



**ACTUALISING PUBLIC PARTICIPATION IN MANAGEMENT,  
PROTECTION AND CONSERVATION OF ENVIRONMENT IN KENYA.**

**By**

**SANG LEONARD**

**REG NO G62/75441/2014**

**THESIS REPORT SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS FOR THE AWARD OF DEGREE OF MASTERS OF  
LAW OF THE UNIVERSITY OF NAIROBI**

**SUPERVISOR: DR ROBERT KIBUGI**

**2016**

**DECLARATION**

This thesis is a result of my original work and has not been presented for examination in any other University.

Signed..... Date.....

Sang Leonard (Candidate)

This thesis has been submitted for examination with my approval as a University Supervisor.

Signed .....Date.....

Dr. Robert Kibugi (Supervisor)

## **ACKNOWLEDGEMENT**

The completion of this work would not have been possible without the rich intellectual stimulation that my supervisor Dr. Kibugi provided in numerous discussions about public participation in environmental governance. I am greatly indebted for his numerous insightful comments on my drafts. His probing questions and valuable suggestions were extremely valuable in clarifying many central issues and concepts.

Much gratitude to my Environmental Law lecturers namely Dr Kariuki Muigua, Dr.Bulska, Prof Mumma , Prof F.D.P Situma and Prof Kameri Mbote for widening my knowledge and interest in Environmental Law.

I Acknowledge all my respondents and especially Professor Karanja, Chairman of Friends of Karura and Mr Ng'ang'a, Vice Chairman of Ngong Road Forest Association for affording me opportunity to interview them.

I acknowledge my parents for their unending support, prayers and sacrifices that have enabled me reach this far. My brother and sister for their unconditional love.

My wife Naomi and children Victoria and Mark for their patience and understanding in the entire period of my study.

Last but not least, God's grace has been and continues to be sufficient in all my efforts.

## ACCRONYMS AND ABBREVIATIONS

**AMICAE CURIE:** Friend of the Court

**CBO** : Community Based Organization

**DESD** : Decade of Education for Sustainable Development

**EAC** : East Africa Commission

**ESD** : Education for Sustainable Development

**EMCA** : Environment Management and Coordination Act

**FCC** : Forest Conservation Committees

**GA** : United Nations General Assembly

**HCCC** : High Court Civil Case

**IIA** : Integrated Impact Assessment

**IAP2** : International Association for Public Participation

**LAUDATO SI** : ‘Praise be to you’

**LOCUS STANDI** : Right to Institute Court Proceedings

**NGO** : Non Governmental Organization

**UNCED** : United Nations Conference on Environment and Development

**UN** : United Nations

**UDHR** : Universal Declaration on Human Rights

**UNECE** : United Nations Economic Commission for Europe

**NEMA** : National Environment and Management Authority

**UNESCO** : United Nations Education, Science and Cultural Organization

**SHAMBA** : Garden

## **LEGAL INSTRUMENTS AND STATUTES**

Constitution of Kenya (2010)

Environmental Management and Coordination Act (EMCA) No 8 of 1999

The Environmental (Impact Assessment and Audit) Regulations, 2003

The Wildlife Conservation and Management Act, No. 47 of 2013, Laws of Kenya

Environment and Land Court Act (2011) Laws of Kenya

Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013

Access to Information Act (2016)

Forests (Participation in Sustainable Forest Management Rules) Legal Notice No 165(2009)

Judicature Act Cap 8, Laws of Kenya.

Commission on Administrative Justice Act (2011) Laws of Kenya

Government of Kenya, (2007) Sessional Paper No 1 of 2007 on Forest Policy, Government of Kenya Printer. Nairobi

## **REGIONAL AND INTERNATIONAL INSTRUMENTS**

Universal Declaration of Human Rights G.A Res.217A, U.N. Doc.A/810(Dec.12, 1948)

International Covenant on Civil and Political Rights 999 U.N.T.S 171(Dec 16, 1966)

Treaty for establishment of East Africa Community (Protocol on Environment and Natural Resources Management) 2144 U.N.T.S 255 Dec 14, 2006

African Convention on the Conservation of Nature and Natural Resources 1001 U.N.T.S 3(Sep 15, 1968)

## **NON BINDING LEGAL INSTRUMENT**

Agenda 21 (U.N Doc. A/Conf. 151/26 1992)

Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters 38 I.L.M 517 (Jun 25, 1988) UNECE

Rio Declaration on Environment and Development. 31 I.L.M 874 Rio de Janeiro June 13, 1992)

Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) Doc. A/Conf.48/14 June 16, 1972

### **Case Law**

Hungary vs. Slovakia, 1997 WL 1168556 (I.C.J-1997).

Musa Mohammed Dagane & 25 others Constitutional Petition No. 56 of 2009 eKLR

Maathai v Kenya Times Media Trust Ltd [1989] eKLR

Wangari Maathai and 2 others vs. City Council of Nairobi and 2 others

Sylvia Endere vs. Karen Roses Ltd, HCCC No 298 of 2005. Reported on (2006) eKLR

Centre for Minority Rights Development(Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council vs. Kenya No 276/2003 (African Commission on Human and People's Rights)

Social and Economic Rights Action Centre and Centre for Economic and Social Rights vs. Nigeria No 155/96 (African Commission on Human and People's Rights)

## ABSTRACT

The principle of public participation has generally been accepted as a foundational value for democratic governance. The principle has gained particular traction in environmental governance owing to the failure of the command and control system by the state to guarantee environmental justice.

The UN Conference on Environment and Development held in Rio de Janeiro in 1992 set the pace by providing that *“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”* This implies that governments have an obligation to involve citizens in decisions which an impact on their health and environment.

In Kenya, the principle of public participation has been entrenched in the Constitution (2010). From the onset the Constitution asserts that sovereign power is vested in the people of Kenya. It is set as one of the national values and principles of governance binding on all state organs, public officers and all persons. The principle has become an inherent of sustainable development meaning that attainment of sustainability requires the participation of all citizens during decision making processes.

The implementation and effectiveness of public participation depends on the legal, statutory and institutional frameworks which have been put in place. This study interrogates the legal framework in place for public participation in environmental governance in Kenya.

As a case study, the researcher appraises the successes and challenges of the concept of participatory forest management (PFM) introduced by the Forest Act (2005). Towards this endeavour, the researcher conducted interviews and focus group discussions in two urban forests where the concept is being implemented.

## TABLE OF CONTENTS

<b>Title</b>	<b>Page</b>
<b>Declaration .....</b>	<b>ii</b>
<b>Acknowledgement .....</b>	<b>iii</b>
<b>Acronyms and Abbreviations.....</b>	<b>iv</b>
<b>Table of Statutes.....</b>	<b>v</b>
<b>Table of Cases.....</b>	<b>vi</b>
<b>Abstract .....</b>	<b>vii</b>
<b>Table of contents.....</b>	<b>viii</b>
<b>CHAPTER ONE</b>	
1.0 Introduction .....	1
1.0.1 Who is the Public.....	2
1.0.2 Rationale for Public Participation.....	3
1.1 Background to the Study .....	5
1.1.0 General Background of Public Participation Principle.....	5
1.1.1 Development of the Concept of Public Participation.....	9
1.1.2. Background of Public Participation Principle in Kenya.....	11



1.2	Statement of the Problem.....	17
1.3	Research Objectives.....	18
1.3.1	General Objectives.....	18
1.3.2	Specific Objectives.....	18
1.3.3	Research Questions.....	18
1.4	Theoretical Framework.....	19
1.4.1	The Principle of Subsidiarity .....	19
1.4.2	The Principle of Sustainable Development.....	21
1.4.3	Balancing Of Interests.....	23
1.4.4	Enduring Relevance of Sustainable Development .....	25
1.4.5	Public Participation & Sustainable Development.....	26
1.4.6	Conclusion.....	28
1.5	Literature Review.....	28
1.5.1	Legal and Institutional Framework.....	28
1.5.2	Proactive Public Participation.....	29
1.5.3	Access to Justice.....	30
1.6	Significance of the Study.....	31
1.7	Hypothesis.....	31
1.8.0	Methodology.....	32

1.8.1	Scope of the Study.....	32
1.8.2	Research Design .....	32
1.8.3	Data Collection.....	32
1.8.4	Data Analysis.....	33
1.8.5	Limitations of the study.....	34
1.9.0	Chapter Breakdown .....	34

**CHAPTER TWO**

2.0	Legal and Institutional Framework for Public Participation in Environmental Governance.....	36
2.1.0	International Framework.....	36
2.1.1	Access to Information.....	36
2.1.2	Opportunity to Participate In Decision Making Processes.....	38
2.1.3	Access to Justice.....	41
2.1.4	Obligation to Facilitate and Encourage Public Awareness.....	42
2.2	Legal and Institutional Framework for Public Participation In Kenya.....	44
2.2.1.0	Constitution of Kenya (2010).....	44
2.2.1.1	Constitutional Foundations of Proactive Public Participation.....	44

2.2.2	Access to Information .....	46
2.2.2.1	Legislative Attempt to Give Meaning to The Right Of Access To Information.....	46
2.2.3	Obligation to Facilitate and Encourage Public Participation In Environmental Decision Making.....	47
2.2.3.1	The County Government Act.....	48
2.2.3.2	Environmental Management and Coordination Act 1999 (EMCA).....	49
2.2.3.3	Environmental Management and Coordination (Amendment) Bill, 2012.....	51
2.2.3.4	The Environmental (Impact Assessment and Audit) Regulations, 2003.....	52
2.2.3.5	The Wildlife Conservation and Management Act, 2013.....	53
2.2.3.6	National Environment Policy 2013.....	54
2.2.4	Public Awareness and Information Dissemination.....	54
2.2.5	Access to Justice.....	56
2.2.5.1	Access to Justice through Judicial Mechanism.....	56
2.2.5.2	Access to Justice through Administrative Mechanisms.....	58
2.3	Conclusion.....	59

### **CHAPTER THREE**

3.0	Public Participation in Sustainable Management and Conservation of Forests In Kenya.....	61
3.1.0	Introduction.....	61

3.2.0	Participatory Forest Management in Kenya .....	63
3.2.1	Forest Management under Forest Act Cap 385 of 1942(Repealed).....	64
3.2.2	The Forest Act (2005).....	66
3.2.3	Participatory Forest Management Guidelines (2007).....	69
3.3.0	Community Forest Associations (CFAs).....	71
3.4.0	Forest Management Plans .....	73
3.5.0	Participatory Forest Management in Selected Forests.....	74
3.5.1	Arabuko-Sokoke Forest .....	74
3.5.2	Arabuko-Sokoke Forest Adjacent Dwellers Association.....	75
3.5.3	Ngong Road Forest .....	76
3.5.4	Ngong Road Forest Association.....	76
3.5.5	Karura Forest.....	80
3.5.6	Friends of Karura .....	80
3.5.7	Successes of Friends of Karura Forest.....	82
3.6.0	Sustainability of Participatory Forest Management .....	83
3.6.1	Gender Disparity.....	84
3.6.2	Technical Expertise.....	85

3.6.3 Non Resident Cultivation Permit.....86

3.6.4 Monitoring and Enforcement of Forest Management Agreements.....87

3.7 Conclusion.....87

**CHAPTER FOUR**

4.0 Conclusion and Recommendations.....93

4.1 Introduction .....93

4.2 Conclusions .....93

4.3 Recommendations.....95

4.3.1 Short term recommendations.....95

4.3.2 Midterm recommendations.....97

4.3.3 Long-term recommendations.....101

4.4 Further Research Areas .....102

**BIBLIOGRAPHY.....104**

# ACTUALISING PUBLIC PARTICIPATION IN MANAGEMENT, PROTECTION AND CONSERVATION OF ENVIRONMENT.

## CHAPTER ONE

### 1.0 INTRODUCTION

Public participation simply put means to engage those who are likely to be affected by the outcome of a decision in the decision making process. It is a process by which government agencies consult with interested or affected individuals and organizations before making a decision. It has been defined as an interactive process that involves communication, listening, consulting, engaging and partnership with the public as stakeholders to establish and deliberate on areas of agreement and disagreement in aid of decision making.<sup>1</sup> Participation has been premised on the concern that citizens and non-governmental actors should obtain greater control and power over issues of concern to them.<sup>2</sup>

The process by which rules, regulations and laws are made is important to the legitimacy of those laws and regulations. The legitimacy of the law in turn determines conformity. Legitimacy to a large extent is viewed as a matter of participation meaning that those who are being governed must have or must perceive that they have a voice in governance.

The concept of public participation is viewed by democracies as the backbone of democratic governance. In Global parlance, participatory democracy is seen as an essential element of ensuring a high level of attaining legitimacy and contributes in strengthening of democracy. Participation especially at the lowest level is viewed as necessary for promoting good

---

<sup>1</sup>Nick Okello , Lindsay Beevers , Wim Douven & Jan Leentvaar (2009) “*The doing and un-doing of public participation during environmental impact assessments in Kenya*”

<sup>2</sup>Nicholas N. Kimani, (2010) ‘*Participatory Aspirations of Environmental Governance in East Africa*’, 6/2 *Law, Environment and Development Journal* , p. 200, available at <http://www.lead-journal.org/content/10200.pdf> viewed on 20<sup>th</sup> April 2015

governance. It is based on the understanding that public participation helps in making better decisions that mirror the interests and concerns of affected people. The principle of public participation is founded on three pillar principles namely: the right to information, the right to participate in decision-making process and the right to justice.<sup>3</sup>

In Kenya, the principle of public participation has been entrenched in the Constitution. The Constitution of Kenya (2010) sets key requirements for the legislature at both levels of government to put in place frameworks for public participation in governance processes. This underscores the fact that election of representatives does not negate the need for citizens to be continuously involved in governance processes. The essence for public participation is also derived from the citizens' statutory obligation to pay government taxes in exchange for service delivery. This therefore means they are the financiers of the services they consume and thus they should be part of decision making.

### **1.0.1 WHO IS THE PUBLIC?**

The public can be individuals, a set of groups with particular interests or communities more generally. The public can thus be treated as one coherent whole distinguished by different interests.<sup>4</sup> It has been contended that the public does not exist as such but that there are profit organizations, nonprofit organizations, religious organizations, the media and political party groups all which are groups within the public sector and the public in general.<sup>5</sup>

In Kenya, communities are administratively zoned from the villages to the sub locations up to the national level, with elected representatives.<sup>6</sup> The lowest cadre of representation is at

---

<sup>3</sup>Sumudu A. Atapattu "*Emerging Principles of International Environmental Law*" (Transnational Publishers Inc, New York, US, 2006), at 353-378;

<sup>4</sup>Supra

<sup>5</sup>De Vries M.S, (2007), *Public Participation in Policy Processes: Towards a Research Agenda*; Radboud University, Netherlands

<sup>6</sup>Constitution and Reform Education Consortium(CRECO) "Model Policy Framework for Public Participation in

the ward level where the ward committees play a central role in bridging the hierarchies of representation. These ward committees may be made up of technical persons in the different interest groups from the general public.<sup>7</sup>

The preamble to the Constitution of Kenya (2010) reiterates the people's sovereign and undeniable right to determine their form of governance and acknowledges the full participation of the people in the making of the Constitution. Article 1 emphasizes that sovereign power belongs to the people and as such may be exercised directly or indirectly through representatives that the people have chosen in an open and democratic manner. Under article 10, sharing and devolution of power, democracy and participation of the people have been identified among others as the values and principles of governance. The foregoing provisions demonstrate the prominence which participation of the people both directly or indirectly has been given and can therefore not be wished away.

### **1.0.2 RATIONALE FOR PUBLIC PARTICIPATION**

Public participation strengthens democratic principle by complementing the rule of law by incorporating a system of checks and balances in technocrats' decision making process<sup>8</sup>. This is manifest in Article 10 of the Constitution of Kenya which places public participation alongside the rule of law, democracy, devolution of power and patriotism as being among the key pillars of governance.

It helps in promoting accountability since decision makers have to state the information used in the decision making, the impact of those decision on the people as well as recourse for

---

County Governments" 2014 viewed at [www.crecokenya.org](http://www.crecokenya.org) on 29<sup>th</sup> October 2015

<sup>7</sup> Constitution and Reform Education Consortium(CRECO) "Model Policy Framework for Public Participation in County Governments" 2014 viewed at [www.crecokenya.org](http://www.crecokenya.org) on 29<sup>th</sup> October 2015

<sup>8</sup> Mantzara, B. 1998. *Public participation: guidelines for the organisation of round table discussion*. Greece: Mediterranean information office for environment culture and sustainable development



unsatisfied parties to challenge the decision.<sup>9</sup> This contributes to open governance system calling for accountability. Principle 10, of the Rio declaration recognizes access to information as being a key aspect of effective participation.

Public participation assists the people to develop the necessary skills, knowledge and values that are needed to take control of their lives, to communicate meaningfully and to create the enabling environment for functioning as responsible citizens in decision making<sup>10</sup>. In essence public participation can be used as a tool of empowering the citizenry and this empowerment enables the citizens to contribute to sustainable development.

Participation in decision making broadens social development principle by enabling the participants obtain a degree of fulfillment which in turn creates a sense of ownership. Further extensive participation and scrutiny allows those in authority to make decisions that are in tandem with the needs of the community. This makes decisions to be more indicative of community needs and values.<sup>11</sup>

Citizen participation allows government agencies and project proponents anticipate the people's fears, concerns, values and conflicting interests<sup>12</sup>. It thus promotes compromises being sought before initiating projects.

---

<sup>9</sup> Sinclair, J and Diduck, A. (1995). Public education: An Undervalued Component of The Environmental Assessment

Public Involvement Process. *Environmental Impact Assessment Review* 15(3):219-240

<sup>10</sup> Mantzara, B. 1998. *Public participation: guidelines for the organisation of round table discussion*. Greece: Mediterranean information office for environment culture and sustainable development

<sup>11</sup> Hughes, R. 1998. Environmental impact assessment and stakeholder involvement: A. Dounelly, B. Dalal-Clayton, and R. Hughes, (Eds). *A directory of impact assessment guidelines. 2<sup>nd</sup> Edition*.

