



PROMOTING COMMON PROPERTY RIGHTS IN FISHERIES MANAGEMENT IN UGANDA

A Review of the National Fisheries Policy and the Proposed Fisheries Legislation



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Cover photograph: The cover photograph was taken at Kyehoro fish landing site on lake Albert, Hoima district.

**PROMOTING COMMON PROPERTY RIGHTS IN FISHERIES
MANAGEMENT TO ENHANCE RURAL LIVELIHOODS AND
POVERTY ERADICATION IN UGANDA**

**A Review of the National Fisheries Policy
and the Proposed Legal Framework**

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List of Acronyms

ACODE	Advocates Coalition for Development and Environment
BMUs	Beach Management Units
CBD	Convention on Biological Diversity
CPRs	Common Property Rights
DFID	Department for International Development (UK Government)
DFR	Department of Fisheries Resources
FSSP	Fisheries Sector Strategic Plan
MAAIF	Ministry of Agriculture, Animal Industry and Fisheries
MFPEd	Ministry of Finance, Planning and Economic Development
NFP	National Fisheries Policy
PEAP	Poverty Eradication Action Plan
PMA	Plan for Modernization of Agriculture
UFA	Uganda Fisheries Authority
UFFCA	Uganda Fish and Fish Conservation Association
UK	United Kingdom

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Executive Summary

Poverty eradication and improvement of rural livelihoods constitute some of the country's main development objectives within the context of Uganda's national development strategy; the Poverty Eradication Action Plan (PEAP). In the natural resources sector, where fishing communities represent the most marginalized and poorest group, fisheries policy and legislation is expected to contribute to the realization of the national development goals.

In this policy briefing paper, I observe that securing fishing community rights of access to the fisheries resource and ensuring equitable sharing of benefits arising from its exploitation is paramount for enhancing rural livelihood and poverty eradication. I argue that the best way to achieve the above is through recognition of common property rights in fisheries use and management. I accordingly examine the concept of common property rights in fisheries use and management and its relevance to poverty eradication and enhancement of community livelihoods.

I analyze the extent to which the recently adopted National Fisheries Policy guarantees common property rights of local fishing communities and I make recommendations on how best they can be secured in the policy implementation process. In particular, I argue that guaranteeing security of land tenure is fundamental to enjoying the full benefits accruing from common property rights regimes. I also recommend establishment and or recognizing private group rights in fisheries use and

management. I propose legal recognition and empowerment of all local fishing communities beyond the current Beach Management Units (BMUs) and argue that in order for them to equitably share in the productivity and profitability of the sub sector, they have to secure a reasonable percentage of the proposed fish levy fund from fish exports for their community development projects. I advocate for greater rights of the fishing communities in issuance of fishing activity licenses and retaining a reasonable percentage of the financial resources raised.

I conclude by observing among other things that establishment of fully supported institutional arrangements at grass root level and Government political will are critical factors in securing and realizing the full benefits of common property rights in fisheries resource use and management.

It is hoped that this policy briefing paper will prove a useful guide in the national fisheries policy implementation process especially regarding matters of property rights of fisheries dependent communities and poverty eradication.

1. Introduction

Fishing communities in Uganda like in other sub-Saharan African countries are among the poorest of the poor notwithstanding the fact of being stratified in terms of the valuable resource. Fish is the critical resource on which many of these communities depend for their livelihoods and survival¹. These communities have very limited human and social capital, little or no financial capital, no access to appropriate credit and very limited access to other physical assets. They have low social status, little influence, hardly play any role in decision making regarding resource management and very limited option for livelihood diversification². All their human capital is focused on fishing and related activities. To these communities, fish is life; it is their food and source of income.

However, many emerging policy and legal frameworks in Uganda threaten to disenfranchise and alienate these poor rural resource dependent communities from access and utilization of the fisheries resource thus undermining their very basis of survival³. There is thus strong need to ensure that these communities' means of livelihoods are not jeopardized.



Recent article in the Monitor Newspaper.

¹ The Fisheries sub-sector in Uganda provides a source of direct employment for 125,000 fishermen and livelihood household support for about one million people. See PMA Bulletin, March 2004. 'Beach Management Units - A New Approach to Managing the Fisheries Sub-Sector' in Improving Rural Lives. PMA Bulletin No.1, Vol. 3 p.4

² MAAIF, 2004, Provisional Fisheries Sector Strategic Plan at p.2

³ Such policies include among others liberalization, modernization and industrialization.

