Government departments; (q) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies, county governments and stakeholders; (r) identify and promote construction of any works deemed necessary for the sustainable development and economic utilization of fisheries resources; (s) in collaboration with county government and the Fish Marketing Authority established

in Nairobi but requires that other offices be established in the counties as may be appropriate to ensure service delivery at county level.

The Kenya Fisheries Service has a Board of Directors whose chairperson is appointed by the President pursuant to section 10 and 11 of the Act. The Board of Directors is, therefore, the policy organ of the Kenya Fisheries Service. The Board of Directors performs many functions and also recruits the Director General competitively and he or she acts as the Chief Executive Officer pursuant to section 15 and 16 of the Act. The day to day running of the Kenya Fisheries Service is, therefore, in the hands of the Director General. Under section 26 of the Act, the Director-General is to report to the Board of Directors within four months after the close of each fiscal year. Under the office of the Director General, there have been created a number of innovative ideas which are aimed at unlocking the potential of the fisheries sector as discussed below.

3.3.1 Monitoring Control and Surveillance Unit

Another key creation of the Act is the establishment of the Monitoring, Control and Surveillance Unit under the Kenya Fisheries Service whose functions include enforcement and compliance issues in the fisheries sector pursuant to section 20 of the Act. The Act also provides that the Cabinet Secretary may make regulations establishing and assigning functions to an inter-agency monitoring control and surveillance unit which shall be able to ensure coordinated and effective interagency enforcement of and compliance with the Act pursuant to section 21 of the Act.

3.3.2 Fisheries Research Development Fund

Section 27 of the Act creates the Fisheries Research and Development Fund which also includes money paid as royalties to the Service and donations from any source for purposes of providing supplementary funding for research intended to further the development of fisheries management, capacity building, scholarships, grants and support for the observer programme.

under section 201, identify opportunities and promote all aspects of fisheries marketing; (t) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions; (u) co-ordinate fish quality assurance and operations of the marine and coastal fisheries, aquaculture and inland and riverine fisheries; (v) coordinate and or undertake monitoring, control and surveillance of all activities within the scope of this Act; and (w) perform such other duties and functions consistent with the provisions of this Act as may be necessary to carry out the objectives and provisions of this Act.

3.3.3 Fish Levy Trust Fund

Section 28 creates the Fish Levy Trust Fund to be paid by persons engaged in fishing or fishing-related activities, donations, and any other funds contributed by the Kenya Fisheries Service. The Trust is administered by five members of trustees, two of whom are fisherpersons from fresh waters and marine waters, nominated through an open and competitive process pursuant to section 28(4) and 5.

3.3.4 County Fisheries Management Plans and Beach Management Units

Under section 22, the Director-General is required to keep all County Government consulted and informed of relevant management measures and processes. Under section 34, the counties are allowed to develop county fisheries management measures and plans for fisheries resources within their jurisdictions. The details of these plans are provided for under sections 39 and 40 of the Act. In this process, the Beach Management Units (BMUs) established under the county governments have a role to play in terms of ensuring a structured community participation. Indeed, as noted above, the regulations for BMUs are currently being developed and the process is at advanced stages.

The *lacuna* that currently exists in the law is that apart from the obligation of the Director-General to consult the counties, there is no forum created under the Act to coordinate county and KFS activities. Such a forum could, for example, take the form of an intergovernmental consultative forum in line with the objectives of section 22 of the Act.

3.3.5 Aquaculture Development Plan

Section 62 envisages the development of an Aquaculture development plan by the Director-General in consultation with the Oceans and Fisheries Advisory Council which shall be for a duration of three years. The Director-General is expected to collaborate with the counties to ensure among other things that the aquaculture development is ecologically sustainable.³⁹ The permission of the Director-General is required for, among other things, the introduction of any exotic species of fish or any genetically modified fish and the import or export of live fish for purposes

³⁹ Section 63(1).

of aquaculture.⁴⁰ The use of drugs, pharmaceutical, antibiotic or other chemical is prohibited unless approved by the Director General.⁴¹ Regulations in this area are envisaged under the Act even though they are yet to be put in place.⁴²

3.3.6 Licensing and Authorisation

Section 84 of the Act requires that all persons engaged in the fisheries sector to be issued with a license and authorization upon satisfying the specified conditions. The county governments are empowered to issue licenses for vessels for recreational fishing and operating a fish processing establishment within the respective county. Non-commercial subsistence is, however, excluded from the requirement of a licence but it is required that they be registered at the county level. In relation to aquaculture, there is a requirement to register an aquaculture establishment and obtain a permit from the Director-General.⁴³