<sup>12</sup> Nanda, V. P. and Pring, G. 2003. *International environmental law and policy for the 21st century*. New York: Transnational Publishers, Inc

## **1.2 BACKGROUND TO THE STUDY**

### **1.1.0 GENERAL BACKGROUND OF PUBLIC PARTICIPATION PRINCIPLE**

Public participation has become a fundamental principle in the field of governance and environmental management. It is premised on the desire to achieve outcomes that are sustainable, i.e. the notion that through consultations better results can be achieved by involving those who are most likely to be affected by a decision in the decision making process. This concept has found particular endearance in environmental law issues because of the complexity, dynamism and sometimes fragile nature of environmental matters. Therefore they call for flexible and transparent decision making procedures that accounts for the wealth of knowledge found in a given population. According to Smith<sup>13</sup>, meaningful stakeholder engagements is an opportunity for views of the most vulnerable parties to be institutionalized in ways that are just and conform to standards laid out by the set criteria.

The essence of meaningful participation is to incorporate the views of those who took part in the process in the final decision and consequently promoting sustainable decisions by representing and making known the needs and interests of all participants.

Identifies those at risk and facilitates the involvement of those potentially affected by or interested in a decision.<sup>14</sup> Thus the state has been obligated by the constitution to encourage public participation in the management, protection and conservation of the environment.<sup>15</sup>

---

<sup>13</sup>P. Smith and M. McDonough, '*Beyond Public Participation: Fairness in Natural Resource Decision Making*', *Society and Natural Resource* 239, 239-241(2001).

<sup>14</sup> Ibid

Involves the participants in designing the models of their participation. Thus public involvement should go beyond mere participation to also include formulation of the mechanisms and systems to be used in the process.

Provides citizens with relevant information necessary for them to participate in a meaningful way. Access to relevant information has been recognized as a prerequisite for meaningful participation to take place and thus most constitutions including the Constitution of Kenya now guarantees the right of access to information in the Bill of Rights.<sup>16</sup>

Public participation communicates to participants how their input affected the decision. Meaningful public participation should incorporate a mechanism of giving feedback after the public participation process of how the different views influenced the final decisions made.

Feedback of the public is crucial in determining whether they have understood the problem. It also an avenue through which their suggestions, opinions, objections can be channeled through.<sup>17</sup> For this to be effective, the feedback mechanisms must well enumerated out and the public taught on how to utilize those mechanisms.

. Participation must be a continuous process through all stages from the formulation of a decision to the actual implementation.

This level presupposes an ideal situation whereby the final decision is purely based on the feedback of the citizenry. Thus the decision makers only act as facilitators of the process.

### **1.1.1 DEVELOPMENT OF THE CONCEPT OF PUBLIC PARTICIPATION**

Legal evolution has been said to be a result of an important interplay of socio-economic and political factors. In the management of the environment and natural resources in developing

---

<sup>15</sup> Art 69(1) Constitution of Kenya

<sup>16</sup> See Art 35

<sup>17</sup> Ibid

countries, several factors have contributed to legislative and institutional developments. These factors differ from region to region and country to country. The most important however are increasing incidences of environmental degradation and the unsustainable exploitation of natural resources, activities of environmental degradation, activities of environmental pressure groups and the activities of regional and international organizations including multilateral financial agencies and donor organizations.<sup>18</sup>

The over-exploitation of natural resources whether caused by economic considerations or population pressure has resulted in a variety of problems. These include deforestation, desertification, air and water pollution, loss of biological diversity and degradation of agricultural land. Governments and public concerns over worsening environmental problems have created an important impetus to legal and institutional development in most of the countries. Governments in many countries for example undertook significant amendments to existing natural resources legislation in order to deal with environmental problems arising from the over exploitation of natural resources.<sup>19</sup>

It was not until as recent as 1972 that international environmental law and rights became internationally recognized following the Stockholm conference on Human development. Since then however significant progress has been made in the expansion of the legal framework for environmental management. For instance the Rio declaration of 1992 required states to enact national legislations for environmental management.<sup>20</sup> The declaration further provides that in handling environmental matters it is critical that all parties participate.

---

<sup>18</sup> Mohan Prabhu, (1995) "*Criminal Law and Environmental Management*", published in Unep's New Way Forward: Environmental Law and Sustainable Development.

<sup>19</sup> Ibid

<sup>20</sup> Rio Declaration on Environment and Development, 1992, 31 ILM.874(1992)

### 1.1.2. BACKGROUND OF PUBLIC PARTICIPATION PRINCIPLE IN KENYA

Prior to the promulgation of the Constitution of Kenya (2010) and the framework legislation on the environment Environmental Management and Coordination Act(1999) (EMCA), access to justice had been a major obstacle facing individuals and groups who wished to invoke courts as a medium for environmental justice. The courts seemed reluctant to recognize suits instituted by private citizens for protection of the environment. This was manifest in the High Court decision in the case of *Wangari Maathai vs. Kenya Times Media Trust* where the petitioner, the coordinator of an environmental pressure group known as the Green belt Movement sought temporary injunction to restrain the defendant company from embarking further on the construction of an office complex at a public Park until determination of the suit. The court dismissed the applicants' claim on the grounds of lack of *locus standi* on the part of the applicant. In his ruling, the Judge stated that only the Attorney General could sue on behalf of the public.<sup>21</sup> Similarly in the case of *Wangari Maathai and 2 others vs. City Council of Nairobi and 2 others*, the court denied the plaintiff's right to sue stating that a private litigant could only initiate court action to seek redress for a private injury and that any protective effect resulting from the private action would be purely incidental<sup>22</sup>.

The above undesirable situation has since been remedied by the enactment of the Environmental Management and Coordination Act,<sup>23</sup> which allows any citizen to go to court and to institute suits to protect the environment by doing away with the requirement of demonstrating special interest. Thus in the recent past, the High Court has been unequivocal in interpreting and

---

<sup>21</sup> HCCC [1989] eKLR

<sup>22</sup> HCCC No. 72 of 1994, Reported in Unep , Compendium of Judicial Decisions on matters related to environment in National Decisions Vol,1998, 19-21

<sup>23</sup> Act No 8 of 1999

enforcing the provisions of EMCA on *locus standi*. In the case of *Sylvia Endere vs. Karen Roses Ltd*<sup>24</sup>, the plaintiff sought a permanent injunction to restrain the defendant from directing or channeling storm water to the plaintiff's dam. The defendant submitted that the plaintiff was a busybody with no interest in the matter. The court asserted that the plaintiff was within her rights as provided for under sec 3 of the EMCA to enforce the provisions of the Act if she was of the view that the defendant was likely to contravene the provisions of the said Act and cause harm to the environment.

From the foregoing case law, the issue of representation and access to justice seem to have been fairly canvassed and settled. This has further been buttressed by the entrenchment of the right to access justice in environmental matters in the Constitution of Kenya 2010. It is stated categorically that an applicant does not have to demonstrate that any person has incurred loss or suffered injury in order to institute a suit.<sup>25</sup>

Apart from representation, the other strands of public participation are access to information and actual participation. This study shall delve more into citizen participation and establish how it has been embraced and how it ought to be made for effective and meaningful

The Constitution of Kenya (2010) has laid down the basis for public participation in governance. This is manifest in Article 1 which vests all sovereign power on the people. This power may be exercised either directly or indirectly through democratically elected leaders.<sup>26</sup> The conducting of regular elections guided by the principle of universal suffrage based on the aspirations for fair representation and equality of vote is an example of public participation in governance.

---

<sup>24</sup> HCCC No 298 of 2005. Reported on (2006) eKLR

<sup>25</sup> Art 70(3) Constitution of Kenya 2010

<sup>26</sup> Art 1(1)(2) *ibid*

The importance of public participation has been pertinently captured in the Constitution which provides that participation of the people shall be among the national values and principles of governance.<sup>27</sup> It is further asserted that the national values and principles are binding on all state organs, state officers, public officers and all persons in the application or interpretation of the Constitution or any other law and in the making and application of any public policy decisions.<sup>28</sup> Further, involvement of the people in the process of policy making is incorporated as one of the values and principles of public service.<sup>29</sup> The Constitution has also provided other instances where the voice and involvement of the public is a prerequisite. These include: provision which requires political parties to respect the rights of all persons to participate in political processes;<sup>30</sup> Provision which mandates parliament to facilitate public participation and involvement in parliamentary business<sup>31</sup>; Provision empowers citizens to petition parliament to consider any matter which is within its authority.<sup>32</sup> These provisions are an illustration of the desire of the citizens in enacting the Constitution to be involved in national affairs affecting them.

In matters environment, for the first time environmental rights have been incorporated in the Bill of Rights. It is provided that every person has a right to a clean and healthy environment.<sup>33</sup> The Constitution obligates the state to encourage citizens to participate in the management, protection and conservation of the environment.<sup>34</sup> On the other hand citizens are under a duty to cooperate with state organs and collaborate with other persons in protection and conservation of the

---

<sup>27</sup> Art 10(2)a Ibid

<sup>28</sup> Art 10(1) Ibid

<sup>29</sup> Art 232(1)d Ibid

<sup>30</sup> Art 91 Ibid

<sup>31</sup> Art 118 Ibid

<sup>32</sup> Art 119 Ibid

<sup>33</sup> Art 42 Ibid

<sup>34</sup> Art 69(10)d Ibid

environment.<sup>35</sup> The specific mention of the need for participation in the context of environmental conservation can be said to be derived from the international realization of the value of public participation in making environmental conservation effective. This provision thus set the pace for direct public participation by every person in environmental conservation and management.

Prior to the enactment of the Constitution of Kenya (2010), The Environmental Management and Coordination Act (1999), was the first legislation to introduce legal framework for environment management and decision making in Kenya. It provided for universal right to a clean and healthy environment for every person resident in Kenya.<sup>36</sup> It provided avenues for public participation through establishment of Provincial and District environmental committees that comprised: sectoral agencies representatives, private sector, citizens and civil society.<sup>37</sup> This legislation thus marked institutionalized involvement of the public in environmental conservation.

The incorporation of Environmental rights in the Constitution of Kenya (2010) is a major milestone in efforts towards environmental conservation and management. From this development it is worthwhile to therefore to critique the role of procedural rights such as access to information, access to justice and public participation in decision-making in the promotion, protection and fulfillment of environmental rights.

It has been stated that the Constitution of Kenya (2010) provides choices and opportunities to the administration to follow universally accepted principles in environmental decision making, though with the exception of the basic right to a clean environment and the specific provisions on proactive public participation arising from Article 69 of the Constitution, many of the provisions require innovative structuring to enhance the utility to environmental decision making. This

---

<sup>35</sup> Art 69(2) Ibid

<sup>36</sup> Sec 3 Environmental Management and Coordination Act (1999)

<sup>37</sup> Sec 29 & 30ibid



could occur through legislation, policy and administrative mechanisms, the design and structuring of which requires in-depth analysis of constitutional provisions to distill the basic precepts of public participation and allow for further application with respect to environmental decision making.<sup>38</sup>

From the foregoing, Article 69(2) places a legal duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. This duty implies that the general public must be proactive in prevention of degradation of the environment. To give effect to this provision, there is need to define the mechanisms to be used by the public in preventing such degradation. The extent of this duty must also be set out.

Whereas the Constitution of Kenya obligates the state to encourage public participation in the management and conservation of the environment<sup>39</sup>, such participation must be demystified i.e. the quality and extent of such participation must be defined so that it is not enough for people to participate but there must be real comprehension of the real implications of any decision being made. Unless this demystification is done, participation may be reduced to mere formality hence defeating the desired intention.

Clear definition of the public is an important factor in determining the level of participation. This is because the public may range from interested parties, concerned parties, affected persons or civil society. Apparent definition will therefore be crucial in determining the point of entry for the public basing on the interests involved and the knowledge and understanding involved.

---

<sup>38</sup> Robert Kibugi “*The World Bank Legal Review, Volume 5: Fostering Development through Opportunity, Inclusion, and Equity.*” November 2013

<sup>39</sup> Art 69(1)d

The current framework on public participation does not efficiently inform the public of the opportunities for participation. An example is that on the Environmental Impact Assessment process which requires the National Environment Management Authority upon receipt from a proponent to publish an environmental impact assessment study report in the Gazette and a newspaper circulating in the area of the proposed project once at least in each of two successive weeks. A notice shall be published giving a summary description of the project, project location, place of inspection of the report and a time limit for submission of written or oral comments by members of the public among other requirements.<sup>40</sup> The ineffectiveness of this provision is apparent for a number of reasons including: that not all persons are able to access the gazette and the newspapers or able to read them; secondly not all persons may be well versed with the technical details of the report hence hampering their input; thirdly there is no requirement under the section requiring active public participation for the report to be valid, hence there is no motivation to organize forums to break down the details of the report.

## **1.2 STATEMENT OF THE PROBLEM**

Despite an explicit constitutional duty imposed on every person in cooperation with state organs and other persons to protect and conserve the environment<sup>41</sup>, proactive and enthusiastic public participation towards this endeavour is yet to be embraced. Similarly the aspect of cooperation with state organs is yet to be demystified and actualized.

The study thus seeks to establish the obstacles that hold back meaningful public participation and cooperation with state organs in environmental conservation and management. To appraise the concept, the study traces the development of the principle of public participation and reviews the

---

<sup>40</sup> Sec 59 EMCA No 8 of 1999

<sup>41</sup> Article 69(2) Constitution of Kenya 2010

legal and institutional framework in place. It assesses the impact of community involvement in forest management as a case study of evaluating meaningful public participation.

### **1.3 RESEARCH OBJECTIVES**

#### **1.3.1 GENERAL OBJECTIVES**

The overall aim of the study was to appraise the principle of Public Participation in environmental governance in Kenya. The study examined its development and the impact of its entrenchment in the constitution and sectoral legislation.

#### **1.3.2 SPECIFIC OBJECTIVES**

- 1) To trace the history and development of the principle of public participation in environmental conservation in Kenya.
- 2) To evaluate the existing legal and institutional framework for participation in environmental conservation and management in Kenya.
- 3) To evaluate the impact of the concept of Forest Management in forest conservation and management in Kenya.

#### **1.3.3 RESEARCH QUESTIONS**

1. What is the history and development path of the principle of public participation in environmental conservation?
2. What is the existing legal and institutional framework for public participation in environmental conservation?
3. How effective has the concept of Participatory Forest Management (PFM) been in conservation and management of forests in Kenya?

## **1.4 THEORETICAL FRAMEWORK**

The study adopted the principles of ‘Subsidiarity’ and “Sustainable Development” as the underpinning theories. This is because the principle of subsidiarity advocates for delegation of powers and tasks to the lowest levels if they are to be effectively carried out. On the other hand the principle of sustainable development calls for maintenance of the integrity of the earth’s ecological systems and it recognizes participation of the people as a key component.

### **1.4.1 THE PRINCIPLE OF SUBSIDIARITY**

The principle of subsidiarity regulates authority within a political order, directing that powers or tasks should rest with the lowest level of that order unless allocating them to a higher level central unit would ensure higher comparative efficiency or effectiveness in achieving them.<sup>42</sup> In other words, the principle of subsidiarity contains the proposition that in order to accomplish an objective, action should be taken at the lowest level of government capable of effectively addressing that particular problem. The philosophy of subsidiarity can be described as being bipolar, i.e. on the one hand, it advances the preservation of lower unit autonomy, while on the other hand, promoting a centralizing tendency based on arguments of comparative efficiency.

The principle of subsidiarity stipulates that a trade-off is made between the requirements of efficiency and democratic legitimacy, so as to bolster overall legitimacy. It requires that decision making, implementation, monitoring, enforcement and judicial recourse are best conducted at the lowest practical level of government.<sup>43</sup>

---

<sup>42</sup> Werner Vandebrouwaene “The Legal enforcement of The Principle of Subsidiarity” Paper for workshop on federalism, Identity and Distributive Justice. Accessed at [www.uantwerp.be/en/staff/wevanden/](http://www.uantwerp.be/en/staff/wevanden/)

<sup>43</sup> *ibid*

Although the principle of subsidiarity traces its antecedents to the Roman Catholic Church's administration, over time it has attracted wider application. Its rapid dissemination can be linked to the Rio Declaration of 1992 which promulgated in Principle 10 that environmental issues are best handled with the participation of all concerned citizens at the relevant level. It further required states to enact national legislation to give effect to the principle.

In line with this trend, the 2010 Constitution of Kenya has embraced the Principle of Subsidiarity by providing for a devolved system of government. It provides that the territory of Kenya is divided into counties and that the governments at the national and county levels are distinct and interdependent.<sup>44</sup> The constitution provides that the objects of devolution shall *inter alia* be: to facilitate the decentralization of state organs, their functions and services.<sup>45</sup> Further every county government is required to decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so.<sup>46</sup>

The principle of subsidiarity despite its apparent popularity has also attracted criticism. Thus while subsidiarity may seem to portend the desirability of decentralization, the concept has raised fundamental questions of who decides what is practicable and hence what are the limits of decentralization or the criteria to be used. Thus the principle can and has been used across the political spectrum to justify either high level intervention or non-intervention.<sup>47</sup>

#### **1.4.2 THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT**

---

<sup>44</sup> Art 6, Constitution of Kenya

<sup>45</sup> Article 174(h)

<sup>46</sup> Article 176(2)

<sup>47</sup> Aaron de Grassi "Constructing Subsidiarity, Consolidating Hegemony. Political Economy & Agro-Ecological Processes in Ghanaian Forestry" World Resource Institute.