Ensuring that these communities continue accessing and gaining benefits from the fisheries resources is therefore critical if their survival is to be guaranteed. The best way of achieving this, is through recognition and/ or granting these communities property rights to the resource. Securing the property rights of these fisheries resource dependent communities will moreover not only guarantee rural livelihoods but is also critical for poverty reduction⁴ and ensuring sustainable use of the resource.

Securing equitable access to, and gaining benefits from, natural resources is essential for poverty reduction. Within fisheries, whilst access must be controlled for sustainable management, systems can also support poverty reduction and gender equity objectives.

Source: DFID...*et al* (2004). *Lakes & Livelihood: Integrated co-management in Uganda* at p.35

The aim of this policy briefing paper therefore is to assess the extent to which the recently adopted National Fisheries Policy (NFP)⁵ guarantees property rights of the fisheries resource dependent communities and how best they can be secured in the policy implementation process. The timing of this review can not be over emphasized since Uganda is in the process of enacting new fisheries legislation⁶and finalizing the making of the Fisheries Sector Strategic Plan. The goal of this review therefore is ensuring that common property rights (CPRs) of the fisheries resource dependent communities are adequately secured in the new fisheries legal framework and the sector plan.

⁴ According to the Poverty Eradication Action Plan (PEAP), which is Government's overall development policy framework, poverty reduction is the over arching development objective of the Government of Uganda.

⁵ The Republic of Uganda, 2004 The National Fisheries Policy

⁶ The proposal for a new fisheries law is embedded in the NFP as well. See para 9.4 at p.49.

The review will also act as a guide to the proposed Uganda Fisheries Authority (UFA)⁷ regarding the interpretation and implementation of common property rights issues in the Fisheries policy.

2. Common Property Rights: The Concept

The concept of common property represents private property rights for the group. Under common property regimes, a group of owners or individuals have collective or individual rights to a resource and yet share collective responsibility and management of the resource. The exploitation rights belong to a clearly identified group of users who also have the right to exclude others from the exploitation and management of the resource. The property owning groups vary in nature, size and internal structure across a broad spectrum, but they are social units with definite membership and boundaries, with certain common interests, with at least some interaction among members, with some common cultural norms, and often their endogenous authority systems.⁸

CPRs therefore consist of a bundle of rights which include but are not necessarily limited to: the rights of access to the resource, use of the resource, possessory rights, ownership rights, exclusion rights and benefit sharing. The various rights are not exclusive to each other, but are overlapping and different sets of rules apply at different places and times or may be appealed to by different

⁷ The policy also proposes establishment of a UFA as an autonomous lead agency under the parent ministry to over see matters of fisheries development in Uganda. See para 9.3 at pp.48-9

⁸ D. M Bromley and Michael M Cernea, *The Management of Common Property Natural Resources: Some Conceptual and Operational Fallacies*. World Bank Discussion Paper No. 57 p15

parties⁹. These rights are either granted or recognized by the state. They are granted by the state where ownership of the resource vests in Government. So while the state retains authority over the resource, it may grant rights of access, use or benefit sharing for the resource to the local communities.

But common property rights are also created from the long term relations established between indigenous people and the natural resources that sustain them. In this case the rights are termed community based property rights and these derive their fundamental legitimacy from the community in which they operate rather than from the nation-state in which they are located¹⁰. These rights are not contingent on state grants and as such it has been argued by a number of scholars that they should be weighed on the same scale with that of fundamental human rights.¹¹

The essence of promoting common property rights in fisheries management is to engender a feeling of ownership and responsibility towards the resource. It is thought that by recognizing rights of the resource dependent communities to access and use the fisheries resource for their social, economic and cultural survival, they would develop a sense of responsibility towards the resource and would thus sustainably utilize and manage it to meet their present needs and for the future generations. Recognition of property rights of the fishing communities would therefore not only enable these communities to

¹⁰ Owen J Linch and Kirk Talbott, *Balancing Acts: Community Based Forests Management and National Law in Asia and the Pacific*. World Resources Institute, 1995, pg 24

¹¹ See for instance argument made by Ronald Naluwairo at p.9 in *Community Based Property Rights in Fisheries Management in Uganda*. LL B Dissertation, Makerere University, 2001 (Unpublished).

meet their survival needs but is also critical for sustainable use of the resource and poverty eradication among the fisherfolk. Promoting community rights in fisheries management would also go a long way in saving on Government costs involved in monitoring and surveillance of community fishing activities.