Also, part of the information that is to be collected by the Director-General under Part IX include a register of licenses and authorizations which will make it easy to govern the fisheries sector in Kenya.⁴⁴ The information to be included in the register includes any records of non-compliance with the license or authorization as well as any record of action taken as a result of non-compliance.⁴⁵ The information should also be capable of assisting Kenya to discharge its regional and international obligations including as a flag state and as a member of regional fisheries management organisation.⁴⁶ There is also an obligation to make information public and disseminate relevant information to stakeholders including regional and international organizations for purposes of fisheries conservation, management and development except where the information is confidential.⁴⁷

3.3.7 Monitoring Control and Surveillance

The Act empowers authorised officers to do all such acts and things and give such directions as are reasonably necessary to exercise powers of monitoring,

⁴⁰ Section 66.

⁴¹ Section 70.

⁴² Section 74.

⁴³ See sections 117 and 118.

⁴⁴ Section 81.

⁴⁵ Section 81(e) and (f).

⁴⁶ Section 821(6).

⁴⁷ Section 82 and 83 of the Act.

control and surveillance.⁴⁸ The authorised officers have very elaborate and far-reaching powers that transcend national boundaries in certain cases. Section 139, for instance, gives authorised officers the powers of hot pursuit where it is suspected that a vessel has been used to commit an offence.

In concluding this section, the KFS is undoubtedly a very important institution in the fisheries sector. Its autonomy means that it can make independent decisions and operate efficiently without government bureaucracy. It is, therefore, important that the institution insulates itself from political control that has hampered the proper functioning of other state corporations. The Director of the institution will, therefore, in addition to the other task have an important role to play which is to insulate the institution from political interference.

3.4 The Kenya Fisheries Advisory Council

Apart from the Kenya Fisheries Service, the Kenya Fisheries Advisory Council established under section 6 of the Act also plays an important governance role in the fisheries sector in Kenya because of its functions. Section 6(2) of the Act provides for the functions of the Council as to review and advise the national government on: policies in relation to the co-ordination of fisheries management in relation to the aquatic environment and human dimensions; the allocation and access to fisheries resources; intergovernmental agreements and arrangements related to fisheries; research, education, capacity development in fisheries and the management of fisheries resources; management plans and resources for the development of the fisheries sector; and any other matters connected with this or any other related Act. These functions are indeed very critical in the governance of the fisheries sector, which makes this body central. In order to conduct its business efficiently, the Council may form working groups and committees.⁴⁹ The secretarial services for the Council are provided by the ministry responsible for fisheries.⁵⁰

The Advisory function is a very important component of the present legislation and its success will depend on the quality of professionals that sit in the council. It is, therefore, critical that those recruited to sit in the council be persons of high professional capacity in order to provide the best advice possible to achieve growth and prosperity in the country.

⁴⁸ Part XIII.

⁴⁹ Section 6(7).

⁵⁰ Section 6(8).

3.5 Kenya Fish Marketing Authority

Even though this is not a governance institution strictly speaking, the Kenya Fish Marketing Authority established under Part XVIII is an important player in the sector. Under section 199, the Authority's object and purpose is to market Kenyan fish and fisheries products abroad. It is managed by a Board of Directors of whom two shall be nominated by the Cabinet Secretary from the registered national fisheries association pursuant to section 201(i).

The marketing of fish is an important aspect in order to guarantee access to the market including at the international level without relying on middlemen. The government could step in and provide more benefits to the fish farmers by providing information and liberalising the trade in fish both locally and internationally.

4. Other Fisheries Institutions

Apart from the mainstream institutions established under the FMDA, there are also a number of other institutions that play a supportive role in the fisheries sector as discussed below.

4.1 Kenya Marine and Fisheries Research Institute

The Kenya Marine and Fisheries Institute (KMFRI) was established in 1979 via the now repealed Science and Technology Act (the current law is Science, Technology and Innovation Act No. 28 of 2013). The institution is mandated to 'undertake research in 'marine and freshwater fisheries, aquaculture, environmental and ecological studies, marine research including chemical and physical oceanography', in order to provide scientific data and information for sustainable exploitation, management and conservation of Kenya's fisheries and other aquatic resources and contribute to National strategies of food security, poverty alleviation, clean environment, and creation of employment as provided for under Vision 2030.⁵¹

KMFRI is particularly important since it is the host institution for the World Bank-funded project dubbed Kenya Coastal Development Project (KCDP) that is aimed at 'protecting the natural resources base and to enhance the management of

⁵¹ 'Kenya Marine and Fisheries Research Institute - Mandate of the Institute' available at <<https://www.kmfri.co.ke/index.php/about-us/mandate-of-the-institute>> accessed on 18th March 2020.