The formulation of this principle can be traced back to the development of International Environmental Law, The report defined Sustainable development as “*development which meets the needs of the present without compromising the ability of future generations to meet their own needs.*”<sup>48</sup>The concept of sustainable development was acceptable to both sides of the ideological divide. For those interested in environmental protection, it recognized the need to regulate economic development and for those interested in economic development it accepted that economic development was a worthwhile and legitimate pursuit. The link is that economic development must be sustainable and it is sustainable if it allows the present generation to meet their needs but does not compromise the ability of future generations to also meet their needs.<sup>49</sup> The concept of sustainable development was endorsed as the theoretical underpinning of Modern environmental law at the Rio Conference<sup>50</sup>. The Rio Conference also adopted a document known as Agenda 21. This is a statement of principles on how to achieve sustainable development in the 21<sup>st</sup> Century.

According to Reed, these three elements of sustainability introduce many potential complications to the original simple definition. The goals expressed or implied are multidimensional, raising the issue of how to balance objectives and how to judge success or failure. In the real world, we can rarely avoid trade-offs, and has been pointed out, we can “maximize” only one objective at a time. Norgaard concludes that “*it is impossible to define sustainable development in an operational manner in the detail and with the level of control presumed in the logic of modernity.*”<sup>51</sup>

---

<sup>48</sup>World Commission on Environment and Development (1987). “Our Common Future”.

<sup>49</sup>Ibid

<sup>50</sup>UN Conference on Environment and Development Rio de Janeiro (1992)

<sup>51</sup>Norgaard, Richard B. (1994). “*Development Betrayed: The End of Progress and a Co evolutionary Revisioning of the Future*”, p. 22. New York and London: Routledge

Sustainable development is therefore perceived as a balancing act between environmental, economic and social goals with trade-offs being a necessary consequence.

### **1.4.3 BALANCING OF INTERESTS**

There is therefore need to attempt to strike a balance between economic interests as against environmental interests.

At the Stockholm Conference in 1972, the tussle between the developed and the developing nations was the notion that the developed countries wanted to salvage whatever was left of their denuded ecosystems caused by massive industrialization while on the other hand the developing nations still with abundant natural resources wished to achieve the level of development set by their developed counterparts.

However learning from the experience of the industrialized nations, African policy makers realized that economic development cannot be achieved in disregard of environmental protection. Thus the question of how to strike a satisfactory balance between the need for economic development on the one hand and environmental protection on the other arose.

Governments and policy makers have grappled with the question of how to best use legislation to balance economic interests against environmental interests. The focus is on regulation of activities that have an impact on the environment.

It has been argued that the wording of the African Charter suggest that the state parties should progressively see to the balancing of all the sustainability factors i.e. environmental, social,

cultural and economic factors. This balancing is however a hard task considering the state of poverty and other socio-economic challenges that persist in most African countries<sup>52</sup>

In Kenya, both environment and development rights have been incorporated in the Bill of Rights.<sup>53</sup> It has been argued that this helps in efforts at balancing interests. That the resultant effects are that environmental protection is thrust into the centre of administrative decision making as a key right with attendant obligations that cannot be ignored and secondly environmental protection and the right to development are considered at par, which parity is important to ensure that the much needed socio-economic advancement of the people is not fettered.<sup>54</sup>

#### **1.4.5 SUSTAINABLE DEVELOPMENT GOALS**

The idea to develop sustainable development goals was an outcome of the UN Conference on Sustainable Development (Rio+20). They were purposed to replace the Millennium Development Goals.<sup>55</sup>

The seventeen goals and 169 targets aimed at expanding on the Millennium Development Goals and add new areas such as climate change, economic inequality and sustainable consumption. They provide clear guidelines and targets for countries to adopt in accordance with their own priorities and environmental challenges.<sup>56</sup>

---

<sup>52</sup>AA du Plessis “*The balance of sustainability interests from the perspective of the African Charter on Human and Peoples’ Rights*” in *The balancing of interests in environmental law in Africa*, Pulp Publication 2011

<sup>53</sup>Articles 42 &43 Constitution of Kenya( 2010)

<sup>54</sup>Robert Kibugi “*Development and the balancing of interests in Kenya*” in *The balancing of interests in environmental law in Africa*, Pulp Publication 2011, viewed at [www.pulp.up.ac.za](http://www.pulp.up.ac.za) on 19<sup>th</sup> October 2015.

<sup>55</sup> A/RES /66/288- Rio+20 Outcome Document. Viewed at [www.un.org](http://www.un.org)

<sup>56</sup> What are the sustainable development goals?. Available at [www.undp.org](http://www.undp.org)



The uniqueness of the SDGs is that they cover issues that affect all humanity. The objective is to ensure no one is left behind by reaffirming the international commitment to end poverty permanently everywhere.<sup>57</sup>

Critics argue that although the SDGs include a sustainability agenda which the MDGs did not, the economic goals and sustainability issues have not been merged hence there remains a danger that that economic growth will continue taking precedence which compromises environmental sustainability.<sup>58</sup> It is thus recommended that there is need to redefine economic objectives to incorporate sustainability so that in the process of maximizing economic growth there is an assurance that the growth is sustainable.<sup>59</sup>

#### **1.4.6 PUBLIC PARTICIPATION & SUSTAINABLE DEVELOPMENT**

Agenda 21, the international blue-print for sustainable development lays emphasis on the requirement for consultation, public participation and involvement, public awareness, capacity-building and partnerships in attaining sustainable development. It calls for global partnership aiming at a high quality environment and a healthy economy for all peoples of the planet.<sup>60</sup> Thus, participation of the people enables decision-makers in making informed decisions about the sustainability of a proposed project or plan.

Under Article 10 sustainable development and public participation have been incorporated as part of the national values and principles of governance<sup>61</sup>. These values and principles are binding upon every state organ, state officers, public officers and every person in the implementation or making of any public policy decision. In respect of environmental matters

---

<sup>57</sup> Background on the goals. Available at [www.undp.org](http://www.undp.org)

<sup>58</sup> See Francis Stewart (One flaw in the SDGs may make the difference between success and failures) available at [www.theelders.org](http://www.theelders.org)

<sup>59</sup> Ibid

<sup>60</sup> A 700 page global plan of action produced as a result of the United Nations Conference on Environment and Development (UNCED) 1992 Rio de Janeiro.

<sup>61</sup> Art 10(1)(2) Constitution of Kenya (2010)

article 69(2) mandates every person to cooperate with state organs and other persons in the protection and conservation of the environment and in ensuring ecologically sustainable development and use of natural resources. This provision in essence demonstrates the inextricable nature of public participation and sustainable development. And thus it can be concluded that in the new constitutional dispensation, public participation is an inherent factor of sustainable development. This recognition and integration of the efforts of the local people can go a long way in guaranteeing sustainability as it also act as an incentive to the people to avoid unsustainable production methods.

#### **1.4.7 CONCLUSION**

Sustainable development is a political, socio-economic concept which seeks to bring an understanding of how to interface environmental, economic& social considerations. At its core is the realization that environmental issues should not be considered in isolation from other global concerns. And whereas the principle has sometimes been criticized as being paradoxical, in order to solve any phenomena relating to either environment or development, sustainable development considerations must be taken into account.

#### **1.5 LITERATURE REVIEW**

The study sought to examine how the concept of public participation in environmental governance has been embraced in Kenya.

In order to conduct a comprehensive study, the researcher reviewed literature that other researchers had done in relation to this issue to gauge whether there is already enough information on the subject or whether an information gap exists which needs to be filled. The researcher reviewed three thematic areas namely: legal and institutional framework; proactive participation and access to justice.

### **1.5.1 Legal and Institutional framework**

According to Prof Mumma (2005), despite a wealth of laws on environmental and natural resources management, the degradation of Kenya's environment and natural resource base has continued unabated. He posits that the laws are known to only a few professionals and little action is taken by government to implement them. Enforcement action tends to be the exception rather than the rule. The public also continues with its activities with little regard to the requirements of the law. He asserts that enforcement action by Non Governmental Organizations is desultory at best and in any case is reactive and poorly contemplated. Even court decision on issues of key environmental and natural resource management concerns do not serve to galvanize any concerted implementation and enforcement effort.<sup>62</sup> According to Mumma the problem appears to be lack of awareness of the rules and poor enforcement techniques.

According to Kameri Mbote (2000), even though the EMCA was in force, the role of the public in environmental decision making was inadequately implemented.<sup>63</sup> The researcher will seek to establish the obstacles which impede public participation.

### **1.5.2 Proactive Public Participation**

Portman in his study established that it is widely accepted that with public participation, controversial elements of a development become clearer to both proponents and public officials<sup>64</sup>. His study however does not establish why the public has been shunned in most decision making processes.

---

<sup>62</sup> Albert Mumma, "*The Role of local Communities in Environmental and Natural Resources Management. The Case of Kenya*", Published in Compliance & Enforcement in Environmental Law. IUCN Academy of Environmental Law Series (2005)

<sup>63</sup> Kameri-Mbote, P (2000). Strategic planning and implementation of policies involved in environmental decision-making as they relate to environmental assessment in Kenya. *International Environmental Law Research Center working paper*. East Africa Office.

<sup>64</sup> Portman, M (2008). "Involving the public in the impact assessment of offshore renewable energy facilities".

According to Eric Orts in Kimani (2010), citizens' participation can readily secure the use of local and contextualized knowledge needed to understand a problem and its required solutions. Such knowledge is often missing from command and control approaches yet is vital in handling environmental issues. Secondly the participation of citizens' better fosters the political development of individuals through their engagement in governance particularly by allowing marginalized groups to participate more directly in decisions that affect their lives. This has an added benefit of contributing to ideals of fairness in decision making which increases the acceptability of outcomes and thus reduces the costs of enforcing compliance.<sup>65</sup>This study appreciates the importance of citizens' participation but does not delve into the obstacles which hinder its realization.

### **1.5.3 Access to Justice**

According to Muigua, the right to a clean and healthy environment is now firmly embedded in the constitution and not just a statutory right as it previously existed under the Environmental Management and Coordination Act (1999). He asserts that greater protection to environmental rights is now guaranteed in and further enhanced by mechanisms for enforcement by allowing every person access to justice through public interest litigation and by assigning courts special roles in protecting environmental rights.<sup>66</sup>His study focuses more on seeking redress through courts for infringement; this study on the other hand will seek to propose ways of avoiding litigation by involving those likely to be affected at an early stage so as to avoid redress to courts.

---

Woods Hole, MA:Marine Policy Center

<sup>65</sup>Nicholas N. Kimani, 'Participatory Aspirations of Environmental Governance in East Africa', *6/2 Law, Environment and Development Journal* (2010), p. 200, available at <http://www.lead-journal.org/content/10200.pdf>

<sup>66</sup>Kariuki Muigua, Didi Wamukoya and Kariuki Francis (2015) "Safeguarding Environmental Rights in Kenya" Glenwood Publishers Limited. Nairobi

Hartlet and Wood (2005) state that the lack of public awareness of their roles in environmental decision making often translates into forgoing justice, as citizens who are not aware of their roles and rights may not adequately claim them. That it is desirable to establish not only the legal requirement for environmental impact assessment but also sufficient institutional and personal capacity and resources to implement them effectively. In this way the public's access to justice may be improved.<sup>67</sup>

From the foregoing literature review, it can be concluded that whereas literature exist on the area of public participation, most studies seem to have concentrated more on emphasizing the importance of public participation in environmental governance but fail to appreciate the challenges faced by the very citizens in realizing this right. This is the gap which the researcher will seek to fill.

## **1.6 SIGNIFICANCE OF THE STUDY**

The study sought to establish how public participation can be crystallized from its superficial nature. It is hoped the findings and recommendations can help arouse the consciousness of the general public on this important tool which is at their disposal.

The research findings will be valuable literature for law students, scholars and policy makers of Constitutional and Environmental law. The researcher himself hopes to gain valuable knowledge in the often overlooked field of public participation.

## **1.7 HYPOTHESIS**

---

<sup>67</sup>Hartley, N and C Wood (2005). Public participation in environmental impact assessment: implementing the Aarhus Convention. *Environmental Impact Assessment Review*, 25, 319–340

The researcher proceeded on the following hypothesis

- 1) The engine that drives environmental justice is empowered communities and not enlightened individuals.

## **1.8.0 METHODOLOGY**

### **1.8.1 SCOPE OF THE STUDY**

The study generally examined the concept of public participation as a principle of environmental governance. The main focus was on the Republic of Kenya. However references were made to other jurisdictions to examine their development and application of the principle.

The relevant materials and literature used ranged from the Constitution, statutes, international instruments, writings of eminent scholars and jurists.

To access primary data, the researcher interviewed policy makers and stakeholders in Participatory Forest Management (PFM) as provided for under the Forest Act (2005).

### **1.8.2 RESEARCH DESIGN**

The researcher adopted both primary and secondary qualitative study. The data was then integrated and subjected to descriptive analysis in order to pursue a research interest which is distinctive from that of the original work.

### **1.8.3 DATA COLLECTION**

The study utilized both primary and secondary data sources. To achieve this goal, secondary data was collected by means of documentary review of legal instruments, case law, textbooks, journals and conference papers on the research topic. To achieve this endeavor the researcher mainly utilized University of Nairobi School of Law library, Kenya Forestry Service Resource Centre and the internet which is rich in the aforesaid materials.

Primary data was collected by conducting personal interviews with respondents at the Kenya Forest Service, Friends of Karura Forest CFA and Ngong Road Forest CFA to establish the extent public participation has been embraced in environmental management especially in forest conservation efforts. In this endeavour the researcher used interview schedules to refresh memory on questions to be asked the interviewees and to record the answers given. Open ended questions were employed. A focus group discussion was held with three members of the Ngong Road Forest Users Association. The group participant were asked questions and given an opportunity to express their opinions, experience and expectations during and prior to the formation of the CFA. The questions asked during the focus group discussions aimed at achieving the objectives of the study.

#### **1.8.4 DATA ANALYSIS**

The researcher analyzed the information obtained from primary sources by integrating them with the information from secondary sources. The integrated data was then analyzed, summarized and presented in this dissertation.

#### **1.8.5 LIMITATIONS OF THE STUDY**

The study analyzed the legal provisions that govern public participation in environmental conservation and management in Kenya. The researcher collected data from Kenya Forest Service, Ngong Road Forest Association and Karura Forest to appraise participation in forest conservation.

A major limitation of the study was inadequate funds. The researcher relied on limited personal savings to conduct the field study. As a result the researcher constrained his study to the urban forests within Nairobi. This denied him the opportunity of obtaining first hand experiences from forests located far removed locations such as the Arabuko Sokoke.

## **1.9 CHAPTER BREAKDOWN**

The study contains four chapters:

### **1.9.1 Chapter One**

It gives an introduction into the study. It gives a brief background on the conception and development of the principle of public participation. It states the statement of the problem, It gives an account of the development of the principle of public participation in environmental governance in Kenya. The theoretical framework objectives, hypothesis, justification, literature review and the research methodology to be adopted by the study are provided for in this chapter.

### **1.9.2 Chapter Two**

This chapter is an analysis of the legal and institutional framework for public participation both at international stage and locally. It appraises the stages of public participation from access to information, constitutional foundations for a proactive public participation and access to justice through judicial and administrative mechanisms



### **1.9.3. Chapter Three**

In this chapter the researcher appraises the concept of participatory forest management as a case study of evaluating the successes and challenges of public participation in forest management and conservation. The researcher reports on the experiences of various community forest associations involved in forest conservation efforts.

### **1.9.4 Chapter Four**

In this chapter the researcher draws conclusions from the research findings. The researcher gives possible solutions to the challenges identified in the study. Further the researcher gives a projection of the feasibility of actualizing the recommendations suggested

## **CHAPTER 2**

### **2.0 LEGAL AND INSTITUTIONAL FRAMEWORK FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE.**

This chapter is an analysis of the legal and institutional framework of public participation in environmental governance both at international and local level. The researcher assesses their relevance and importance at the various categories of public participation.

#### **2.1.0 INTERNATIONAL FRAMEWORK**

Various environmental conventions, treaties and soft law instruments expressly provide for public participation in environmental governance as a general principle. For instance the World Charter for Nature provides explicitly for an opportunity for all people guided by their national legislation to participate either individually or with others in the crafting of decisions which are

of direct impact to their environment and provides for judicial mechanisms to be pursued in seeking justice for the environment.<sup>68</sup>

What is important to note is that most of these international treaties and conventions only provide a general framework thus requiring state parties to put in place enabling legislation to actualize the treaties and conventions.

### **2.1.1 Access to Information**

To empower citizens to effectively participate in oversight over resources and institutions, they must be afforded access to information.<sup>69</sup> The UDHR (1948) set the basic framework for accessing information and seeking justice.<sup>70</sup> The ICCPR (1966) guaranteed right of access and publication of information. Citizens of member states have a right to demand and be afforded relevant information of all kinds.<sup>71</sup>

Access to information precedes other elements of the Aarhus Convention<sup>72</sup>. Under this pillar every person is entitled to obtain information on environment being held by a public authority without having to demonstrate a special interest. What constitutes environmental information has been given a wide scope so as to afford the right to access to information the widest interpretation possible.

The Convention requires each state party to compel their respective state departments to possess and update regularly environmental information relevant to the public. Further systems are to be set up so that information flows uninterrupted to and from public authorities relating to future

---

<sup>68</sup> Principle 23, World Charter for Nature, UN GA Res 37/7 [www.un.org/docs](http://www.un.org/docs)

<sup>69</sup> Christophe Schwarte, *Access to Environmental Information in Uganda Forestry and Oil Production* (Intl. Inst. Env. & Dev. 2008). cited in R Kibugi, 'The Constitutional Basis of Public Participation in Environmental Governance', *World Bank Legal Review* No 5(2014)

<sup>70</sup> Art 19 Universal Declaration of Human Rights(1948)

<sup>71</sup> Art 19(2) *International Covenant on Civil and Political Rights*, 6 Intl. Leg. Materials 368 (1967).