Some of the children of the local fishermen playing in their father's boat. Recognizing common property rights of fisheries dependent communities would go a long way in guaranteeing their livelihood security.

3. The National Fisheries Policy

For a long time, the fisheries sub sector in Uganda was operating without an explicit policy on the fisheries resource use and management, a situation which contributed greatly to the uncoordinated development and mismanagement of the sector¹². Until the late 1990s, fisheries management was vested in central Government under the Department for Fisheries Resources (DFR) with out-posted local officers employing a command and control approach. There was very little (if at all) or no participation by the fisheries communities in resource planning, management and development. Tax collection

¹³ Ibid note 5.

was both low and open to mismanagement and illegal fishing was the order of the day.

Realizing the failures of the central command and control system, the Government of Uganda started thinking of new approaches and mechanisms to sustainably manage the fisheries resource. It initiated the fisheries policy formulation process in the mid 1990s, a process which culminated into the adoption of the Uganda National Fisheries Policy to guide the overall development and investment in the fisheries sub sector¹³.

In line with Uganda's Vision 2025 and the broader Government development policy frameworks; the Poverty Eradication Action Plan (PEAP), Plan for Modernization of Agriculture (PMA) and the decentralization policy among others, the fisheries policy seeks to ensure sustainable exploitation and culture of fishery resources at the highest possible levels, thereby maintaining fish availability for both present and future generations without undermining the environment¹⁴.

It acknowledges that one of the causes of the problems faced by the sector is the inappropriate mechanisms for controlling access to fisheries resources and inadequate mobilization and involvement of the communities in the development and management of the fisheries resources¹⁵. The policy therefore recognizes that there is urgent need for a paradigm shift in the way fisheries should be regulated and managed.

¹² Ibid note 5 at P.3

¹⁴ This is the overall National Vision for Uganda's Fisheries sector. The overall fisheries sector goal is to ensure increased and sustainable fish production and utilization by properly managing capture fisheries, promoting aquaculture and reducing post harvest losses.

¹⁵ Ibid note 13, para 5 at p.14

Under Policy Area No.1, on sustainable management and development of the fisheries resource¹⁶, the policy clearly sets out to improve livelihoods and alleviate poverty in fishing communities taking account of the special needs of women, youth and other disadvantaged groups. It is thus clear that one of the fundamental objectives of the fisheries policy is enhancing rural livelihoods and poverty eradication among the fisheries dependent communities. Indeed as a long term vision, the policy envisions fully modernized and highly skilled fisherfolk communities that have high human development indicators (access to potable water exceeding 80%, infant mortality of less than 40%, universal school enrolment, high standard of hygiene and sanitation, clean and attractive environment)¹⁷.

As a strategy to achieve the above goal and objective, the policy provides for a review of existing approaches to the control of access to fisheries to ensure the equitable use of fisheries resource by those who are most dependent on them and to enact appropriate legislation to give effect to the policy objectives.

Policy Area No.2 on decentralization and community involvement in fisheries management¹⁸ aims to move away from the old style of central command and control to one in which local community participation in fisheries management is guaranteed. This change in approach does not come as a surprise and was indeed overdue since the command and control system had long proved a failure in sustainably managing and utilizing natural resources.

¹⁶ See para 8.2.1 at p.22

¹⁷ See para 1.2

¹⁸ See para 8.2.2

Among the strategies to be adopted in achieving the above objectives include: the creation of an enabling legal environment for establishment of fisheries management institutions at community level. This is aimed at ensuring effective participation of stakeholders and providing “legal recognition of fisheries communities and their rights of management over the fisheries resource in their neighborhood”. This is perhaps the most express and positive policy statement of the need to recognize the rights of the fishing communities in the management and utilization of the fisheries resource.