Kenya's coastal and marine resources.⁵² The project is being implemented in Lamu, Tana River, Kilifi, Mombasa, Kwale and Taita Taveta in collaboration with the State Department of Fisheries (SDF), Kenya Wildlife Service (KWS), Kenya Forestry Research Institute (KEFRI), Coast Development Authority (CDA), Ministry of Lands Department of Physical Planning (DPP) and the National Environmental Management Authority (NEMA).⁵³ Under the project, one of the key focus area include improved management systems, guidelines and biodiversity strategies and under it the project has been above to achieve fisheries management plans for Ring Net fisheries, lobsters and Aquarium fisheries.⁵⁴

4.2 Kenya Wildlife Service

The Kenya Wildlife Service (KWS) is a state corporation established by the now repealed Wildlife (Conservation and Management) Act (the current legislation is Wildlife Conservation and Management Act) with the mandate to conserve and manage wildlife in Kenya, and to enforce related laws and regulations.⁵⁵ Perhaps, the main link between the Kenya Wildlife Service (KWS) and fisheries is the Kenya Wildlife Service Training Institute (KWSTI), which was established under Sessional Paper No. 3 of 1975.⁵⁶ Located in Naivasha, the institute, perhaps having been established in 1985 under the then departments of wildlife and fisheries under the Ministry of tourism and wildlife offers craft certificate and diploma in aquaculture, as well as fisheries and aquatic sciences respectively.⁵⁷ The Diploma in Fisheries & Aquatic Sciences (Fisheries Extension Officer, Fish Gear Technician) takes a duration of 18 months broken down into 4 Semesters.⁵⁸ It appears, therefore, that the KWSTI's focus on fisheries is as a result of historical reasons. Currently, the training should be left to the Kenya Fisheries Service established under the

⁵² 'Kenya Coastal Development Programme (KCDP) | Kenya Wildlife Service' available at <<http://www.kws.go.ke/content/kenya-coastal-development-programme-kcdp>> accessed on 18th March 2020.

⁵³ Ibid.

⁵⁴ Kenya Coastal Development Project, 'FACT SHEET FOR THE KENYA COASTAL DEVELOPMENT PROJECT' (KCDP undated) Fact Sheet KCDP Fact Sheet 10 available at <http://www.kws.go.ke/sites/default/files/KCDP%20Fact%20Sheet_10.pdf> accessed on 4th March 2020.

⁵⁵ 'About Us | Kenya Wildlife Service' available at <<http://www.kws.go.ke/about-us/about-us>> accessed on 18th March 2020. In fact, the KWS was established through an amendment to Cap 376 in 1989 through the Wildlife (Conservation and Management) (Amendment) Act, 16 of 1989.

⁵⁶ Republic of Kenya Ministry of Environment and Natural Resources 'Statement of the Future of Wildlife Management Policy in Kenya' (Sessional Paper No. 3, 1975).

⁵⁷ 'Kenya Wildlife Service Training Institute | Kenya Wildlife Service' available at <<http://www.kws.go.ke/content/kenya-wildlife-service-training-institute#>> accessed on 18th March 2020.

⁵⁸ Ibid.

Fisheries Management and Development Act, 2016. It looks a little bit absurd for the trainings on fisheries to continue being domiciled in KWSTI whilst another more relevant and appropriate institution is available at the same level. KFS should, however, develop its training institute before the transfer of course can be effected.