<sup>72</sup> United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters(1988) (Aarhus Convention)

and existing activities which may considerably impinge on the environment. And where human health or the environment is threatened, all pertinent information which could enable the public to take pre-emptive measures to stop or diminish potential harm resulting from that threat and which is held by a public authority is circulated expeditiously to the public who may be affected<sup>73</sup> Through the Aarhus Convention various elements of the principle of public participation have been promoted. Notably civil society organizations have brought about cases seeking to challenge their governments' failure to comply or implement provisions of the convention. This has resulted in development of jurisprudence that strengthens the principle in general. Further the elements arising from this Convention have been applied in jurisdictions that are not signatories to the Aarhus regional convention. They have become useful persuasive precedents to underpin activities such as establishment of national environmental courts.<sup>74</sup>

The EAC Protocol on Environment provides for public participation, access to justice and information. The protocol requires the Partner States to take up common policies, laws and programmes relating to access to information, justice and the participation of the public in environmental and natural resource management.<sup>75</sup>

### **2.1.2 Opportunity to Participate in Decision Making Processes**

The aim of this stage is to obtain feedback from the public. The decision makers undertake to keep the public informed and listen to their concerns and to provide feedback on how their input influenced the decisions made.

Principle 10, of the Rio Declaration emphatically calls for participation of citizens when handling environmental issues at the applicable level. There is an obligation on governments to

---

<sup>73</sup> Ibid at Art (5) 1 a,b,c

<sup>74</sup> See The Role of the Aarhus Convention in promoting good governance and human rights. Available at [www.unece.org/env/publications](http://www.unece.org/env/publications)

<sup>75</sup> Article 34(1) The East Africa Community Protocol on Environment and Natural Resources Management (EAC Protocol)

set a platform for citizens to obtain environmental information, take part in decision-making and access justice on environmental matters. Together with the Brundtland Report of 1987<sup>76</sup>, the Rio Declaration of 1992 conveyed the clear message that active public participation is a precondition for achieving sustainable development and solving the environmental problems of the world.<sup>77</sup>

Similarly *Agenda 21*, the blue print for implementation of the Rio declaration reflects the right of participation. It states that one of the fundamental pre requisites for achievement of sustainable development is broad public participation in decision making.<sup>78</sup> It identifies major groups whose participation is needed. These are: women, youth, indigenous and local population, nongovernmental organizations, local authorities, workers, business and industry players, scientists and farmers.<sup>79</sup>

The Aarhus Convention specifies the activities where public participation is required<sup>80</sup>. These include activities in the energy sector such as mineral oil and gas refineries, thermal power stations and other combustion installations, nuclear power stations and reactors, chemical installations for the production of basic organic and inorganic chemicals, waste management and waste water treatment plants including installations for the incineration, recovery, chemical treatment or landfill of hazardous waste<sup>81</sup>. There is a requirement for members of the public to be allowed to submit comments, information and opinions that they consider relevant to the proposed activity. Further that the outcome of public participation is taken into account in decisions made.<sup>82</sup>

---

<sup>76</sup> GH Brundtland and World Commission on Environment and Development.(1987) Our Common Future: Report of the World commission on Environment and Development. Oxford University.

<sup>77</sup> Kariuki Muigua and Paul N. Musyimi, "Enhancing Environmental Democracy In Kenya",www.kmco.co.ke

<sup>78</sup> Preamble to Chapter 23, Agenda 21 (U.N Doc. A/Conf. 151/26 1992)

<sup>79</sup> Ibid at Chapter 24-29

<sup>80</sup> Art 6(1) Aarhus Convention

<sup>81</sup> Ibid at Annex 1

<sup>82</sup> Article 6 (7)(8) Aarhus Convention

The African Convention on the Conservation of Nature<sup>83</sup>, provides for procedural rights, requiring parties to ensure public access to information, public participation in decision making, and access to justice in matters related to the environment<sup>84</sup>. In the *Ogoni peoples' case*<sup>85</sup>, the African Commission on Human and People's Rights while addressing a question on procedural rights called on governments to allow independent audits providing information to citizens and providing meaningful opportunities for individuals to participate in the discourses affecting their communities.<sup>86</sup>

The procedural dimension of the right to a healthy environment as articulated in the *Ogoni* case may have influenced development of jurisprudence in other monitoring mechanisms. For instance, The World Bank rules require that before a project or activity is financed by the bank, the proponent of such a project ought to address environmental concerns. This involves establishing the likely environmental impacts of such activity with the main aim being to avoid adverse harm to both the environment and local population.<sup>87</sup> This was illustrated in *Gilgel Gibe* dam in Ethiopia where the World Bank opted out of funding the project citing lack of transparency in the EIA process.<sup>88</sup> It is required that public participation shall take place during at least two stages of the project. The first being at the scoping stage and secondly once the environmental assessment has been completed. However public participation is encouraged to continue throughout the process of Environmental assessment.<sup>89</sup>

### 2.1.3 Access to Justice

---

<sup>83</sup> African Convention on the Conservation of Nature and Natural Resources (1968)

<sup>84</sup> Ibid Article 16

<sup>85</sup> Social and Economic Rights Action Centre and Centre for Economic and Social Rights vs. Nigeria No 155/96

<sup>86</sup> Ibid At Para 53

<sup>87</sup> World Bank's operational directive 4.0, Annex A: Environmental Assessment, Oct 1989. Quoted in Kameri Mbote "Strategic Planning & Implementation of Public Involvement in Environmental decision making as they relate to environmental Impact Assessment in Kenya. Viewed at [www.ielrc.org](http://www.ielrc.org) on 24<sup>th</sup> June 2015.

<sup>88</sup> Carey L Biron, Global Policy Forum, 2012, viewed at :[www.globalpolicy.org/social](http://www.globalpolicy.org/social) and economic policy

<sup>89</sup> World Bank (1996) The Impact of Environmental Assessment: A Review of World Bank Experience. World Bank Technical Paper No 363, Environment Department, Washington Dc pg 35.

It has been stated that the legal system of any country should ensure that judicial institutions and the administrative mechanisms therein are enhanced in order to enhance access to environmental justice for the public.<sup>90</sup> The Rio Declaration required States to facilitate valuable access to judicial and administrative proceedings including redress and remedy.<sup>91</sup> The Aarhus Convention obligates its members to set up adequate review procedures within the framework of their national legislation to facilitate redress in cases where a member of the public alleges that his or her request to information has been ignored or denied. This will involve setting up an independent and impartial tribunal. The state party shall further ensure that the procedure under such tribunal shall be prompt and free of charge or affordable<sup>92</sup>

Crucially for access to justice to be meaningful, the outcomes of the justice mechanisms should be binding on governments and public authorities. In the case of the *Endorois* people,<sup>93</sup> the African Commission on Human and People's rights held that the government of Kenya had interfered with the *Endorois* enjoyment of their human rights by means of forced evictions. Further that the *Endorois* people had not been given an opportunity to participate in the decision which led to their eventual eviction. The Commission made a recommendation that the government of Kenya recognise the *Endorois*' ownership rights, reinstate indigenous and ancestral land of the *Endorois* and compensate them for their displacement. The government of Kenya however failed to act on the recommendations. This brings to focus the relevance of such findings since there is no clear mechanism to compel the government to act on them.

#### **2.1.4 Obligation to Facilitate and Encourage Public Awareness**

---

<sup>90</sup> R Kibugi (2014) '*The Constitutional Basis for Public Participation in Environmental Governance*' The World Bank Review No 5

<sup>91</sup> See Principle 10

<sup>92</sup> Article 9(1) Aarhus Convention

<sup>93</sup> Centre for Minority Rights Development(Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council vs. Kenya No 276/2003

The Stockholm Declaration called for education in environmental matters, for all generations , giving due weight to the marginalized, so as to widen the basis for an informed opinion. Thus the call for an ‘enlightened opinion’ presupposes participation by all in decision making processes affecting the environment. Further the media is urged to disseminate information which will foster the enlightenment.<sup>94</sup> The Stockholm declaration can thus be said to have laid the foundation for education in the environmental discourse. This view is reinforced by Agenda 21 which sets out objectives, programme areas and means of implementation for a sweeping range of issues in sustainable development. It identifies each challenge and proposes simple realistic solutions towards overcoming it.<sup>95</sup>

The Millennium Development Goals, called for achievement of universal primary education.<sup>96</sup> The Sustainable Development Goals enhanced on it by calling for all encompassing and quality education for all and promoting lifetime learning.<sup>97</sup> This implies the importance of both formal and informal education in inculcating values and knowledge and relevance of sustainable development to all generations. The UN General Assembly Resolution on Decade of Education for Sustainable Development (DESD) called on National governments to “*consider the inclusion . . . of measures to implement the Decade in their respective educational systems and strategies and, where appropriate, national development plans*”.<sup>98</sup> The objectives of this programme according to UNESCO are: to improve access to quality basic education; reorient existing educational programmes; develop public understanding and awareness; and provide training.<sup>99</sup>

---

<sup>94</sup> Ibid

<sup>95</sup> See Agenda 21 available at [www.habitat.igc.org](http://www.habitat.igc.org)

<sup>96</sup> Goal No 2, Millennium Development Goals available at [www.undp.org/home/mdg](http://www.undp.org/home/mdg)

<sup>97</sup> Goal no 4 ibid

<sup>98</sup> UN GA Res No 59/237 available at [www.unesco.unesdocs](http://www.unesco.unesdocs)

<sup>99</sup> Unesco, The UN Decade of Education for Sustainable Development (DESD 2005–2014): The First Two Years 6 (UNESCO 2007). Available at [www.unesco.publication](http://www.unesco.publication)

Education has thus been hailed as a foundational critical element of public participation that enhances public sensitivity and compassion to environment and development phenomena. It can also aid in strengthening public involvement in seeking solutions and fostering a sense of delicate environmental responsibility and commitment towards sustainable development.<sup>100</sup>

## **2.2 LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK FOR PUBLIC PARTICIPATION IN KENYA.**

### **2.2.1 CONSTITUTION OF KENYA (2010)**

From the onset the Constitution of Kenya (2010) puts the people of Kenya at the centre of action. The Preamble revolves around the resolutions, aspirations and commitments of the people of Kenya in enacting the Constitution. Article 1 vest all sovereign power in the people of Kenya with a choice to either exercise that sovereignty themselves directly or through democratically elected representatives. Under article 10, public participation is firmly entrenched as one of the national values binding on all state organs, state officers, public officers and all persons. The significance of this entrenchment has begun to take shape as manifested in enactment of legislation both at the National and County governments which requires public participation as a crucial step in the enactment process.

#### **2.2.1.1 Constitutional Foundations of Proactive Public Participation**

---

<sup>100</sup> Report of the 1992 UN Conference on Environment and Development, Rio (Res 1 annexes 1&2 Para 36.3). Quoted in R Kibugi's '*The Constitutional Basis for Public Participation in Environmental Governance*' The World Bank Legal Review No 5.



The Constitution is a framework law which lays down the general principles and norms. It sets the foundation for its provisions to be crafted and built upon through legislation, policy and administrative actions.

It provides that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.<sup>101</sup> It goes further to contemplate the measures through which this right shall be achieved. These measures provide an opportunity for public participation.

The first set of obligations mandates the state to among others: ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and equitable sharing of accruing benefits; encourage public participation in the management, protection and conservation of the environment.<sup>102</sup> To actualize these obligations, there is need for further legal, policy and institutional framework.

Secondly the Constitution contemplates a duty on every person in cooperation with state organs and other persons in protecting the environment and in ensuring sustainable development and use of natural resources.<sup>103</sup> The duty created herein can be dissected into three facets i.e.: a specific obligation on every individual to protect and conserve the environment; an obligation to cooperate with state organs and other persons in protecting and conserving the environment; an overall obligation on all people working together and in cooperation with the state to conserve the environment and ensure ecologically sustainable development. Contextually art 69(2) lays the foundation for public participation discourse in environmental conservation. To define the

---

<sup>101</sup> Article 42(a) Constitution of Kenya (2010)

<sup>102</sup> Art 69(1)a, d Ibid

<sup>103</sup> Art 69(2) ibid

ambits of this participation, there is need to develop the roles through which the public can effectively take part in environmental conservation. These mechanisms can be established through proposed laws, policies and programmes. It has been stated that the aim of these mechanisms should be to have public representation and consultations resulting in positive effects on the minimum threshold and direction of the process.<sup>104</sup>

### **2.2.2 Access to Information**

The Constitution (2010) explicitly provides for access to information as a fundamental right. This right includes the right to access information held by the state and information held by private entities where such information is required for the exercise or protection of any right or fundamental freedom.<sup>105</sup>

The pertinent implication of this article is that it leaves an open ending in regards to access to information held by the state as opposed to information held by private citizens and entities. This implies that one can access information held by the state without the necessity to demonstrate the purpose for which the information is required. Another pertinent issue raised by this provision is that unlike the other fundamental rights, the right to access to information is available to citizens of Kenya only.

#### **2.2.2.1 Legislative Attempt to give meaning to the Right of Access to Information**

The Access to Information Bill (2015) seeks to give effect to article 35 of the Under sec 4 it reiterates the right to access information as a fundamental right. It also spells out the modalities

---

<sup>104</sup> R kibugi, (2014)“*The Constitutional Basis of Public Participation in Environmental Governance*”, World Bank Review No 5

<sup>105</sup> See Art 35

for ensuring public access to information as well as the factors that may obstruct the right to this access. Significantly it proposes the procedure of how public officials should respond to information requests, notably placing a 15 day limit for processing the requests.<sup>106</sup> It further proposes that information should be denied only when the information if released would be detrimental to personal privacy, expose commercial secrets or endanger national security. Under sec 16(5) proactive disclosure of information relating to environment is provided for. Should the Access to Information Bill (2015) be enacted into law it shall ease the process of accessing environmental information from institutions such as NEMA, it shall also clarify on administrative fee levied to access information. It also prescribes an appeal mechanism which the public can employ against a decision limiting or denying access to vital information.

However it is instructive to note that there has been inordinate delay in enacting the law. The Access to Information Bill has been tabled in parliament at least five times since 2007 with no sight to its enactment yet.

### **2.2.3 Obligation To Facilitate And Encourage Public Participation In Environmental Decision Making.**

Article 69(1) obligates the state to engage the citizens in the management, protection and conservation of the environment. Specifically County governments have been entrusted with the responsibility of ensuring public participation under the fourth schedule.<sup>107</sup> The responsibility created herein is categorical and requires county governments to ensure and coordinate participation of the local communities in governance and also to assist the local communities in developing administrative capacities for effective participation at the local level. In the case of

---

<sup>106</sup> Sec 9(1) Access to Information Bill(2015)

<sup>107</sup> Clause 14,Fourth Schedule Constitution of Kenya (2010)

*Musa Mohammed Dagane & 25 others* The court observed that there was no representation from an independent organization or the applicants during the forcible eviction to avoid casualties and claims of illegality or provision of legal remedies made available to the applicants.

Although the obligation bestowed on county governments is on general governance, the same can be adopted to enhance public participation in environmental governance. This can be implied from clause 10 of the fourth schedule which mandates county governments to complement the National government in putting to practice government policies on environmental conservation.

#### **2.2.3.1 The County Government Act**

The County Governments Act (2012)<sup>108</sup> gives effect to the constitutional provisions on devolution with respect to county government functions. It enumerates the county governments' powers, functions and responsibilities,

Under the Act, citizens have a right to petition the county government on any matter within their jurisdiction and the county government is under an obligation to respond expeditiously to such petitions and challenges from the citizens.<sup>109</sup> To further entrench public participation, county governments are at liberty to conduct referendums in controversial matters.<sup>110</sup>

The county government is charged with the responsibility of establishing platforms and modalities for citizen participation. These structures include organizing town hall meetings, ICT based platforms for disseminating information, notice boards for announcing job vacancies, procurements and other announcements relevant to the public. These platforms are aimed at

---

<sup>108</sup> County Governments Act, no 17 of 2012

<sup>109</sup> See Sec 88 Ibid

<sup>110</sup> Sections 89,90 Ibid

enhancing the contribution of citizen to governance in the counties as envisaged in the Constitution.

Though the provisions in this Act are general in nature, the same could be modified and expanded through regulations and other mechanisms to enhance their utility in environmental decision making. Currently the focus of the county governments seems to be emphasizing participation on county budget processes while leaving out other critical sectors like environment.

### **2.2.3.2 Environmental Management and Coordination Act 1999 (EMCA)**

This is the main legislation that covers environmental matters in Kenya.<sup>111</sup> It provides for the establishment of an appropriate legal and institutional framework for the management of the environment and for other matters incidental thereto.

One of the general principles of environmental management provided under EMCA is sustainable development. It provides that in exercising the jurisdiction conferred upon it, the High Court shall be guided by the principles of sustainable development which include the principle of public participation in the development of policies, plans and processes for the management of the environment.<sup>112</sup>

As a tool for facilitating public participation, EMCA provides for Environmental Impact Assessment Study<sup>113</sup>. It requires the proponent of a project or cause to be undertaken at his own expense an EAI study and prepare a report thereof where the authority being satisfied after studying the project report submitted to it, that the intended project may or likely to have or will have a significant impact on the environment.<sup>114</sup>

---

<sup>111</sup> Environmental Management and Coordination Act No 8 of 1999

<sup>112</sup> Sec 3(5) Ibid

<sup>113</sup> Sec 57-67 Ibid

<sup>114</sup> Sec 58(2) Ibid

However, to be more meaningful, EIA ought not to be undertaken after a business proposition has been drawn. Rather it should be part of the process from the beginning. The local population should be made part of the process from the onset. Their participation is particularly crucial since they are concerned of their own future hence they are likely to consider goals transcending economic interests. Participation should also go beyond preliminary decisions to other follow up activities such as project monitoring.