Other Specific Objectives under Policy Area No.2

- Achieving more effective fisheries management that takes account of paradigm shifts in both the fisheries sector and the wider policy environment and ensuring that fisheries resources contribute to sustainable rural livelihoods and poverty alleviation,
- Promoting and supporting local government and communities in assuming responsibilities in respect of sustainable fisheries resource management, development and utilization
- Ensuring that fisheries resource contribute more to local government and community revenues and household incomes and
- Advancing the involvement of women, youth and less advantaged members of society in fisheries resource management.

It is instructive to note that the policy uses the word ‘recognize’ and not ‘grant’ meaning that as earlier pointed out, the State acknowledges that such rights (community based property rights) emanate from the community itself and are not contingent on State grants¹⁹. The best the State could do therefore, and indeed as rightly provided in the policy was to recognize such rights.

The policy however falls short of addressing the legal ownership (ownership rights) question which is critical in a property rights regime. For all that the policy provides is “recognition of rights of management over fisheries

¹⁹ ibid note 10

resources in the neighborhood”. The issue of ownership is very important as it is the basis of determination of other rights. Ownership rights are important not only for the communities but also for the sustainable use and management of the resource as they create a sense of ownership and responsibility over the resource.

It is critical in a property rights regime therefore to know where ownership falls. It is important to recall that the ownership status of natural resources in Uganda including the fisheries resources and the natural waters and wetlands in which they live is established by Article 237 (2) b of the Constitution²⁰ which obliges the State to hold such resources in trust for the people of Uganda. Although under trust law legal ownership technically vests in the State, as trustee, the Government is obliged to manage the resource in the interest of the beneficiaries i.e. the people of Uganda who include the local resource dependent communities. It is largely upon the basis of this trust relationship that the State should recognize and protect the rights of the beneficiaries especially the resource dependant communities in the management and sustainable use of the fisheries resources.

The policy further enumerates the fisheries sector guiding principles all of which are either in support of and or don't conflict with the recognition or granting of property rights of fishing communities in fisheries use and management. These include among others: poverty eradication, divesture of government functions, decentralization, gender and equity, community participation and international commitments.²¹

²⁰ The Constitution of the Republic of Uganda, 1995.

²¹ Para 7 at p.17.

A clear analysis of the above guiding principles leads one to draw a number of conclusions. First and foremost, in line with the PEAP, poverty eradication and improvement of rural livelihoods is at the centre stage of these policy guiding principles and therefore the policy implementation process should take into consideration that central objective. This entails guaranteeing rights of the fishing communities to the resource.

Secondly, the policy recognizes the important role the fisheries neighboring communities play and therefore the need to devolve power and responsibility to these communities and to let them actively participate in the decision making process regarding the resource. These conclusions indeed support the recognition of common property rights of the resource dependent communities.

The policy however seems to place a lot of emphasis on the private sector in the management and control of the fisheries resources. Indeed the policy provides that there will be reduced involvement of government in activities that can be carried out by the private sector²² and that the direction of change towards industrialization and modernization of the fisheries sector promotes replacement of family fishing enterprises by larger and more commercial operators²³.

Experience especially in developing countries however points to the undisputed fact that the private sector (especially the multi national and big companies) is always insensitive to the needs of the poor and in most cases

²² Ibid

²³ Para 2.1.3

works to exploit and marginalize them further. The competitive tendencies of the big commercial enterprises would also mean less access by the poor to the fisheries resource and related activities and services.

Therefore, unless government puts in place adequate checks and balances to counter such tendencies, leaving a lot of powers to the private sector in fisheries related activities will work to the further marginalization of the already impoverished communities. These communities do not have the capacity and power to engage the private sector.



Local fishermen at Kyehoro Fish landing site (on Lake Albert), Hoima district mending their nets.

Indeed, if the above policy statements are not properly interpreted within the objectives of PEAP; the broader framework within which the policy was formulated, this could have far reaching implications for the fisheries dependent communities. “Replacement of family fishing with larger and commercial operators” means nothing less than displacement of the local fishermen and therefore the fisheries resource dependent communities in fishing activities. It means taking away their means of survival and livelihood and therefore condemning them to death, if the stronger word has to be used.

It is therefore pertinent that in interpreting and implementing the policy, sight should not be lost of the fundamental policy objectives of poverty eradication and community involvement in the sector. Industrialization and modernization of the sector should not necessarily be interpreted as requiring the displacement of the fisher folk communities but rather to facilitate and support them to acquire better facilities, equipment and fishing gears. Modernization of the fisheries sector should also entail empowering of the local fisherfolk to effectively participate in decision making on matters that affect them.