4.3 Coastal Development Authority

The Coastal Development Authority (CDA) is a state corporation mandated with the provision of integrated development planning, coordination and implementation of projects and programmes within Coast region, Southern Garissa and Kenya's Exclusive Economic Zone (EEZ). Fisheries is one of the Coastal resources that fall within the jurisdiction of CDA.⁵⁹ In terms of its focal area of development concerned with the optimal sustainable utilization of Exclusive Economic Zone of Kenya (EEZ) and connected resources in the region, it is implementing a programme under the name 'Establishment marine and aquatic natural resources processing facilities and improve management support systems and programme'. In Tana River, Kilifi, Lamu and Kwale Counties, the projects include: integrated coastal marine resources management programme; integrated fish resources development project; and Kilifi industrial park development project.⁶⁰

4.4 Lake Basin Development Authority

The Lake Basin Development Authority (LBDA) was established via the Lake Basin Development Authority Act, Cap 442 Laws of Kenya as a government agency to provide an avenue for a quicker, more meaningful and coordinated development in the Kenyan portion of the Lake Victoria basin.⁶¹ The LBDA's vision is to be an authority in integrated socio-economic development in the region and one of the community empowerment programmes contained in their service delivery charter is fisheries, wherein the services/goods rendered include: survey of fish farming sites; farm designs advice; business plan advice; pond construction advice; promotion of fish farming development; fish feeds; training of youth/women groups; and fish pond stocking.⁶² It appears that the key focus of LBDA is aquaculture development from the above focus areas it has enumerated in its service charter.

⁵⁹ 'Coast Development Authority' available at <<http://cda.go.ke/html/projects.html>> accessed on 4th March 2020.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

4.5 County Governments

Article 6(1) of the Kenya Constitution recognizes that Kenya's territory is divided into counties. Chapter eleven of the Constitution provides for devolved government and article 176 established, for each County, a County government consisting of a County Assembly and a County Executive. According to the fourth schedule of the Constitution, the functions and powers of the County in relation to agriculture include fisheries among other things. Fisheries is, therefore, one of the functions that has been devolved and all the 47 County governments should play a critical role in this regard.

County governments are principally governed by the County Governments Act.⁶³ The main County governments that are concerned with fisheries sector include Mombasa and Kisumu. In Mombasa, the County Executive Committee Member for Agriculture, Livestock, Fisheries and Cooperatives announced plans for fisheries including establishment of common user storage facility, fish auction market and processing plants.⁶⁴ Similarly, in Kisumu, there is a department of Agriculture, Irrigation, Livestock and Fisheries and it is headed by County Executive Committee Member. As part of its food security agenda, the County government of Kisumu is also engaged in fisheries and fish farming and in this category they are promoting sustainable harvesting of Lake Victoria's fish stocks and introducing fish farming projects in every ward across the County to meet the increasing demand for fish.⁶⁵ Fisheries is also included in the industrialization agenda in relation to enhancing agro-processing of fish products among others.⁶⁶ It is therefore clear that the County governments, including in Kisumu and Mombasa, are also important players in the fisheries sector apart from the role identified above in relation to the Fisheries Management and Development Act, 2016.

Another County office that is critical in matters fisheries is the public health office. The public health office is the office that will ensure that all fish is fit for human consumption. It is the office that is expected to conduct inspections and recommend good hygiene and sanitation practices. As part of the County Government in Kisumu, Kisumu Water and Sewerage Company (KIWASCO),

⁶³ County Governments Act.

⁶⁴ 'Agriculture, Fisheries, Livestock & Cooperatives – Mombasa County' available at <<http://www.mombasa.go.ke/agriculture-livestock/>> accessed on 4th March 2020.

⁶⁵ 'Kisumu County Development – Kisumu County' available at <<https://www.kisumu.go.ke/about-us/pillars-for-kisumu-county-development/>> accessed on 4th March 2020).

⁶⁶ Ibid.

even though a company, plays important services including 'providing cost effective and affordable quality water and sanitation services to the residents of Kisumu County including water treatment and supplies and exhauster services.'⁶⁷ This company is important in maintaining sanitation along Lake Victoria and ensuring that appropriate water and sanitation services are in place for both the fisher-folks as well as fisheries companies.

Lastly, the trade office is also important, particularly, because of levies and also market regulations. It is also the trade office that may boost international trade in fisheries resources by conducting market research and facilitating market access.

4.6 National Environment Management Authority

In February 2020, an investigation that took place for three months, *rotting from the deep*, revealed chilling news that Lake Victoria was slowly dying and that dozens of fish species have already disappeared due to contamination through waste discharge or human activity.⁶⁸ This report brought into sharp focus the role of the National Environment Management Authority which is established under the Environmental Management and Coordination Act No. 8 of 1999. NEMA is the principal government agency over all matters relating to environment. One of its important functions is issuing of environmental licenses and permits including in relation to effluent discharge.⁶⁹ Through its water quality regulations, NEMA also regulates water used for fisheries and in doing so it protects lakes, rivers, streams, springs, wells and other water sources. The objective of the water quality regulations is to prohibit discharge of effluent into the environment contrary to established standards.⁷⁰

⁶⁷ 'KIWASCO – Refresh Life' (KIWASCO) available at <<https://www.kiwasco.co.ke/>> accessed on 5th March 2020.