### **2.2.3.3 Environmental Management and Coordination (Amendment) Bill, 2012**

The Bill sought to amend sections of EMCA. Section 3(d) of this Bill amended section 3 of the Principal Act (EMCA) by adding a new Section 3(7) to read to the effect that in interpreting and implementing the Act, all persons shall be guided by *inter alia* the principles of voluntary environmental management, rule of law, social justice, subsidiarity, public participation, integrity, non-discrimination, transparency, equitable sharing of resources, accountability and the principles of public service.

Section 6 of the Bill amended section 9(2) of EMCA, in sub paragraph (m) by the deleting the words occurring after public awareness and substituting therefore with the words public participation.<sup>115</sup>

Section 28 of the Amendment Bill amends the title of Part VI of the Principal Act (EMCA) to read “Integrated Impact Assessments” (IIA) instead of Environmental Impact Assessment. The significance is that IIA is wider in application and would probably be more effective than EIA considering that it is expanded in scope since it covers: Strategic Environmental Assessments; Environmental Impact Assessments; Health Impact Assessments; Social Impact Assessments;

---

<sup>115</sup> Sec 9(2)m Environmental Management and Coordination(Amendment) Bill,2012

and Cultural Impact Assessments.<sup>116</sup> Its impact is expected to be manifest by widening instances of public participation in environmental and natural resources management.

It is worth noting that the amendments to the parent Act were necessitated by the need for a reflection of the devolution structure of the new Constitution of Kenya (2010) which emphasizes greater participation of the public in governance.

#### **2.2.3.4 The Environmental (Impact Assessment and Audit) Regulations, 2003**

The Regulations enacted under Legal Notice No.101 require the proponent shall in consultation with the Authority, seek the views of persons who may be affected by the project.<sup>117</sup> Although these regulations were meant to implement the provisions of EMCA including those on public participation, there has been laxity in enforcing them with the public in most times being excluded when reports are being prepared. And where the public is engaged, the effect of such engagement cannot be ascertained since there are no feedback mechanisms to report the same.

#### **2.2.3.5 The Wildlife Conservation and Management Act, 2013**

The Wildlife Conservation and Management Act, 2013<sup>118</sup> provides for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes.

This legislation applies to all wildlife resources on public, community and private land, and in Kenya's territorial waters and thus has potential to result in many decisions that require public participation.<sup>119</sup>

---

<sup>116</sup> Sec. 29, Ibid

<sup>117</sup> Regulation 17(1) The Environmental (Impact Assessment and Audit) Regulations, 2003

<sup>118</sup> The Wildlife Conservation and Management Act, No. 47 of 2013, Laws of Kenya.

<sup>119</sup> Sec 2 ibid

The Act defines public participation to mean active involvement by the citizenry in decision making processes through, *inter alia*, use of the national media, relevant consultative mechanisms and public hearings.<sup>120</sup>

It is provide that implementation of the Act is to be guided by general principles which include *inter alia*: Wildlife conservation and management to be devolved, wherever possible and appropriate to those owners and managers of land where wildlife occurs; and conservation and management of wildlife to entail effective public participation.<sup>121</sup>

#### **2.2.3.6 NATIONAL ENVIRONMENT POLICY 2013**

It is provided that the implementation of the policy is guided by a number of principles including the principle of public participation.<sup>122</sup> There is a call for a coordinated and participatory approach in environmental protection and management. The policy also recognizes the principle of subsidiarity as being key in the management of the environment. It provides for decentralization and devolution of authority and responsibilities to the lowest level possible. The policy mechanism offers the simplest way of implementing public participation principle at all levels of governance.

#### **2.2.4 Public Awareness and Information Dissemination**

The constitutional foundation for public awareness has been laid down in article 33, which provides that every person has the right to freedom of expression which includes freedom to seek, receive or impart information or ideas. Public awareness buttresses the other elements of public participation by facilitating citizen involvement in accessing information relevant for meaningful participation. Access to information is further strengthened by Article 43 which provides for the right to education of every person. This article has been interpreted to include an

---

<sup>120</sup> Sec 3 *ibid*

<sup>121</sup> Sec 4 *ibid*

<sup>122</sup> See Sec 3.3 National Environment policy 2015



entitlement to both formal and informal education that improves skills, knowledge, values and attitudes of people in environmental decision making.<sup>123</sup>

To implement the UN General Assembly resolution on Decade of Education for Sustainable Development<sup>124</sup>, UNESCO fronted education, both formal and informal as the effective tool to be used in bringing change to values, attitudes and lifestyles in ensuring a sustainable future.<sup>125</sup>

Kenya drawing inspiration from the UNESCO, Decade of Education for Sustainable Development (DESD) recognized the need to develop a National framework of education for sustainable development. Thus NEMA developed the “*ESD: Strategy for Kenya 2005-2010*” to mainstream education for sustainable development (ESD) in Kenya’s education system. The strategy focused on the main spheres of ESD including: basic education; reorienting existing education programmes; developing public awareness; environmental conservation; rural transformation and sustainable production and consumption.<sup>126</sup>

The strategy which was scheduled to run between 2005-2010 aimed at achieving specific objective among others: providing a framework for developing effective ESD programmes; capacity building and increasing environmental awareness levels; ensuring that the input of local communities are represented in ESD initiatives; integrating ESD into all learning programmes. A glance at the successes of the ESD Kenya strategy reveals that a lot remain to be achieved. This is further demonstrated by the National Environment Policy (2013)<sup>127</sup> in which the government undertakes to develop a national strategy on environmental education and public awareness. It

---

<sup>123</sup> R Kibugi ‘*The Constitutional Basis of Public Participation in Environmental Governance*’ World Bank Legal Review, No 5

<sup>124</sup> A/Res/57/254 UN Documents. Viewed at [www.un.org/net](http://www.un.org/net)

<sup>125</sup> UNESCO, The UN Decade of Education for Sustainable Development (DESD 2005-2014): The First Two Years (UNESCO 2007) available at [www.unesco.publications](http://www.unesco.publications)

<sup>126</sup> Dorcas Otieno ‘*Towards Developing Education for Sustainable Development Strategy for Kenya: Experiences & Perspectives*’. Available at [www.Kenya Organization for Environmental Education.org](http://www.Kenya Organization for Environmental Education.org)

<sup>127</sup> Available at [www.environment.go.ke](http://www.environment.go.ke)

also undertakes to develop a National Environment Education Curriculum examinable at the primary, secondary and tertiary levels.

### **2.2.5 Access to Justice**

The fundamental right to access justice is embedded in Article 48 of the Constitution. It obligates the state to ensure all persons access justice and that if any fee is required it shall be reasonable so as not to impede access to justice. To actualize this right, several mechanisms have been incorporated in the Constitution and other legislation to aid the citizens in enforcing the right. The constitution sets out a framework judicial and administrative structure for the enforcement of fundamental rights.

#### **2.2.5.1 Access to Justice through Judicial Mechanism.**

Enforcement of environmental rights has been given prominence in the Constitution. Article 22 provides for enforcement of the rights and fundamental freedoms guaranteed in the Bill of Rights. Article 70 specifically provides for enforcement of environmental rights guaranteed under Article 42. Thus any person who claims that this right has been denied, infringed upon, or merely threatened may apply to court for redress. Unlike article 22, Article 70 specifically provides that for a person to institute proceedings to enforce environmental rights, one does not have to demonstrate that he has suffered injury or incurred loss. The court is permitted to make any orders or give any directions it considers appropriate including orders or directions: to prevent or discontinue an act harmful to the environment; compel a public officer to take measures preventing acts or omissions harmful to the environment; provide compensation to any victim of the violation of the right to a clean and healthy environment.<sup>128</sup>

The prominence and prioritization of environmental matters under the Constitution (2010) is further manifested in the establishment of a special court dedicated to handle environmental

---

<sup>128</sup> Article 70(2) Constitution of Kenya(2010)

matters. Parliament was mandated to establish a court with the status of the High Court to hear and determine disputes relating to environment.<sup>129</sup> Pursuant to this constitutional authority parliament enacted the Environment and Land Court Act (2011) which created the Environment and Land division of the High Court. The court was established with the primary objective of facilitating just, expeditious, proportionate and accessible resolution of disputes.<sup>130</sup> By giving the court the status of a High Court makes it a superior court ensuring that its role does not conflict with other institutions dealing with enforcement of environmental rights such as the National Environment Tribunal and the Public Complaints Committee. Instead the court exercises supervisory jurisdiction over the institutions as well as determining appeals from local tribunals. To enhance access to justice, the chief justice is empowered to make rules of procedure to facilitate access to justice by minimizing formal procedures, eliminating court fees and allowing persons with specialized knowledge and expertise in a matter at hand to be enjoined in the proceedings as *amicae curie*. Towards this endeavor, the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 were enacted. The overriding objective of the rules is to facilitate access to justice for all persons in fulfillment of article 48 of the Constitution.<sup>131</sup> In this regard the rules prescribe *inter alia* that: the court shall facilitate just, expeditious and affordable resolution of cases; access to justice shall be accorded to all persons including the poor, illiterate, unrepresented and persons with disabilities; the court may accept oral application, a letter or an informal document which discloses violation or infringement of a fundamental right; a person who wishes to be exempted from paying court fees may apply to the Registrar.

---

<sup>129</sup> Art 162(2)b Ibid

<sup>130</sup> Sec 3(1) Environment and Land Court Act(2011)

<sup>131</sup> Rule 3(2) Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013

The above rules have exemplified the ease with which access to justice has become. It therefore gives impetus to any member of the public to approach the court and seek to enforce an infringement of environmental right. The new constitutional dispensation can be said to have cured the technicalities such as *locus standi* and complicated pleadings which previously bedeviled efforts by environmental litigants in seeking environmental justice.

#### **2.2.5.2 Access to Justice through Administrative Mechanisms.**

The right to justice through administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair is embedded in Article 47(1) of the Constitution.

Prior to enactment of 2010 Constitution, Kenya did not have a legislation solely dedicated to effecting administrative action. The courts relied heavily on principles of common law and doctrines of equity to adjudicate administrative disputes. The judicature Act came in handy for the High court in issuing Judicial Review remedies such as *certiorari* and *mandamus*.<sup>132</sup>

The Constitution (2010) called for the enactment of a legislation to give effect to the right to fair administrative action.<sup>133</sup> This led to the enactment of the Fair Administrative Action Act (2015).<sup>134</sup>

The Act reiterates Article 47 of the Constitution by providing that administrative action shall be taken expeditiously, efficiently, lawfully and in a reasonable and procedurally fair manner. Further it provides that where an administrative action is likely to adversely affect the rights of a person, he shall be given prior and adequate notice of nature and reasons for the proposed administrative action; an opportunity to be heard and make representations; notice of a right of review or internal appeal against the administrative decision.

---

<sup>132</sup> Judicature Act Cap 8, Laws of Kenya.

<sup>133</sup> Art 47(3)

<sup>134</sup> Act no 4 of 2015

The Fair Administrative actions Act (2015) complements the Commission on Administrative Justice Act (2011). The Commission on Administrative Justice is the custodian of the right to fair administrative action. It is mandate to protect, uphold and enforce the right to fair administrative action. It is empowered to institute and undertake investigations into complaints submitted by any person alleging unfair administrative action.<sup>135</sup>

The enactment of legislations on administrative actions coupled with that on access to information will ensure a more transparent, responsive and accountable system of enforcing fundamental rights and freedoms including environmental rights. These legislations subject administrators to an effective system of checks confining their actions to rationability and reasonableness test. In environmental management administrative bodies will include NEMA, Kenya Wildlife Service and Kenya Forestry Service.

The challenge seems to be how to implement the numerous public participation clauses in the statutes. To overcome this challenge may require enactment of a framework that will purposively guide administrative implementation. Such a framework will also set the threshold for participation in environmental decision making.

### **2.3 Conclusion**

The numerous clauses and provisions requiring public participation in environmental governance processes is a demonstration of the key position which the concept of public participation now occupy in the discourse of sustainable development. The consensus seems to be that for legitimate and enduring decisions to be made, the citizens must actively participate in formulation of those decisions.

The incorporation of public participation provisions in the legal framework notwithstanding, the actual contribution by members of the public in environmental conservation still remains a

---

<sup>135</sup> Sec 5, Commission on Administrative Justice Act(2011)

pittance. There is therefore need to identify other innovative means that will actualize implementation of public engagement in the conservation of the environment.

## CHAPTER THREE

### 3.0 PUBLIC PARTICIPATION IN SUSTAINABLE MANAGEMENT AND CONSERVATION OF FORESTS IN KENYA

#### 3.1.0 Introduction

Participatory Forest Management (PFM) has been defined as the processes and mechanisms which enable people with a direct stake in forest resources to be part of decision making in all aspects of forest management including policy formulation processes.<sup>136</sup> It involves establishing a partnership between the local adjacent community and the central government for sustainable management of forests.<sup>137</sup>

There is a shift in East Africa in forest management from state driven regimes towards decentralized and mainly community based models. Accordingly governments have had to reshape their functions away from direct management functions towards technical support and advisory role.<sup>138</sup>

This decentralization of authority in management of forest resources and the redefining of rights and responsibilities has created opportunities and challenges for community participation in the sustainable management of protected forest areas. It has been stated that decentralizing management of natural resources increases efficiency and equity, that efficiency increases because of more local input resulting in better policies and lower transaction costs and that

---

<sup>136</sup> Government of Kenya , (2007) Sessional Paper No 1 of 2007 on Forest Policy, Government of Kenya Printer, Nairobi.

<sup>137</sup> Ngece N, Karuri W, and Kimani K (2007). *Conflict management and community development projects as Incentives for partners to participate in participatory forest management (PFM). The case of Leita and Lembus communities in Kenya. In Participatory Forest Management, Biodiversity and livelihoods in Africa.* Cited in International Journal of Science and Research (IJSR) Vol. 3 Issue 9, 2014. Viewed at [www.ijsr.net](http://www.ijsr.net)

<sup>138</sup> Campbell B, Byron N, Hobane P, Madzudzo E, Matose F & Wily L (1999) *Moving to local control of woodland Resources: Can Campfire Go Beyond the Mega- Fauna? Society and Natural Resources.*

democracy and equity benefits are more likely to accrue to the local communities.<sup>139</sup> The shift towards devolution and decentralization of management functions has been entrenched in the Constitution of Kenya (2010) which identifies sharing and devolution of power and participation of the people as amongst the national values and principles of governance.<sup>140</sup>

The Food and Agriculture Organization (FAO) conceptualizes community forestry as “*any situation which intimately involves local people in a forestry activity*”<sup>141</sup>. This definition was approved by the 1992 Rio Conference on Environment and Development in the Forest Principles. The Forest Principles support the utility of community forests and in particular

In September 2015, countries adopted the Sustainable Development Goals (SDGs). These goals aimed at ending poverty, protecting the planet and ensuring prosperity for all people as part of a new sustainable development agenda. SDG number fifteen calls for sustainable management of forests, combating desertification, halting and reversing land degradation and halting of biodiversity loss.<sup>142</sup>

### **3.2.0 Participatory Forest Management in Kenya**

In the past, management of forests in Kenya was based on a command and control system by government with little or no contribution by other stakeholders. Consequently communities living adjacent to forests were isolated from forest resources decision making processes. This caused a rift and animosity between the communities and the forest rangers. It's on this background that the Constitution of Kenya (2010) sought to entrench participation of the people

---

<sup>139</sup> Ongugo P O, Mogoi J N , E Obonyo, Oeba V.O , *Examining the roles of Community Forest Associations (CFAs) In The Decentralization Process of Kenyan forests*, Paper presented to the IASC Conference July 2008 England.

<sup>140</sup> See Article 10

<sup>141</sup> Food and Agriculture Organization of the UN(FAO) *Introduction in Forestry for Local Community Development( FAO Forestry paper no 7)* [www.fao.org/docs](http://www.fao.org/docs) viewed on 12th May 2016.

<sup>142</sup> Sustainable Development Goals-United Nations. Viewed at [www.un.org/sustainabledevelopmentgoals](http://www.un.org/sustainabledevelopmentgoals).



as a key element. However prior to the promulgation of the Constitution, parliament through the Forest Act (2005) had introduced the concept of Participatory Forest Management (PFM) which encapsulates public participation albeit limited to forest management.

.Participatory Forest Management was introduced in Kenya mainly as a result of pressure from forest adjacent communities and civil society organizations who had been working on alternative methods of reducing forest destruction.<sup>143</sup> One of the major reasons presented for the escalation of forest destruction in Kenya was lack of community involvement in the management of the country's forest resources especially those who lived adjacent to them.<sup>144</sup> In an interview with Prof Karanja, chairman of Friends of Karura Forest, a community forest association (CFA) operating in Karura forest, the threat to forest conservation in Kenya has never been the lack of laws but the lack of proper management. He cites the strong management authority of forests under the colonial government and the contrast in post colonial governments where natural resources were plundered by greedy politically correct individuals.

Participatory forest management has been heralded as the key towards achievement of forest sustainability and biodiversity conservation with socio-economic objectives. These socio-economic objectives include equity, conflict resolution, awareness, poverty reduction and sustainable utilization of forest products.<sup>145</sup>

The Constitution of Kenya (2010) lays the foundation for obligations in respect of the environment. On the other hand every person is obligated to cooperate with state and other

---

<sup>143</sup> Ghate R 2004, *Un-commons in the commons: Community Initiated Forest Resource Management*, New Delhi India, Concept Publishing Company.

<sup>144</sup> Paul Ongugo, *Participatory Forest Management in Kenya: Is there anything for the Poor?* Paper Presented at the International Conference on Poverty Reduction and Forests, Bangkok, September 2007.