The NFP does not also address the question of security of land tenure on the sites on which most fisheries dependent communities are settled. Although the policy recognizes²⁴ the fact that most fisherfolk communities live on land that does not belong to them²⁵ and that this scenario creates insecurity of tenure and therefore negatively impacts on community development, it is silent and does not offer any solution or way out. The question of insecurity of land tenure is not a minor problem to ignore. It has always caused conflicts between the land owners and the local communities and negatively affects community development efforts because the locals feel insecure to engage in any serious investments on land that does not belong to them²⁶. It is therefore pertinent that in finalizing the fisheries sector strategic plan and implementation of the NFP, ways of dealing with this question are explored as it jeopardizes the development goals to which common property rights in fisheries management aims to achieve namely: enhancement of

²⁴ Ibid

²⁵ Most of these lands belong to either Government or private individuals.

²⁶ Discussion with the Executive Director of Uganda Fisheries and Fish Conservation Association, Mr. Seremos Kamutaraki.

rural livelihoods, poverty reduction and sustainable use and management of the fisheries resource.

On the whole however, the Fisheries policy supports common property rights in fisheries use and management. This promotes involvement of fishing communities in decision making structures and leads to more sustainable use and management of the resource. But most important it enhances and guarantees livelihood security of the fisheries dependent communities.

4. The Fisheries Sector Strategic Plan

The FSSP is the national fisheries policy implementation strategy²⁷. It sets out the sector priorities and actions necessary to achieve the objectives and goal of the Fisheries policy. The major goal of the sector in line with the PEAP and the national fisheries policy is poverty eradication in fisheries communities and the sector contribution to national economic growth maximized²⁸.

On that basis, the strategic plan then identifies eight key policy areas as the priorities requiring immediate attention. Of these, the most relevant contributing to poverty reduction and enhancement of rural livelihood include;

Some Key Issues in Poverty Reduction in the Fisheries Sector

- Need for participatory control of access to fisheries
- Need for legally empowered communities
- Increased capacity of the poor to influence service delivery and budgeting
- Need for socially inclusive decision making institutions and processes for fisheries planning and management.
- Need for livelihood diversification initiatives outside fisheries.

Source: *Provisional FSSP, August 2004.*

²⁷ Ibid note 2.

²⁸ Ibid at p.6

sustainable management and development of capture fisheries, Human resource development and institutional reforms and funding mechanisms²⁹. Some of the actions identified for achieving the above include; establishment and capacity building of a nationwide network of Beach Management Units for fisheries co-management, development and supporting institutional arrangements for sustainable economic growth and poverty reduction within the fisheries sector at all levels and establishment of cooperatives and marketing associations to promote private sector development at community level³⁰.

5. The Proposed Fisheries Legislation

In bid to implement the NFP, the DFR has prepared the Fisheries Bill, 2004 to be enacted into law to repeal and replace the Fish Act³¹ and the Trout Protection Act³². The proposed law provides for the conservation, sustainable management, utilization and management of the fisheries sector; establishment of the Uganda Fisheries Authority; establishment and regulation of Lake Management Organizations and Beach Management Units while also consolidating and reforming the law relating to fisheries³³.

The purpose of the Bill is explained³⁴ among other things to be aimed at enabling the fisheries sector to contribute to poverty reduction and economic growth, decentralize, devolve and delegate powers, functions and services within the fisheries sector to local governments and community

²⁹ Ibid

³⁰ Ibid pp.7-8

³¹ Cap 197 Vol.8 Laws of Uganda, 2000

³² ibid Cap 199.

³³ Preamble to the Bill

³⁴ S. 3 of the Bill.

based organizations, encourage public participation in the management and conservation of fisheries resources and to enable the increased benefits from the sector to be equitably shared at all levels.

The Bill provides for the preparation of the Fisheries Sector Strategic Plan as the framework for the implementation of the fisheries policy and programmes by Government and provides that the views of persons and organizations in the public and private sector shall be sought and taken into account, particularly, the views of persons whose livelihoods are dependent on the fisheries sector³⁵. This particular provision is intended to enable the fisheries dependent communities to have a say in the way the policy should be implemented. It is instructive to note that consultation of the fisheries dependent communities and taking on board their ideas and views is a must as the Bill uses mandatory language.