⁶⁸ Paul Wafula 'Toxic dump: The Poisons Killing Lake Victoria' *Daily Nation (Nairobi 17 February 2020)* available at <<https://www.nation.co.ke/nationprime/poisons-lake-victoria-kenya/5279428-5458326-xlnisn/index.html>> accessed 5th March 2020.

⁶⁹ 'National Environment Management Authority (NEMA) - Environmental Lincensing' available at <http://www.nema.go.ke/index.php?option=com_content&view=article&id=10&Itemid=146> accessed on 5th March 2020.

⁷⁰ 'National Environment Management Authority (NEMA) - Water Quality Regulations' available at <http://www.nema.go.ke/index.php?option=com_content&view=article&id=28&Itemid=168> accessed on 5th March 2020.

4.7 Kenya Forest Service and Kenya Forest Research Institute

Kenya Forest Service (KFS) is a state corporation established in 2007 pursuant to the Forest Act, 2005. Whilst the link of KFS and fisheries is not obvious, certain overlaps exist. The KFS engages in income generating activities to improve the livelihoods of local including fish farming alongside bee keeping and others.⁷¹ Indeed, such projects include the Green Zone Development Support Project which was funded by the African Development Bank and the Government of Kenya.⁷²

Another important work being done in this context relates to the Forest Biodiversity and Environment Management (FBEM) which is implemented by the Kenya Forest Research Institute (KEFRI). This work focuses on 'development of technologies for rehabilitation, sustainable management and utilization of all types of forests in water towers, wetlands and riparian ecosystems.' This work is important in relation to fresh water fisheries resources or inland fishing. Conservation of forests, including the Mau forest, which is a source of water for many rivers and lakes, therefore, remains an important area of focus.

4.8 Kenya Fish Processors and Exporters Association

Apart from governmental institutions, another important fisheries resources institution is the Kenya Fish Processors and Exporters Association (AFIPEK) which focuses on 'providing leadership to support and strengthen Kenya's trade in fish and fish products'. Started in 2000, it is a national association formed to promote the development of fisheries resources trade in both the domestic and export markets.⁷³

5. Regional and International Fisheries Institutions

Kenya belongs to a number of regional and international institutions under international treaties on fisheries which also play an important role in the fisheries governance sector. Using the FAO website, these include: Department of Rural Economy and Agriculture of the African Union Commission (AUC); African

⁷¹ Michael Muratha 'Green Zone Development Support Project Winds Up' *Kenya Forest Service (undated)* available at <http://www.kenyaforestservice.org/index.php?option=com_content&view=article&id=417:misitu-corporate-day&Itemid=1> accessed on 5th March 2020.

⁷² Ibid.

⁷³ 'AFIPEK' (*Kenya Fish Processors and Exporters Association*) available at <<https://www.afipek.org/>> accessed on 5th March 2020.

Union Inter-African Bureau for Animal Resources – AU-IBAR; Committee on Inland Fisheries and Aquaculture of Africa (CIFAA); Indian Ocean Tuna Commission (IOTC); International Whaling Commission (IWC); Lake Victoria Fisheries Organization (LVFO); and Southwest Indian Ocean Fisheries Commission (SWIOFC). It is crucial to note that globally, as of June 2017, there were about 133 institutions in marine and aquaculture which ‘have a formal position to influence rules, norms and/or performance of an institution.’⁷⁴ Clearly, therefore, the institutions discussed below are only representative and do not exhaustively cover the terrain as it were.

5.1 Department of Rural Economy and Agriculture of the African Union Commission

The AUC Department of Rural Economy and Agriculture (DREA) leads the efforts to promote sustainable environmental management and agricultural development.⁷⁵ The department, therefore, has the mandate of boosting the rural economy of AU Member States by ‘supporting the adoption of measures, strategies, policies and programmes on agriculture.’⁷⁶ Fishing is mainly carried out in rural areas and in this regard the department has an important role to play. The department works together with the African Union Inter-African Bureau for Animal Resources (AU-IBAR) and as a matter of fact the two took the leadership in developing the AU strategy following the conclusion of the BE conference in Nairobi in 2018.