<sup>145</sup> Kallert S R, Mehta , J N,Ebbin & Litchenfed L(2000), "*Community Natural Resources Management Promise, Rhetoric And Reality*" Journal of Society and Natural Resources

persons in protecting and conserving the environment and in ensuring ecologically sustainable development and use of natural resources.<sup>146</sup> The Constitution is however a framework law providing the general aspirations of the people, therefore to give effect to the provisions there is a need to develop legislative and policy mechanisms to implement the aspirations in the Constitution.

### **3.2.1 Forest Management under Forest Act Cap 385 of 1942(Repealed)**

The Forest Act (1942) (Repealed) provided for the establishment, control and regulation of government forests and forests on unalienated government land. It granted the Minister in charge of Forests the discretion to determine areas of the country which will be governed by the forest law. The minister had powers to determine the boundaries of forests and to occasionally alter those boundaries as well as withdraw forest status of an area<sup>147</sup>.

What was instructive in the 1942 law is that it did not require the Minister in charge of Forests to consult or involve members of the public or any stake holder in the exercise of his functions.<sup>148</sup> This wide unfettered discretion was susceptible to abuse and this was evident in the events which took place in the 1980's and 1990's which witnessed arbitrary excision and degazetment of government forests. An example was the excision of parts of *Karura* forest and *Mau* forest to private individuals in the guise of allocation to squatters. The excision was done without the involvement of the general public and only came to light when residents neighboring the forest witnessed massive clearing of the forest and construction machinery being moved to sight. There

---

<sup>146</sup> Art 69(2) Ibid.

<sup>147</sup> Sec 4, Forest act 1942(Repealed)

<sup>148</sup> F.D.P Situma,(2008) *Forestry Law and the Environment in Environmental Governance in Kenya : Implementing the Framework law* 236 Charles Okidi, Patricia Mbote & Migai Akech eds., East Africa Educational Publishers. cited in R Kibugi *Conceptualizing Regulatory Frameworks to Forge Citizen Roles to Deliver Sustainable Natural Resource Management in Kenya*, World Bank Legal Review Vol. 6,2015

was public agitation for the revocation of the allocations characterized by mass demonstrations, prayer meetings and sometimes violent encounters with security agencies and the developers. The government finally yielded to public pressure and rescinded some of its decision.<sup>149</sup> These events were an illustration of arbitrary decisions made by the minister without regard to environmental, social considerations or public views.

Even though the Forest Act of 1942 restricted persons without permits or user rights to engage in any forest activities, the government implemented an agro forestry system popularly known as *shamba* system in state owned forests. The system allowed individuals to cultivate food crops while tending after the trees grown for timber production. The practice targeted landless peasants, communities living adjacent to forests and forest workers. The system was touted as being beneficial to both the government and the farmers for it allowed the farmers to grow food crops for their own use while the forest department planted exotic tree species in the cultivated land.<sup>150</sup>

Over time however, the system faced challenges ranging from laxity in control and oversight leading to influx of people in forests, to poorly tend *shambas* resulting in low survival of planted trees.<sup>151</sup> Consequently the system was suspended in 1987 through a presidential decree. As a result of this suspension, participating farmers lost their main source of livelihoods. The system was later reintroduced in 1994 albeit with a modification limiting it to nonresident cultivation.<sup>152</sup>

---

<sup>149</sup> Michael Gachanja,(2003) *Public Perception of Forests as a Motor for Change : The Case of Kenya* 55(213) Unasylva 2003 Cited in R Kibugi *Conceptualizing Regulatory Frameworks to Forge Citizen Roles to Deliver Sustainable Natural Resource Management in Kenya*, World Bank Legal Review Vol. 6, 2015.

<sup>150</sup> Peter Allan Oduol ,(1986) *The Shamba System: An Indigenous System of Food production from Forest Areas in Kenya* Agro Forestry Systems. Cited in R Kibugi *Conceptualizing Regulatory Frameworks to Forge Citizen Roles to Deliver Sustainable Natural Resource Management in Kenya*, World Bank Legal Review Vol. 6,2015

<sup>151</sup> *ibid*

<sup>152</sup> Joram Kagombe & James Gitonga,(2005) *Plantation Establishment in Kenya : A Case Study on Shamba System* Kenya Forestry Research Institute & Forest Department

This reintroduction did not bring much success in terms of reforestation and was abolished altogether in 2003 through a Ministerial directive. This measure was taken to pave way for the enactment of a new Forest law and Policy.

### **3.2.2 The Forest Act (2005)**

The Act lays emphasis on the new paradigm shift in forest management by propagating the principle of public participation in natural resource management. It introduced the concept of Participatory Forest Management (PFM) where the management and conservation of forest resources must involve the communities around the forest resource.<sup>153</sup>

The Act provides for the establishment, development and sustainable management, conservation and utilization of forest resources.<sup>154</sup> It puts in place a clear framework for community and private sector involvement in forest management. The overall management and administration of forests is placed in an administrative body corporate known as Kenya Forest Service<sup>155</sup> which is a semi autonomous body, expected to be independent and free from political influence in its decision making processes.

Also created under the Act is a Board responsible for the management of Kenya Forest Service. The board has a representation of two members of the community<sup>156</sup>. The Board is mandated to establish Forest Conservation Committees.<sup>157</sup> The Kenya Forest Service is required to devolve its functions to the Forest Conservation Committees, the Private Sector and Community Forest Associations. The Forest Conservation Committees are mandated to inform the board on issues

---

<sup>153</sup> Forest Act (2005) Part 4

<sup>154</sup> Preamble Forest Act 2005, No 7 of 2005

<sup>155</sup> Sec 4 Ibid

<sup>156</sup> Sec 6 Ibid

<sup>157</sup> Sec 9 Ibid

and ideas raised by people in their conservancy. They also monitor and implement forest regulations.<sup>158</sup> The FCCs however do not align along County boundaries as promulgated in the Constitution of Kenya (2010) meaning that an FCC may have to deal with two or more counties. There is therefore need to align the conservancy boundaries with the new County boundaries or in the alternative establish new county units similar to FCCs so as to be in tandem with the new governance order in Kenya. The Forest Conservation and Management Bill(2016) proposes the establishment of County Forest Conservation Committees.

The Act supports the involvement of stakeholders in the forest sector in joint management of forest resources with the Kenya Forest service.<sup>159</sup> To give effect to this involvement, there is need for local communities to set up local forest associations.

The Act recognizes the importance of forests in the livelihoods of the local communities inhabiting forest vicinities. As such it proposes a number of measures to enhance community participation in forest conservation including: encouraging sustainable use of forest resources; supporting the establishment of community forest associations; protecting traditional interests of local communities customarily resident within and around forests.<sup>160</sup> The objective of these measures is to control and ensure sustainable use of the forest resources.

The Act grants Community Forest Associations (CFAs) user rights to the forest resources on condition that those rights do not come into conflict with the conservation of the forest. These user rights include: collection of firewood; medicinal herbs; harvesting of honey and honey combs; harvesting of timber and wood fuel; grazing rights and harvesting of grass; recreational activities; scientific and educational activities; nonresident cultivation; development of

---

<sup>158</sup> Sec 13 Ibid

<sup>159</sup> Sec 36(1) Ibid

<sup>160</sup> Sec 59(2) Ibid

community wood and non wood forest based industries and other benefits that may from time to time be agreed upon between the associations and Kenya Forest Service.<sup>161</sup> These user rights present challenges in striking a balance between exploitation of forest resources and conservation efforts. To confront these challenges calls for extensive deliberations and education of forest communities. It also calls for a reduction in the overreliance in forest products for survival.

Implementation of the provisions of the Forest Act (2005) is guided by the Forest Rules (2009). Under these rules community participation is categorized into two. Under the first classification, the local community is authorized to participate in forest conservation and management based on user rights assigned by the Kenya Forest service.<sup>162</sup> The second category involves the issuance of permits to Community Forest Associations (CFAs) allowing its members to engage in non residential cultivation of degraded industrial forest plantation as they tend and grow tree seedlings.<sup>163</sup> The nonresident cultivation is somewhat similar to the discredited *shamba* system.

However these PFM processes in some pilot sites have raised certain challenges especially regarding the effectiveness of the community forest associations. For instance the question as to whether the community forest associations have the right to license the extraction and movement of forest products in forests under participatory forest management.<sup>164</sup> There are also doubts as to whether community forest associations possess sufficient capacity to manage an entire forest block as anticipated by the Forest Act (2005) which provides for one community forest association per forest.<sup>165</sup>

### **3.2.3 Participatory Forest Management Guidelines (2007)**

---

<sup>161</sup> Sec 48 Ibid

<sup>162</sup> Rule 43, Forests(Participation in Sustainable Forest Management Rules) Legal Notice No 165(2009)

<sup>163</sup> Rule 50, *ibid*.

<sup>164</sup> *Ibid*

<sup>165</sup> *Ibid*

These guidelines were developed in the backdrop of the enactment of the Forest Act (2005) so as to provide details on how to operationalize PFM as provided in the Act.

The guidelines have been divided into eight basic steps that summarize the whole PFM process. The objective of the guidelines is to provide a simple set of steps for stakeholders in the forest sector to use in the management and conservation of forests in Kenya. They seek to define when, where and how local communities and other stakeholders can get involved in management of forests.<sup>166</sup>

The first step in the guidelines involves identification of the forest area that is to be managed. Once this is done there is need to create awareness among the main stakeholders in that area mainly those utilizing the forest resources. These could be formally organized groups, associations or simply forest adjacent households and individuals. From these stakeholders a local planning committee is formulated and assigned tasks.<sup>167</sup>

The second step involves conducting a socio-economic survey and participatory resource assessment in the proposed forest area. The data obtained is analyzed and the results presented to the stakeholders.<sup>168</sup>

At the third step, the local planning committee prepares a forest management plan ordinarily for a period of five years. The plan must strive to draw a balance between the needs of the local people with conservation measures and national priorities. The discussions must also involve the

---

<sup>166</sup> See Introduction, Participatory Forest Management Guidelines(2007) Ministry of Environment and Natural Resources

<sup>167</sup> Part 3.0 Main Steps in PFM Process, Ibid

<sup>168</sup> Ibid

stakeholder expectations and assumptions. The overriding objectives for the management of the forest must be negotiated and agreed on.<sup>169</sup>

The fourth step involves the development or modification of the existing local organizational structure appropriate for PFM and which is in line with the Forest Act. The next step involves the development and signing of a Forest Management Agreement which is then submitted to the Forest Conservation Committee. The Forest Management Agreement must address the costs, benefits and expectations of the stakeholders. The signing of this document signals the start of the implementation process.<sup>170</sup>

At the end of each year of implementation, the local level forest management committee together with the Forest Association and other stakeholders will review and report on the progress against the objectives of the operation plan.<sup>171</sup>

These guidelines are aimed at guiding groups desirous of forming Community Forest Associations in fast tracking the process.

### **3.3.0 Community Forest Associations (CFAs)**

A forest community has been defined by the Forest Act (2005) on one level as a group of persons who have a traditional association with a forest for purposes of livelihood, culture or religion. On the second level it is defined as a group of persons who are registered as an association or other organization engaged in forest conservation<sup>172</sup>. These definitions may be interpreted as encompassing communities who since time immemorial have inhabited the forest and have

---

<sup>169</sup> Ibid

<sup>170</sup> Ibid

<sup>171</sup> Ibid

<sup>172</sup> Sec 3 Forest Act (2005)



utilized the forest for cultural and spiritual activities and also those who may not have hitherto inhabited the forest areas but live adjacent to forests have subsequently incorporated themselves into associations' concerned with conserving the forests.

The concept of Participatory Forest Management in Kenya has resulted in the formation of community based organizations (CFAs). To give effect their objectives, most CFAs have entered into forest management agreements with Kenya Forest Service.<sup>173</sup> These agreements confer management roles to the community associations while the Kenya Forestry Service retains the forest resource ownership rights and the right to withdraw the agreement either in total or in part.

The government recognized the need to realize desired forest cover and reduce forest destruction. As such it acknowledged the role played by forest adjacent communities in this endeavor.<sup>174</sup> The forest management systems practiced earlier in Kenya have been described as uninspiring to the local communities and one that made them participate in the destruction of the country's tree and forest resources.<sup>175</sup> A task force for conservation of Mau Forest water tower formed in 2009 recommended that participatory forest management be fast-tracked to enhance the livelihoods of communities, and that community forest associations should of essence be supported to actively participate in forest management.<sup>176</sup>

Under the Forest Act (2005) a member of a forest community may together with other members or persons resident in the same area register a Community Forest Association under the Societies

---

<sup>173</sup> Friends of Karura to manage Karura Forest and Ngong Road Forest Association are examples

<sup>174</sup> Ministry of Environment and Natural Resources(MENR) 2007 *Participation in Sustainable Forest Management 2007, Draft Rules and Guidelines.*

<sup>175</sup> Nurse ,M.C & Edward, *Strategies for Sustainable Conservation of Forests Under Threat from their Adjacent Communities.* KIFCON Kenya and Birdlife International.

<sup>176</sup> Republic of Kenya *Rehabilitation of Mau Forest Ecosystem :Executive Summary 5(Interim Coordinating Secretariat, Office of the Prime Minister, April 2010*

Act.<sup>177</sup> Subsequently the registered association may apply to the director of Kenya forest Service for permission to participate in the conservation and management of a state forest or a local authority forest.<sup>178</sup> The requirement for incorporation as a society and subsequent application for a license enables the Kenya Forest Service to have effective control and manage those entering the forest. The CFAs are required to provide details of their membership, their constitution and financial regulations. Further they are required to provide: details of their proposed use of the forest; methods of biodiversity conservation; monitoring and protection of wildlife and plant population.<sup>179</sup>

As such CFAs assist the Kenya Forest service in implementing the provisions of the Forest Act. They are required to update the Kenya Forest Service of developments, changes and any occurrences within the forest that are critical to its biodiversity conservation. The Forest Rules (2009) sets out the procedure of implementing the Act. In part it provides that KFS may facilitate the formation of a CFA based on existing community structures.<sup>180</sup> This provision however seems to contradict the Forest Act (2005) which requires that an association be first and foremost be registered as a society before its application for a CFA status can be considered.

#### **3.4.0 Forest Management Plans**

The requirement of a management plan is an effort to give effect to the objective of sustainable forest management by integrating forest conservation with socio-economic activities. As such

---

<sup>177</sup> Sec 46(1) Forest Act(2005)

<sup>178</sup> Sec 46(2)ibid

<sup>179</sup> Sec 46(3)ibid

<sup>180</sup> Rule 45(2) The Forest (Participation in Sustainable Forest Management) Rules 2009.

CFAs are required to protect, conserve and manage a state forest pursuant to an approved management agreement and the provisions of the management plan for the forests.<sup>181</sup>

The role of CFAs has continued to evolve over time from being directly controlled by the forest department to a system where they are more involved in decision making. Their roles have also expanded from lobbying to conflict management, fundraising, initiating rural development and forestry development activities. They have also been involved in developing systems which are equitable in addressing the needs of the poor and disadvantaged members of the community. As such they have established projects like butterfly farming, bee keeping, farm forestry initiatives, eco tourism & environmental awareness programmes. These initiatives have enhanced the CFA roles in participatory forest management.<sup>182</sup>

Forest Management Plans have been successfully implemented in Karura Forest which is now implementing a second Forest Management Plan (2016-2020) after its first management plan Karura Forest Strategic Management Plan (2010-2014) lapsed. Similarly the Arabuko Sokoke Forest Strategic Management Plan (2002-2027) is being implemented.

### **3.5.0 Participatory Forest Management in Selected Forests**

#### **3.5.1 Arabuko-Sokoke Forest**

The Arabuko-Sokoke forest covers an area of 400sq km along the north coast of Kenya and is the largest remaining protected fragment of the coastal forest mosaic that once stretched from

---

<sup>181</sup> Sec 47 Ibid

<sup>182</sup> C.K.Koech, P.O.Ongugo, M.T.E Mbuvi & J.O.Maua (2009) *Community Forest associations in Kenya: Challenges and opportunities*. Kenya Forestry Research Institute, Nairobi

southern Somalia to northern Mozambique.<sup>183</sup> The forest is part of the East African coastal forest/eastern arc forest complex that ranks among the top 25 biodiversity hotspots on Earth<sup>184</sup>

The forest is internationally renowned for its rare bird species, mammals and diversity of habitats. As a result the forest has attracted the attention of many conservation organizations locally and internationally including Birdlife International who along with the European Union contributed to the development of the Arabuko Sokoke Forest Strategic Management Plan.<sup>185</sup>

Communities living next to the forest have exploited the forest for centuries. However this exploitation has become unsustainable in the recent past. Major threats to its conservation include: illegal exploitation of; timber, woodcarvings, building poles, firewood and charcoal; pressure to excise portions of the forest for human settlement and human/wildlife conflict particularly crop raiding by elephants. These threats have called for the implementation of the Strategic Forest Management Plan for the overall conservation of Arabuko. In the plan, emphasis has been laid on the involvement of forest-adjacent communities in participatory forest management and forest based income generating activities.<sup>186</sup>

Prior to introduction of PFM in Arabuko Sokoke forest, 96% of the forest adjacent dwellers did not support forest conservation and 56% wanted the forest de-gazetted for settlement and agriculture. The perception and reasons given at the time were that the forest was a source of poverty and hunger for the local population as a result of crop raids by wild animals and diseases

---

<sup>183</sup> Robertson, S.A and W.R.O Luke 1993. The report of the NMK/WWF Coast Forest Survey. WWF Project 3256 Kenya, Coast Forest Status, Conservation and Management, Kenya Indigenous Forest Conservation programme.

<sup>184</sup> Myers, N R.A Mittermeier, G.A.B da Fonseca and J.Kent (2000) Biodiversity hotspots for conservation priorities. Nature 403.