While work on the preparation of the fisheries sector strategic plan has been ongoing under the aegis of the fisheries department, stakeholder consultation especially of the fisheries resource dependent people has not been visible. Although the Bill is not yet law, and notwithstanding the constraints faced by the department, in light of the fisheries policy objectives and of the proposed law as highlighted above, the department is strongly encouraged to involve the resource dependent people in these processes early enough. Moreover, involvement of the fisheries resource dependent communities at an early stage will not only help build their confidence in the process, but is also critical for the

³⁵ s.8 (2) of the Bill.

effective implementation of the national fisheries policy at the grassroots level.

The Bill further provides for the establishment of Beach Management Units (BMUs)³⁶ at each gazetted landing site as corporate entities to take charge in partnership with local governments fisheries management and use at such locations. The creation of BMUs is part of Government process of decentralization and community empowerment. Other than having the right to exclude any person who is not one of its members from engaging in commercial fishing activities, the BMU also has the right to collect all fees payable on behalf of the relevant local government, the National Fisheries Authority and itself³⁷. The right to carry out fishing activities at a gazetted landing site will largely depend on whether or not one is a member of the BMU. In addition to being entitled to engage in fisheries related activities, members of the BMU will also have the right to participate in the decision making processes on matters that affect them and the fisheries resource³⁸.

BMUs form the foundation of fisheries co-management and enable all fisheries stakeholder groups to influence decision making. BMUs provide a vehicle for improved fisheries governance and poverty-focused and gender sensitive planning. They provide an entry point to the fisheries communities to facilitate a wide range of development interventions, as well as contribute to fisheries management

Source: DFID...et al, 2004: *Lakes and Livelihoods: Integrated co-management in Uganda at vi.*

³⁶ BMUs are community based organizations of fishers, boat owners, managers, chatteringers, fish processors, fish mongers, boat makers, local gear makers or repairers and fishing equipment dealers.

³⁷ S.55

³⁸ S.59

From the foregoing, it is clear that under the proposed law, the fisheries resource dependent communities' rights to the fisheries resource will largely be exercised through the institutional framework of BMUs.

The Units provide a legally empowered institutional framework that brings together all fisheries stakeholders, including the poor and marginalized, and actively involve them in decision making for the sustainable management of the fisheries resource. The Units are expected to contribute greatly to the welfare and livelihood of people in fisheries dependent communities through improved planning and resource management, good governance, democratic participation and self reliance.

The other way through which the proposed law ensures access to fisheries resources and sharing in the benefits arising therefrom is through issuance of vessel operation licenses and fish movement



permits by the competent authorities. It should be noted in this regard that boat owning is a source of considerable income from fisheries and ensures livelihood security of the owners. The competent licensing body is obliged in determining the application for a vessel license to have regard to the purposes of the Act, the FSSP and

Some of the local fishing vessels docked at Waka Waka fish landing site. Owning such vessels is a source of considerable income for the local fishing populace

the relevant fisheries management strategy³⁹. Following the objectives of the NFP and the FSSP, this therefore means that the licensing system should not only be poverty focused but should also promote access to the fisheries resources by the poorer and marginalized members of local communities especially the boat crew and women. The procedures must moreover ensure transparency, fairness and accountability through participation of all stakeholders.

6. Proposals for Advancement of Common Property Rights (CPRs) in Fisheries Management

It is clear that one of the major policy objective of the national fisheries policy to ensure sustainable management and utilization of the fisheries resource is to move away from the old system of command and control to directly involve the public and in particular resource dependent communities. One of the policy strategies to be adopted in achieving the above is to provide

Summary of the Proposals

- Establishment and recognition of private group rights in fisheries use and management beyond the current BMUs.
- A minimum percentage of the money from the proposed FishLevy Fund to be committed to fishing community development projects and provision of critical services.
- A given percentage of the Fish vessel and other licences to be reserved for the most marginalised members who include the women , youth and the boat crew.
- Fishing communities to licence most of the fishing activities at their site and to retain a significant portion of the money collected for community development.
- Guaranteeing security of land tenure of the fisheries resource dependant communities.
- Transparency and accountability in the decision making process.

legal recognition of the fishing communities and the introduction of a property rights system whereby those dependent on the fisheries resources are given rights over

³⁹ See S. 77(3) and S. 79 (4)

management and exploitation of the resources. Based on the above policy framework, the following proposals are hereby suggested for consideration in the new fisheries legislation. Although the current Bill contains some elements of what is proposed, the same would require serious follow up to ensure that they are not lost during the finalization process.