5.2 African Union Inter-African Bureau for Animal Resources – AU-IBAR

Kenya is a member of the African Union (AU). On 8th February 2020, during its 33rd African Union Summit in Addis Ababa Ethiopia, the AU launched the Africa Blue Economy Strategy under the theme ‘Developing Sustainable Blue Economy: Increasing Momentum for Africa’s Blue Growth’. The objective of the strategy has five thematic reports detailing it as follows: fisheries, aquaculture, conservation and sustainable aquatic ecosystems; shipping/ transportation, trade, ports, maritime

⁷⁴ Sergi Arnau, Kristian Kristensen, Oscar Widerberg, & Philipp Pattberg *Mapping the Institutional Architecture of Global Marine Fisheries and Aquaculture Governance* (IVM Institute for Environmental Studies 10 October 2017) 20.

⁷⁵ ‘AU REA’ (African Union Department of Rural Economy and Agriculture) available at <<https://au.int/en/rea>> accessed on 28th March 2020.

⁷⁶ *Ibid.*

security, safety and enforcement; coastal and maritime tourism, climate change, resilience, environment, infrastructure; sustainable energy and mineral resources and innovative industries; and policies, institutional and governance, employment, job creation and poverty eradication, innovative financing.⁷⁷ The document was launched against the backdrop of the November 2018 Sustainable Blue Economy Conference which ‘was an eye opener to the challenges and opportunities for blue economy growth in the world, not least in Africa’ and is regarded as a ‘significant step towards fulfilling the aspiration of our continent expressly enshrined in African Union Agenda 2063’ according to H.E. Ambassador Yosefa Sacko, the Commissioner for Rural Development and Agriculture.⁷⁸ The Department of Rural Economy and Agriculture under African Union Inter-African Bureau for animal Resources (AU-IBAR) is expected to lead in this process of implementing the strategic plan.

5.3 Committee on Inland Fisheries and Aquaculture of Africa

The main objective of the Committee is to promote the development of inland fisheries and aquaculture in Africa (CIFAA).⁷⁹ Kenya is a member of the Committee on Inland Fisheries and Aquaculture of Africa (CIFAA) among other countries selected by the Director-General because of their active interest in inland fishery development in Africa and potential in assisting the CIFAA discharge its functions effectively.⁸⁰

The Committee has the following terms of reference as per the website:⁸¹ to promote, coordinate and assist national and regional fishery and limnological surveys and programmes of research and development leading to the rational utilization of inland fishery resources; to assist Member Governments in establishing the scientific basis for regulatory and other measures for the conservation and improvement of inland fishery resources, to formulate such measures through subsidiary bodies as required, and to make appropriate recommendations for

⁷⁷ ‘AU-IBAR | Launch of the Africa Blue Economy Strategy’ available at <<https://www.au-ibar.org/home/171-en/media/news/au-ibar/1484-launch-of-the-africa-blue-economy-strategy>> accessed on 5th March 2020.

⁷⁸ Africa Blue Economy Strategy n 3 above iv-v.

⁷⁹ ‘FAO Fisheries & Aquaculture - Regional Fishery Bodies Summary Descriptions - Committee on Inland Fisheries and Aquaculture of Africa (CIFAA)’ available at <<http://www.fao.org/fishery/rfb/cifaa/en>> accessed on 28th February 2020.

⁸⁰ Ibid.

⁸¹ Ibid.

the adoption and implementation of these measures; to promote and coordinate efforts on a national and regional basis to prevent damage to the aquatic environment, including the prevention and control of water pollution; to assist in the development of fish culture and stock improvement, including the control of fish diseases and the importation of exotic species; to promote and assist in the utilization of the most effective fishing craft, gear and techniques; to promote and assist activities concerned with the processing, preservation and marketing of fish and fish products; to encourage education and training through the establishment or improvement of national and regional institutions and by the promotion and the organization of symposia, seminars, study tours and training centres; to assist in the collection, interchange, dissemination and analysis of statistical, biological and environmental data and other inland fishery information; and to assist Member Governments in formulating national and regional programmes to be implemented through sources of international aid to help achieve the objectives referred to in the preceding paragraphs.

From the above, the CIFA focus is on inland fresh water fishing including aquaculture. In this regard, Kenya's membership is important in order to develop the sector.