<sup>185</sup> John Sinclair, Susan A Collins & Harry Spaling *The Role of Participant Learning in Community Conservation in the Arabuko Sokoke Forest, Kenya* viewed at [www.conservationandsociety.org](http://www.conservationandsociety.org) on 1<sup>st</sup> July 2016.

<sup>186</sup> Balozi B.Kirongo, Tito Mbuvi and Simon Wairungu, (2003) *A Stitch in Time? Community Empowerment to Conserve the Arabuko Sokoke Forest*. Paper presented to the XII World Forestry Congress, 2003, Quebec Canada

caused by tsetse flies from the forest.<sup>187</sup> However fifteen years after implementation of PFM in the forest, studies have revealed that household benefits from the forest outweigh costs in PFM zones.<sup>188</sup>

What is unique about PFM in the Arabuko Sokoke forest is that it predates the Forest Act (2005). In 1993, community engagement began through butterfly farming with funding from the Global Environment Facility small grant programme for butterfly farming projects. The objective of the programme was to provide incentives for local communities to support forest conservation objectives. In 2000, the government consented to pilot participatory forest management in Arabuko Sokoke Forest. This gave legitimacy to the activities which were on course such as the butterfly farming and capacity building that had helped in promoting community engagement in forest management.<sup>189</sup>

A management plan was subsequently developed by the government in consultation with civil society organizations. The approach in the development of the management plan was to build consensus regarding the sustainable management of the Sokoke Arabuko forest for the benefit of current and future generations and for the conservation of rare plant and animal species. The underlying principles included keeping the forest as intact as possible and utilizing it in ways that would not jeopardize biodiversity and forest ecosystem for present generations and posterity.<sup>190</sup>

---

<sup>187</sup> Mogaka, H (1991), *Local utilization of Arabuko Sokoke Forest Reserve*, Nairobi. Forest conservation/Forest Department, Ministry of Environment and Natural Resources.

<sup>188</sup> Ibid

<sup>189</sup> Paul Matiku, Mireri Caleb & Ogot Callistus ,(2013)*The Impact of Participatory Forest Management on Local Community Livelihoods in the Arabuko-Sokoke Forest, Kenya* viewed at [www.conservationandsociety.org](http://www.conservationandsociety.org) on 7<sup>th</sup> July 2016

<sup>190</sup> Arabuko-Sokoke Strategic Forest Management Plan 2002-2027(February 2002) available at Forest Department, Ministry of Environment and Natural Resources, Nairobi.

The Management Plan divided the forest into four main management zones.<sup>191</sup> The first zone is described as a non extractive zone in which non extraction of forest resources is allowed and is the area lying furthest from the adjacent villages. This zone is further subdivided into two subzones: the biodiversity conservation subzone mainly used for biodiversity research and the eco-tourism subzone used for eco tourism and conservation awareness programmes. The second zone is referred to as the subsistence zone and lies closest to the adjacent villages and is mostly used by the village dwellers for subsistence. It is sub divided into two i.e. the community use sub-zone for collection of permitted forest products such as fruits, herbs, fuel wood, honey & medicinal plants; the other part is composed of non-timber forest product zone in which limited range of subsistence products e.g. pole wood and grass may be collected. The third zone is the commercial zone which consists mainly of plantations. The fourth zone is the intervention zone which is an area lying outside the forest boundary but bordering the forest mainly consisting private land. In this zone the management options include awareness raising, eco tourism development, agro forestry, educational activities and capacity building.<sup>192</sup>

### **3.5.2 Arabuko-Sokoke Forest Adjacent Dwellers Association. (ASFADA)**

The CFA is composed members living adjacent to the Arabuko Sokoke Forest. It was initially started as a lobby group when there was an attempt by politicians to excise part of the forest for resettlement. The lobby successfully petitioned the Minister in charge to stop the degazettment. The group gradually transformed itself into a lobbying, forest management and rural development community organization for communities adjacent to the forest. The forest has been

---

<sup>191</sup> See Part 1.6 Zonation, Ibid.

<sup>192</sup> Ibid

zoned into six regions and each zone is represented by ten delegates who elect the executive committee. The CFA is registered under the Social Services Act in Kilifi and Malindi Districts.<sup>193</sup>

ASFADA has partnered with agencies such as Kenya Forest Research Institute (KEFRI), Kenya Wildlife Service, Constituency Development Fund (CDF) in programmes such as biodiversity conservation, fencing projects and tree planting projects. As such they sought funding to erect a perimeter fence to reduce human-wildlife conflict, especially crop destruction due to elephant raids on farms.<sup>194</sup>

### 3.5.3 NGONG ROAD FOREST

The Ngong Road forest is an urban forest in Nairobi County covering an area of 1224ha. It is divided by the Ngong Road into two main sections, the Miotoni section to the North West and the Racecourse and Kibera section to the South East.<sup>195</sup>

The forest is a home to diverse mammals, amphibians, reptiles and birds. Diverse human inhabitants neighbor the forest ranging from the affluent residents of Miotoni, Forest Edge, Karen and Dagoretti to the slums of Kibera, Riruta and Mwituni Village.<sup>196</sup>

According to Simon Ng'ang'a<sup>197</sup> in an interview with the researcher, over time there has been a growing friction between the residents of the affluent northern suburbs and the high density slums over the use and future of the forest. Rapid urbanization and the insatiable demand for land and forest resources have been taking a toll on Ngong Road forest just like other urban

---

<sup>193</sup> Paul Matiku, Mireri Caleb & Ogot Callistus ,(2013)*The Impact of Participatory Forest Management on Local Community Livelihoods in the Arabuko-Sokoke Forest, Kenya* viewed at [www.conservationandsociety.org](http://www.conservationandsociety.org) on 7<sup>th</sup> July 2016

<sup>194</sup> Ibid

<sup>195</sup> [www.ngongroadforest.com](http://www.ngongroadforest.com)

<sup>196</sup> Ibid

<sup>197</sup> Vice Chairman, Ngong Road Forest Association.

forests. Lack of effective monitoring through fencing and patrols have made the forest susceptible to unsustainable deforestation and depletion of other forest resources.<sup>198</sup>

### **3.5.4 NGONG ROAD FOREST ASSOCIATION**

Prior to the establishment of Ngong Road Forest Association, the forest was managed by the Forestry Department. Due to wanton destruction, degradation and excision of the forest, concerned citizens sought permission to co-manage the forest. As such Ngong Road Forest Sanctuary Trust was granted limited authority to manage the forest on condition that they did not utilize the forest for any commercial purpose.

Pursuant to the enactment of the Forest Act (2005), which provided for the establishment of Community Forest Associations in every forest, the Ngong Road Forest Sanctuary invited other stakeholders so as to form the Ngong Road Forest Association (NRFA). The stakeholders who merged to form the association were: Ngong Road Forest Sanctuary, Jockey Club, Scouts Club, Bomas of Kenya, Residents' Associations including Miotoni Residents Association, Forest Edge Residents Association, Langata Residents Association, Dagorreti Kibera Residents Association.

The objectives of the CFA are :to secure the forest for its visitors and the neighboring communities so as to increase interest in its conservation and preservation; to rehabilitate and manage the forest to a productive and healthy closed canopy forest; protect the forest from high impact development other than forestry activities and ensure eco tourism proposals are in best interest of the forest; to promote sustainable participatory forest management and conservation;

---

<sup>198</sup> Interview held at Ngong Road Sanctuary.



to support the needs of the local community; promote environmental education and research in forestry.<sup>199</sup>

In its objective of promoting participatory forest management by the community, the CFA has recruited seven scouts to assist KFS rangers in patrolling the forest. According to Mr. Nicholas Akach,<sup>200</sup> the scouts were co-opted from the surrounding community and given paramilitary training. The scouts have also been trained on forest management skills, hospitality and fire fighting techniques. The scouts have contributed significantly to conservation efforts owing to the fact that having been part of the local community themselves, they are able to engage the potential forest poachers. They are also more acceptable by the locals since they are unarmed unlike the KFS rangers. Through open forums, the local communities are taught of the sustainable ways of accessing and exploiting forest resources.

Through the CFA, the local community is able to access forest products such as water, firewood, herbs and honey. This is done in an orderly manner whereby the scouts monitor the products being collected. Prior to the formation of the CFA, forest resources were exploited in an haphazard manner. The challenge however is the overwhelming expectations from the local communities who expect to eke their entire living from the forest resources.<sup>201</sup>

Members of the CFA have been able to establish small commercial activities in specific allocated areas. These include collection of dead wood and leaves to make briquettes; establishment of tree nurseries, beekeeping and butterfly farming, fishing, controlled *Muhugu* growing for wood carving. Through these small scale commercial activities, members especially those from the resident associations have been able to generate income. The CFA envisions scaling up these

---

<sup>199</sup> Ngong Road Forest Management Plan.

<sup>200</sup> Chief Scout, Ngong Road Forest Association

<sup>201</sup> Op. cit, p 223

activities by forming cooperatives to sell their products directly to the markets rather than relying on middlemen.

A focus group discussion with some of the forest users namely Phillip Ndemwa, Veronica Kanini and Jane Wangare<sup>202</sup> revealed that the community has appreciated the importance of conserving the forest if they are to sustainably exploit its resources. They appreciate the role which the CFA framework has performed in enabling them to utilize the forest in a structured manner. The association has also enabled them progress socially and economically. They meet periodically during which they integrate their ideas and have been able to contribute to a fund in which members are able to access loans. The coming together has also enable them attract funding from development organizations.

The CFA is working on a restoration programme of the existing dilapidated network of nature trails. The trails will be cleared, expanded and marked for walking, jogging, horse riding and cycling purposes. The programme also includes animal and bird watching circuits as well as groves and sacred shrines. According to the CFA vice chairperson Mr. Simon Nganga, the forest has a huge potential for a wide range of recreational activities ranging from animal and bird watching programmes, woodland concerts and competitive running events. The CFA intends to rehabilitate Ngong Race Course dam and Miotoni dam to be used for sport fishing.<sup>203</sup>

The challenges which the forest faces range from guaranteeing security for its visitors. Only a small section of the forest has been fenced off with fundraising campaigns ongoing to fence the entire forest. Owing to the limited resources at its disposal, the CFA has not been able to employ more scouts to patrol the forest. A level of mistrust still persist on the role of the CFA from the

---

<sup>202</sup> Members, Ngong Road Forest users Association

<sup>203</sup> Op.cit, p 226

managing arm of the forests i.e. the Kenya Forest Service and its subsidiary agencies. The CFA has also faced bureaucratic impediments in the development of its Forest Management Plan which has led to delay in finalizing the same.<sup>204</sup>

To be self sustaining, the CFA hopes to draw inspiration from other urban forests such as Karura Forest. Once secure, the CFA hopes that the number of its visitors will rise steadily leading to increased revenues. Through the entry charges the users utilizing and benefiting from the forest contribute to the management and conservation efforts through the user pay principle.<sup>205</sup>

### **3.5.5 KARURA FOREST**

Karura Forest Reserve is located in the outskirts of Nairobi city. It is an urban forest covering an area of 1041.3 ha comprised of two blocks namely Karura and Sigiria. It is rich in biological diversity with many species of plants, birds, insects and mammals. It is also a catchment area for a number of rivers. It was originally gazetted in 1932 as a forest reserve and later on became a Central Government Forest Reserve in 1964.<sup>206</sup> According to the Ndungu land report on illegal land allocations, private developer incursions have cut the actual forest size by almost half with only 564ha remaining.<sup>207</sup>

Prior to enactment of the Forest Act (2005), Karura forest was managed in an ad hoc basis without a management plan. The precursor to KFS, the Forest Department was solely responsible for its management and was not obliged to consult other stakeholders. This sole management resulted in massive excision of the forest mostly in the 90s threatening its existence. The

---

<sup>204</sup> Ibid

<sup>205</sup> Ibid

<sup>206</sup> Viewed at [www.karuraforest.org](http://www.karuraforest.org)

<sup>207</sup> Republic of Kenya, Report of the Commission of Inquiry into the illegal/Irregular Allocation of Public land (2004)

command and control approach which the forest legislation emphasized hindered achievement of environmental sustainability through public participation and cooperation.<sup>208</sup>

### **3.5.6 Friends of Karura (CFA)**

In response to the Forest Act (2005) which provided for Participatory Forest management, the Friends of Karura Forest was registered. The objective of the CFA is to provide a platform that facilitates the collaboration of key stakeholders. Its aim is to partner with KFS to sustainably manage Karura forest for the benefit of the local and wider communities and ensure that the forest is protected for future generations.<sup>209</sup>

In an interview with the CFA chairman, Prof Karanja, he posits that Karura forest faces diverse threats owing to its uniqueness. He cites the strategic location of the forest being next to the capital city and the premium cost of land in its surrounding has led to private developers salivating for a piece of the forest. Secondly he cites the slum areas adjacent to the forest whereby its residents heavily depend on the forest for firewood and other forest resources. Their overdependence on the forest resources may lead to unsustainable deforestation and also have an effect on the balance of flora and fauna.<sup>210</sup>

The adjacent communities surrounding Karura Forest are of two extreme economic endowments. On the one hand are the affluent communities including Muthaiga residential area, Gigiri, Ridgeways and Runda Estate. On the other hand the less affluent communities include Huruma slum, Mathare slum, Githogoro slum and Deep Sea slum. The perception of the forest by these communities is quite diverse. Whereas those living in the affluent neighborhoods view it as a

---

<sup>208</sup> See History of Karura Forest, Karura Forest(Strategic Management Plan)2016-2020 available at [www.friendsofkarura.org](http://www.friendsofkarura.org)

<sup>209</sup> Ibid

<sup>210</sup> Interview held at Friends of Karura CFA offices at Karura Forest.

recreational facility, a source of clean oxygen to the city residents and lungs for absorbing the heavy carbons produced by vehicles and industries. On the other hand those from the slum areas see the forest as a source of income for their wellbeing. According to Prof Karanja, these diverse needs can easily complement each other if properly coordinated. He posits that since the affluent are willing to pay to utilize the forest as a recreational facility, the fees can be used to employ people from the slums to maintain the forest paths. Also controlled utilization of the forest resources is viable.<sup>211</sup>

### **3.5.7 SUCCESSES OF FRIENDS OF KARURA FOREST.**

Prior to the introduction of joint management by KFS and Friends of Karura, the forest was dreaded by many owing to the reported cases of criminals committing attacks on passersby. The forest was a no go zone with no guaranteed safety even from the KFS rangers. The most infamous case of harassment being that of Nobel laureate Prof Wangare Maathai in January 1999 when she was viciously attacked for having strode into the forest to plant trees in protest of government approved plans to build a private golf course.

Upon commencing its operations, FKF embarked on a project to first and foremost secure the forest. It managed to secure funding mainly from East Africa Breweries Limited Foundation to construct an electric perimeter fence around the whole forest. This was the biggest achievement of the CFA according to its chairman.<sup>212</sup>

Once the forest was secured by the perimeter fence, it improved infrastructure in the forest such as maintaining walking and jogging tracks as well as signage in the forest. According to the chairman, this has resulted in a gradual rise of visitors from an initial 350 to the current 18,000

---

<sup>211</sup> Ibid

<sup>212</sup> Ibid

per month on average. An efficient and transparent management system for gate collections from eco tourism and recreational activities has been set up. Through the entry fee, the association generates an average of two million shillings every month.<sup>213</sup>

Through the revenues the CFA has made improvements in the general amenities in the forest. These include renovating rangers' houses; building washrooms at the main gate; built a parking lot at the Sigiria main entrance. To improve on the eco tourism and recreational experience, it has: designed and printed a map of the forest with more details and a bird guide sheet; labeled trees, shrubs other plants; signposted junctions in the forest with numbered kerns; built an obstacle course for group activities and physical recreational activities; built steps to the caves and waterfall.<sup>214</sup>

The CFA has empowered the surrounding communities both socially and economically. It has built a water purification unit to supply clean drinking water to Huruma slums. It also built and fenced a playing field for children of Huruma slum. Economically it has co-opted scouts from the surrounding communities and trained them. According to Mr. John Chege, the chief scout at the forest, the scouts received paramilitary training and periodically receive training on financial management and leadership. The scouts patrol the forest, act as tour guides and monitor the collection of firewood and fodder. Casual laborers are periodically contracted to clear footpaths, plant and weed trees.

The CFA has facilitated the establishment of economic activities in the forest. These include bee keeping, fish ponds and tree nurseries. The members involved in these activities are also afforded training on financial management, leadership and forest conservation.

---

<sup>213</sup> Ibid

<sup>214</sup> Ibid

Involving the community in management has raised awareness on sustainable ways of utilizing the forest resources while at the same time conserving it. The CFA has set up the Karura Forest Education Centre which conducts a mentorship programme for primary and secondary schools who visit the forest. An education officer has been employed to sensitize the students who visit the forest on forest ecology and conservation measures.

### **3.6.0 Sustainability of Participatory Forest Management (PFM)**

For the successful implementation of PFM, sustainability of CFAs is fundamental. The CFAs sampled show a heavy reliance on members' subscription as well as visitors' entrance fee. This is supplemented by income generating activities and donor funding. What is apparent is that sustainability of urban forests differs from sustainability of rural based forests. The focus of the study was in urban based forests.

#### **3.6.1 Gender Disparity.**

The sustainability of PFM mainly through Community Forest Associations (CFAs) been linked to the level of gender participation. The presence of young men and women in the membership of forest associations is vital to their success and sustainability. This is attributed to the fact that majority of forest resources have long term benefits. Further since most of the youths in Kenya are unemployed, their participation in CFAs is a means of ensuring they do not become idle, keeping them away from social upheavals while at the same time engaging them in activities that promote environmental conservation.<sup>215</sup>

---

<sup>215</sup> Kabutha, C & Humbly, H (1996) *Gender concerns in agro forestry. In people and Institutional Participation in Agro Forestry and sustainable Development*. First Kenya Agro forestry Conference, 25-29 March 1996, Nairobi Kenya.