The starting point would be for the law to expressly establish and recognize private group rights in fisheries use and management in Uganda. For the indigenous people and other communities that have had long interaction with the resource and have developed institutions and customs for the sustainable management of the resource, the law should recognize and protect their community based property rights to the resource. This is so because in such instances, the rights to the resource already exist. They derive legitimacy from the community itself and the best the state can do is to recognize them. For the non indigenous communities and other groups living and depending on the fisheries resource, the law should provide a mechanism to grant them group rights to the resource.

Secondly, the law should recognize such communities and groups as legal entities for the purpose of enforcement of their rights. For the recognition of property rights of the resource dependent communities would be as good as useless if the communities cannot enforce them. Already under the Fish (Beach Management) Rules, BMUs are established as legal entities and form the framework within which members of the fishing community enjoy rights of access and decision making regarding the fisheries

resource. The Fisheries Bill, 2004 as discussed above, proposes establishment of the BMUs as legal entities and provides rights of such Units. What is needed therefore is to push for these proposals not to be dropped in the process of finalization of the law. It should also be noted that at the moment, BMUs are only operational at gazetted fish landing sites. There is therefore, need to establish them in the rest of the fishing communities.

In line with emerging international practice and Uganda's international obligations⁴⁰, the law should also include provisions on equitable sharing of benefits which should actually trickle down to the local communities which help nurture the resource. This can for instance be through a provision in the law to the effect that a given percentage of the money from the proposed Fish levy fund⁴¹ should be used for infrastructural development and provision of critical services to local fishing communities. Such provision would help ensure that the local communities benefit from both the increased productivity and profitability of the fisheries sector.

As observed earlier, security of land tenure is fundamental to the enjoyment of the full benefits that accrue from common property rights regimes. Government should therefore explore ways of dealing with the land tenure question of the fisheries resource dependant communities. For the land belonging to private individuals on which such communities are settled, one option could be for Government to acquire⁴² or buy such land from the

⁴⁰ Especially under the Convention on Biological Diversity

⁴¹ S. 32 of the Bill proposes establishment of a Fish Levy on all fish exported from Uganda.

⁴² Government can acquire such land under Article 26(2)a of the Constitution.

individuals and lease it on long term basis to the communities in question⁴³.

Although this does not permanently solve the problem, long term leases of over fifty years would provide more security to these communities than they are currently enjoying. Besides, the poor resource dependant communities feel more secure dealing with government than private individuals.

With increased empowerment and capacity building of the rural communities, the fisheries dependent communities should also be allowed to license most of the fishing activities and retain a significant portion of the money collected for community development projects.

Lastly, transparency and accountability in decision making should be guaranteed if the resource dependant communities are to derive maximum benefits from establishment of common property rights in fisheries management. An important aspect of transparency and accountability is access to information. Information on licencing procedures, number of licences issued, persons to whom they are issued, the total revenue collected from the issuance and how such revenue is used should easily and readily be available to the members of the communities as and when they need it. The law should also ensure the full and effective participation of the resource dependant communities in the fishing activities licencing processes.

⁴³ The option of communities buying or leasing directly from the private individuals is difficult as such individuals are not willing to relinquish their land except on very stringent terms which such poor and vulnerable communities can not satisfy

7. Conclusion

The review has revealed that although there are some areas lacking the National Fisheries Policy by and large provides the broad policy framework within which CPRs in fisheries use and management can be established and/or recognized for enhancement of rural livelihoods and poverty eradication among fisherfolk communities. The challenge that remains is the enactment of appropriate legislation that would help translate the policy into action. But even then, legislation has to be complemented by other initiatives. A number of conditions need to be in place in order to realize the full benefits of common property rights in fisheries management; the major one being the establishment of appropriate institutional arrangements at the local level. The fisherfolk communities will also need considerable support and capacity building to maximize the benefits of common property rights in sustainable use and management of the fisheries resource. Most importantly, Government political will is critical for pushing the policy initiatives to another level.

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Young fishermen on Lake Albert take time off to enjoy an evening boat ride



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