5.4 Indian Ocean Tuna Commission

The Indian Ocean Tuna Commission (IOTC) is established under article XIV of the FAO Constitution pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission, 1996.⁸² Kenya is a member of the IOTC and it is mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas with the objective of promoting the conservation and optimal utilization of tuna and tuna-like stocks covered by the IOTC Agreement, and to encourage sustainable development of fisheries.⁸³ The functions of the Commission are as follows: to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information, catch and effort statistics and other relevant data; to encourage, recommend and coordinate research and development activities in respect of the stocks and fisheries covered by the Agreement; to adopt conservation and management measures on the basis of scientific evidence; and

⁸² 'FAO Fisheries & Aquaculture - Regional Fishery Bodies Summary Descriptions - Indian Ocean Tuna Commission (IOTC)' available at <<http://www.fao.org/fishery/rfb/iotc/en>> accessed on 28th February 2020.

⁸³ Ibid.

to keep under review the economic and social aspects of the fisheries, bearing in mind, in particular, the interests of developing coastal states.⁸⁴

5.5 International Whaling Commission

The International Whaling Commission (IWC) is a global Commission whose main objective is to establish a system of international regulations to ensure proper and effective conservation and management of whale stock.⁸⁵ Kenya is a member of the Commission.⁸⁶

5.6 Lake Victoria Fisheries Organisation

The Lake Victoria Fisheries Organization (LVFO) was established in 1994 as an institution of the East African Community and its mandate is to coordinate the management of the fisheries resources of Lake Victoria for sustainable development and utilization, and to spearhead aquaculture development in the Basin.⁸⁷ The objective of LVFO is stated as ‘to promote Sustainable Management and Development of Fisheries and Aquaculture in the East African Community for Food Security and Wealth Creation.’⁸⁸

5.7 Southwest Indian Ocean Fisheries Commission

The South West Indian Ocean Fisheries Commission (SWIOFC) is the body responsible for the promotion of the application of the provisions of the FAO Code of Conduct on Responsible Fisheries, including the precautionary approach and the ecosystem approach to fisheries management.⁸⁹

The functions and responsibilities of the Commission include: to contribute to improved governance through institutional arrangements that encourage

⁸⁴ Ibid.

⁸⁵ ‘FAO Fisheries & Aquaculture - Regional Fishery Bodies Summary Descriptions - International Whaling Commission (IWC)’ available at <<http://www.fao.org/fishery/rfb/iwc/en>> accessed on 28th February 2020.

⁸⁶ Ibid.

⁸⁷ ‘FAO Fisheries & Aquaculture - Regional Fishery Bodies Summary Descriptions - Lake Victoria Fisheries Organization (LVFO)’ available at <<http://www.fao.org/fishery/rfb/lvfo/en>> accessed on 4th March 2020.

⁸⁸ ‘East African Community | Lake Victoria Fisheries Organization’ available at <<https://lvfo.org/index.php>> accessed on 4th March 2020.

⁸⁹ ‘FAO Fisheries & Aquaculture - Regional Fishery Bodies Summary Descriptions - Southwest Indian Ocean Fisheries Commission (SWIOFC)’ available at <<http://www.fao.org/fishery/rfb/swiofc/en>> accessed on 4th March 2020.

cooperation amongst members; to help fishery managers in the development and implementation of fishery management systems that take due account of environmental, social and economic concerns; to keep under review the state of the fishery resources in the area and the industries based on them; to promote, encourage and coordinate research related to the living marine resources in the area and draw up programmes required for this purpose, and to organize such research as may be necessary; to promote the collection, exchange, dissemination and analysis or study of statistical, biological, environmental and socio-economic data and other marine fishery information; to provide a sound scientific basis to assist Members in taking fisheries management decisions; to provide advice on management measures to member governments and competent fisheries organizations; to provide advice and promote co-operation on monitoring, control and surveillance, including joint activities, especially as regards issues of a regional or sub-regional nature; to encourage, recommend and coordinate training in the areas of interest of the Commission; and to promote and encourage the utilization of the most appropriate fishing craft, gear, fishing techniques and post harvesting technologies.⁹⁰

5.8 Institutions under the 1982 United Nations Convention on the Law of the Sea (UNCLOS)

The three institutions established under the UNCLOS, 1982⁹¹ are equally important in relation to fisheries resources institutions. These are namely: the International Tribunal for the Law of the Sea (ITLOS); the International Seabed Authority (ISA); and the Commission on the Limits of the Continental Shelf (CLCS). These institutions are important particularly in relation to marine fishing and they have been in existence for many years with ITLOS and ISA being autonomous international organizations and the CLCS being a treaty body consisting of independent national experts.⁹² UNCLOS, 1982 imposes many obligations on the states sharing the marine resources as noted below:⁹³

⁹⁰ Ibid.

⁹¹ United Nations Convention on the Law of the Sea (UNCLOS), December 10, 1982, 1833 UNTS 3.

⁹² Helmut Tuerk 'UNCLOS Institutions and their Roles' *Maritime Issues (undated)*, available at <<http://www.maritimeissues.com/uploaded/HTBD8/UNLCOS%20institutions%20and%20their%20role.pdf>> accessed on 30th March 2020.

⁹³ Maguire J., Sissenwine M, Csirke J, Grainger R & Garcia S 'The State of World Highly Migratory, Straddling and other High Seas Fishery Resources and Associated Species' *FAO Fisheries Technical Paper No. 495. (ROME FAO 2006)* available at <<http://www.fao.org/3/a0653e/a0653e03.htm>> accessed on 30th March 2020.

UNCLOS recognizes the sovereign rights of the coastal States for the purpose of exploring and exploiting, conserving and managing fishery resources in their EEZs, calling upon the coastal States to adopt conservation and management measures to promote the optimum utilization of fishery resources in their EEZs. With respect to exploited stocks or stocks of associated species occurring both within the EEZ and in the area beyond and adjacent to the zone, UNCLOS calls upon the coastal States and States fishing in the high seas to seek agreement upon the measures necessary for the conservation of those stocks in the adjacent high seas area. UNCLOS also calls upon the coastal States and other States fishing highly migratory species to cooperate in ensuring conservation and promoting the optimum utilization of those resources in their whole area of distribution. With respect to the high seas, UNCLOS also recognizes the free access and the freedom of fishing to all States, calling upon all States and particularly upon States fishing to cooperate in the conservation and management of fishery resources occurring in the high seas.

The above obligations must, therefore, out of necessity be mediated and enforced by the institutions mentioned above which are part of UNCLOS, 1982 and not any other institution.

6. Non-Governmental Organisations

In the fisheries sector, it is important to highlight a few non-governmental organizations working in this area. A quick google search reveals the following NGOs. One is Kwetu Kenya which describes itself as a recognised pioneer of mariculture (a branch of aquaculture that involves culture of aquatic organisms under marine environment) in Kenyan Coast in collaboration with other institutions.⁹⁴ Another prominent NGO is Farm Africa, which works directly with farmers, suppliers and traders to improve the production and marketing of fish.⁹⁵ Lastly, there is Coastal & Marine Resources Development (COMRED), which is involved in supporting coastal and marine resource conservation, research, governance and management.⁹⁶ The above list is only indicative and is by no means exhaustive.

⁹⁴ 'Mariculture | Kwetu Training Center' available at <<https://www.kwetukenya.org/departments/mariculture/>> accessed on 5th March 2020.

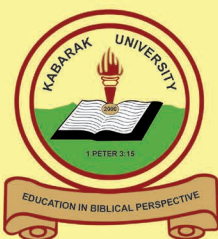
⁹⁵ 'Fish Farming in Kenya' available at <<https://www.farmafrica.org/kenya/fish-farming-in-kenya>> accessed on 9th May 2020.

⁹⁶ 'Coastal & Marine Resource Development' available at <<https://comred.or.ke/>> accessed on 9th May 2020.

7. Conclusion

The above analysis reveals that there exists a plethora of national and international institutions that are involved in the management of fisheries resources in Kenya. It is, therefore, important to take note of the different mandates of each institution while engaging in the sector. The key national institution in the Kenyan fisheries resources sector is, however, the KFS that was established pursuant to provisions of the Fisheries Management and Development Act, 2016. The institution is currently not fully operational because some important guidelines and regulations in the fisheries sector are currently being developed and, in fact, they are at advanced stages in this regard.

Apart from KFS, the role of County governments is also critical especially because fisheries is a devolved function in Kenya according to the Constitution 2010 under its Schedule Four. As expected, the County governments of Kisumu and Mombasa are implementing robust projects aimed at boosting the fisheries economy in their regions and improve production for economic growth and livelihoods. The regulatory aspect of the Counties is also important to note especially in licensing and other enforcement measures. There is need to have in place a link; between the KFS and the Counties to avoid future conflicts. Such a link could be in form of an intergovernmental committee established under the 2016 Act. The KFS working together with the Counties and other stakeholders identified above should be able to ensure that the fisheries sector is properly managed and developed in order to achieve the promises under Kenya's Vision 2030 and AU Agenda 2063.



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