Memberships in most CFAs however seem to be skewed in favour of men.<sup>216</sup> Most men are motivated to join CFAs due to the massive benefits that accrue from the forest and related projects. According to Coulibaly-Lingani et al, household chores are a contributing factor that hinders most women from joining and participating in the CFAs. They however assert that the few women who have succeeded to join the CFAs play a critical role in the way forest resources are managed.<sup>217</sup> It has been stated that women play a crucial role as they hold the power to sustainable production of the country's land resources and that forest associations are one way of decentralizing the management of forest resources<sup>218</sup>.

It can be inferred that traditionally, gender roles have inhibited participation of women in forestry activities. At the Ngong Road Forest CFA as well as Friends of Karura Forest CFAs, the researcher observed that a common trend seem to be that those engaged in income generating activities such as bee-keeping and tree nurseries are mostly women while the men have been engaged as forest scouts and casual laborers .

Therefore CFA management committees ought to ensure that in the formation and subsequent registration of a CFA, there is adequate representation of women, youth and excluded groups.

### **3.6.2 Technical Expertise**

Most CFAs incorporate persons who have worked in the forestry or agricultural sectors. These people possess expert knowledge in tree planting and management. Their invaluable knowledge is passed on to the other members of the CFA. Also the CFAs will be composed of people who have lived in forest areas for a period of time and possess indigenous knowledge in forest

---

<sup>216</sup> Agevi H, Wabusya M, Tsingalia HM, Community Forest Associations and Community Based organizations : Redesigning their Roles in Forest Management and Conservation in Kenya. International Journal of Science and Research (IJSR) Vol. 3 Issue 9 September 2014. Viewed at [www.ijsr.net](http://www.ijsr.net)

<sup>217</sup> Coulibaly-Lingani, P.P Savadogo, M Tigabu & P.C Oden (2011). *Factors influencing people's participation in forest management program in Burkina Faso West Africa*. Forest Policy and Economics Vol 13 ,

<sup>218</sup> Op.cit, p 240



dynamics such as tree species, uses and their abundance. Such technical information is vital in research, education and ecotourism.<sup>219</sup>

The research established from the interviews conducted at Ngong Road Forest CFA that in spite of high regard to income generating activities, the CFA lack marketing strategies for their products. Furthermore the products are not afforded any value addition before being taken to the market. The local markets near the CFA sites cannot absorb all the products and do not offer competitive prices. The Karura Forest CFA has invested in training for its members. Bee keeping training courses, tree husbandry, leadership and financial management are some of the courses which its members have benefitted.<sup>220</sup>

The challenge however still persists. It requires deliberate efforts to build capacity in marketing, management and financing so as not to put at risk the enthusiasm PFM has created.

### **3.6.3 Non Resident Cultivation Permits**

The Forest Act (2005) recognizes nonresident cultivation as a form of PFM<sup>221</sup>. This system is reminiscent of to the *shamba* system which had proven futile in the period prior to the enactment of the Forest Act (2005). Coupled with the huge demand for cultivation permits, the implementation of the permit procedures may prove cumbersome for forest officers and may give rise to opportunity for underhand dealings. However in a bid to ensure transparency it is required that the allocation of plots is to be done through a balloting system organized through CFAs. Further it is required that preference be given to poor and vulnerable members of the community.<sup>222</sup> In the karura and Ngong Road forests, cultivation has not been permitted;

---

<sup>219</sup> C. K.Koech, P.O. Ongugo , M.T.E Mbuvi and J.O.Maua (2009) Community Forest Associations in Kenya: challenges and opportunities. Available at [www.kefri.org](http://www.kefri.org)

<sup>220</sup> op, cit p 230

<sup>221</sup> Sec 47(2)h

<sup>222</sup> Rule 46 Ibid

members are only allowed to access forest resources such as firewood and fodder but not to cultivate.

#### **3.6.4 Monitoring and Enforcement of Forest Management Agreements.**

CFAs are required under the Forest Act to assist KFS in enforcing the provisions of the Act and any other rules and regulations in relation to illegal harvesting of forest products.<sup>223</sup> This provision implies that the responsibility of enforcing the law is vested collectively both with the KFS and CFAs. The difficulty however is that neither the Act nor the rules offer any modalities on how this enforcement rule may be executed. It is uncertain whether the enforcement should be against the members of a CFA or the public in general. Thus enforcement by a CFA against an individual who is not subject to the disciplinary provisions contained in the constitution of a CFA may prove a challenge.

With regard to State forests, KFS is mandated to monitor compliance with the law and enforce any provision of the Forest Act. The Forest Rules specifically requires KFS to monitor and evaluate the implementation of the community forest management agreement.<sup>224</sup>

The Act empowers the Director of KFS to terminate a community forest management agreement or withdraw a user right from a CFA if there is a breach of any of the conditions of the agreement.<sup>225</sup> This may arise where a CFA fails to fulfill the responsibility to exercise forest conservation and management as required by the forest management agreement. Under the model Forest Management Agreement, it is obligatory for a CFA to protect, conserve and manage an assigned forest. Owing to the limited number of foresters, the level of monitoring is a pittance. KFS relies heavily on the CFAs reports to measure successes and challenges.

### **3.7 Conclusion**

---

<sup>223</sup> Sec 47(1)d Forest Act(2005)

<sup>224</sup> Rule 48 Forest Rules(2009)

<sup>225</sup> Sec 49(1)b Forest Act

The evolution of forest management in Kenya from state control towards community participation has been a long and momentous one. The command and control system earlier practiced by the government was characterized antagonistic relations between the government and forest communities with continued destruction and degradation of forest areas. The system also provided an opportunity for arbitrary excision of forest lands for private development. The introduction of Participatory Forest Management marked a paradigm shift both in management and conservation of forests in Kenya from one of advocacy to participation. In sites where the system has been effectively implemented like in the Karura forest, the results have been impressive. Not only has the system drastically improved conservation efforts but also introduced sustainability measures enabling the community to benefit from the forest resources while conserving and managing the forest at the same time. There is need to implement this management system in all forests while having regard to the unique challenges of each forest and its surrounding communities.

Participatory Forestry Management (PFM) has drastically demystified the principle of public participation in environment management. Not only has it raised awareness of the benefits of conservation but it has vindicated the principle of subsidiarity which advocates for decisions being taken at the lowest level. The Forest Conservation and Management Bill (2016) seek to repeal the Forest Act (2005). From the Title of the Bill, it can be implied that there is more focus and emphasis on conservation and management of forests. It seeks to provide for the establishment, development and sustainable management, including conservation and rational utilization of all forest resources. The guiding principles proposed by the Bill for its implementation include: good governance; access to public information and participatory approach to forest conservation.

The Bill aims to align forest conservation and management with the Constitution of Kenya (2010). Specifically it provides for County Forest Conservation Committees in line with the new governance structure created by the new constitution which introduced devolved units of governance. The Bill is however innovative in introducing the concept of ‘ecosystem approach’ as a guiding principle in the management and conservation of forests. This principle advocates for collaboration by counties in management of a forest which falls within the jurisdiction of more than one county.

The Bill proposes establishment of a Forest Conservation & Management Trust Fund whose aim and object is to nurture, promote and inspire innovations in forest conservation. This is similar to the Forest Conservation Fund provided for under the Forest Act (2005) which has proved ineffective owing to the lack of funds. It will therefore call for deliberate efforts to secure funding to actualize the endeavour.

## **CHAPTER FOUR**

### **4.0 CONCLUSIONS AND RECOMMENDATIONS**

#### **4.1 Introduction**

The overall objective of the study was to appraise the principle of public participation in environmental governance. Specifically it sought to trace the development of the principle of public participation, analyse the legal and institutional framework in place and to appraise the concept of participatory forest management as a case study of public participation.

#### **4.2 Conclusions**

##### **4.2.1 Public participation an inherent of sustainability.**

The study established that the process by which a decision is made is important for the legitimacy of the final decision made. Further that the legitimacy of the final decision made in turn affects compliance. It was established that participation especially at the lowest level is necessary for sustainability of a decision As such the principle of public participation has gained traction as a means of achieving sustainability and accountability.

Whereas the principle has found particular importance in environmental law matters due to the complex, fragile and dynamic nature of environmental issues, it has also been criticized for being an expensive and time consuming venture which slows the pace at which decisions are arrived. The lack of homogeneity in human conditions also means that consensus may not be arrived at in all matters subjected to public participation.

#### **4.2.2 Incomplete legal and institutional framework**

The study established that the principle of public participation has been firmly entrenched in the Constitution and the general legal framework as a general principle of safeguarding environmental rights. The enactment of the Access to Information Act (2016) guarantees the first step of actualizing public participation by ensuring that access to relevant information is guaranteed. The legal and institutional framework for accessing justice has also been fairly developed with special courts for handling environmental matters being established. Citizens also have the option for seeking redress through administrative mechanisms established under the Commission on Administrative Justice Act (2011) and the Fair Administrative Actions Act (2015). In view of these legal frameworks, the missing link is that on guaranteeing actual participation.

#### **4.2.3 Effective forest management.**

An analysis of community involvement in the forests where the concept of PFM has been implemented reveal that the concept has resulted in a paradigm shift in forest management. Not only have the forests been protected but also the communities surrounding the forests have benefitted through sustainably utilizing forest products as well as innovative projects initiated

within the forests. The turnaround in the fortunes of Ngong Road forest and Karura forest as a result of direct involvement of the local communities is an indictment of the effectiveness of public participation as opposed to government control. The challenge however is that the concept has not been implemented in all forests mainly as a result of the technical procedure followed in the setting up of community forest associations.

The study commenced on the hypothesis “the engine that drives environmental justice is empowered communities and not enlightened individuals”. The results of the research especially the case study on participatory forest management proves the hypothesis to be true. The command and control system used by the government to manage forests proved ineffective as compared to the management by community forest associations.

### **4.3 Recommendations**

To make participation more effective and meaningful, the researcher recommends a wide range of measures. These measures will close the gaps and set public participation concept in motion. These recommendations are implementable in the short term, medium term and long term periods.

#### **4.3.1 Short term recommendations**

##### **4.3.1.1 Civic Education**

In the short term recommended that extensive civic education should be conducted to arouse the consciousness of the community and the general attitudes on the importance of protecting the environment. It is further recommended that environment conservation programmes be incorporated into school curriculum right from the elementary levels. This will help in inculcating values conservation in the mindset of the citizens from an early age of their role in

protecting and conserving the environment. To actualize this, the concept of Education for Sustainable Development (ESD) is a useful guide. The ESD objectives include: improving access to quality basic education; reorienting existing educational programmes; providing training and developing public understanding and awareness. UNESCO has endorsed ESD as the framework through which formal, no formal and informal education can be used to foster change in values, attitudes and lifestyle for ensuring a sustainable future.

County governments should implement section 100 of the County Governments Act which empowers the devolved units to develop legislation that puts into place the institutional framework for facilitating and implementing civic education.

#### **4.3.4 Technology**

Lack of adequate financing has been cited as one of the reasons for failure to disseminate information to the public. This problem can be remedied by use of technology to disseminate information.

Social Media tools offer a new way of communicating. If well utilized it can become the most effective medium of communication between government officials and the ordinary citizen. Through this medium, citizens can control much more of the interactions than they would in traditional communication routes. Citizens can keep themselves informed by subscribing to news feeds, blogs and alerts. On their part officials in possession of information have an obligation to ensure that what they publish through social media is up to date, comprehensible, timely and valuable to the citizen.

#### **4.3.5 Political Goodwill**



As revealed by this study, public participation in environmental management in Kenya was for a long time antagonistic in nature and was often characterized by non-governmental organizations (NGOs) and community based organizations (CBOs) representatives lobbying and petitioning the government on environmental conservation issues. The response in most cases was violent, mute or dismissive from the government. The constitutional development has since opened the door for a proactive public in the management and conservation efforts.

Although the public now have a big role to play in conservation, the impetus for championing governance still rests with the leadership. Both national and local governments under the new constitutional dispensation have a responsibility to offer inspiration and guidance to its citizens. This can be actualized by mobilizing members of the public into taking decisive actions aimed at environmental conservation.

Article 10 of the Constitution requires all state officers and public officers to be guided by the national values and principles of governance when making or implementing public policy decisions. Further article 132 requires the president to report annually in an address to the nation on all the measures taken and the progress achieved in the realization of the national values. These provisions reflect the proactive nature expected of state and public officers in promoting the realization of the principle of public participation. It calls for incorporation of environmental considerations into development plans and enthusiasm in implementing environmental legislations.

#### **4.3.2 Midterm Recommendations**

##### **4.3.2.1 Public Participation Framework.**

To aptly capture the aspirations of the people of Kenya in regards to public participation as expressed in the Constitution of Kenya 2010, there is need for enactment of specific legislation on public participation. This was contemplated in article 72 which obligates parliament to enact legislation to give full effect to environmental matters enumerated in Article 69. The provision relating to public participation in the constitution which obligates the state to 'encourage' public participation in the management, protection and conservation of the environment can at best be described as blurred. This therefore calls for enactment of enabling legislation.

Currently various sectoral laws on environment provide for the aspect of public participation, for instance EMCA which is the framework law on environment management and coordination seems to limit public participation to environmental impact assessment studies; The Forest Act (2005) provides for community participation in forest management while the Water Act provides for involvement of water resources users associations. It would be desirable if a Public Participation Act was enacted to harmonize the participation aspects contained in the various sectoral laws. Such statute will at the foremost define the scope of 'public participation'. It will incorporate and enhance on the pillars stipulated by the Aarhus Convention i.e. access to information, public participation and access to justice. Under the Act, an access to information commission should be formed. Such commission shall among other functions be mandated: to ensure that all relevant information held by state agencies is available and accessible by the public; to establish a mechanism for requesting information which though existing has not been made public; to establish different levels of participation; to establish processes of public education, consultation and dialogue; to establish a system of appeal for denied information and to emphasize for participation at the lowest levels.

Further the framework should detail the institutional arrangements required to effect public participation, define roles and responsibilities for individuals groups and entities involved in public participation, detail mechanisms for effecting public participation and to provide tools for evaluating the effectiveness of public participation.

The framework should incorporate regulations that will guide administrative implementation of the principle of public participation. The regulations should provide simple and flexible procedures that would enable every person to be included in consultative processes. The regulations should also provide for feedback mechanisms which enables those who participated gauge the impact of their contributions.

Enactment of public participation framework will thus mainstream public involvement in environmental conservation. It is important to note however that sustainable development depends not only on the existence of legal, policy and institutional framework but also on implementation and enforcement capacity.

The enactment of the Freedom of Information Act (2016) during final stages of this dissertation marked a momentous occasion. The Bill which had been dragging for over five years was finally signed into law on 31<sup>st</sup> August 2016 by the President. This law will enable citizens to access information held by the state as of right. This means that it's now an obligation for any person holding information to provide it to any citizen who asks for it. The objective of the law is to promote accountability in the use of public resources. In effect, it gives the citizen an oversight role over public officials through scrutiny of information held by the state. With the enactment of the law public institutions are now obliged to maintain good records and up-to-date information.

The challenge that can be anticipated with implementation of the Access to Information Act (2016) is the citizen's attitudes. It is undeniable that majority of Kenyans' are not accustomed to demanding information held by government agencies. Neither are they aware that they are entitled to it. This therefore calls for extensive civic education so as to change this mentality.

The county governments have been charged with the responsibility to oversee and facilitate access to information. They are required to use the media to advocate development issues such as sustainable environmental management. This requires county governments to be innovative in establishing mechanisms for dissemination of information and for including citizens in governance procedures.

#### **4.3.2.2 Access to Justice.**

To enhance access to justice, the rights sought to be enforced must be included in the law itself and the awareness & understanding of such rights widely publicized.

The Constitution of Kenya (2010) has been described as an activist constitution. This aspect of activism is an invitation to judicial officers to adopt liberal interpretation when called upon to interpret the rights guaranteed by the Constitution including environmental rights. Judicial mechanisms which allow easy access to justice, timely processing of claims and prompt enforcement judicial outcomes must be adopted. The Environment and Land division of the High Court are limited in number leading to delay in access to justice in environmental matters. Whereas the right to access courts in environmental matters i.e. *locus standi* has since been entrenched, there is need for jurisprudence to be developed on the field of public participation. Access to courts will be effective if costs on seeking these rights are waived. In other jurisdictions for instance the United Kingdom, citizens have a right to access courts to seek

remedies where they have been excluded from a project touching on environment without any costs.

Apart from the courts, justice can also be accessed through administrative action. The office of the Ombudsman established by the Commission on Administrative Justice Act (2011) is vested with powers to institute and undertake investigations into complaints submitted by any person regarding administrative actions.

### **4.3.3 Long term Recommendations**

#### **4.3.3.1 Inclusion and Ownership**

Effective Public participation should be an inclusive process which involves all stakeholders. Therefore in the long term once the legal framework has been put in place, efforts should be made to involve all members of the society in environment conservation. Women, youth, older people, ethnic and religious minorities and other disadvantaged groups should be involved. Beyond participation, citizens should be made to own the process and not be merely part of it. The stakeholders should be engaged at every stage of a process which requires participation of the public. Involvement especially during the initiation stages of a project engenders a sense of ownership. Extensive involvement increases transparency by keeping the public informed about the stages which a project will go through and the role they shall be expected to play. The integration of all persons was contemplated by the Constitution of Kenya (2010) in the Fourth Schedule part 14 which enjoins county governments to ensure participation of communities and locations at the lowest level.

Inspiration can also be drawn from Pope Francis in his Encyclical on environment, *Laudato Si 'On Care Of Our Common Home'*<sup>226</sup>, in which he calls for a new dialogue on shaping the future of our environment. He propagates the need for a conversation which includes everyone. He however laments that many efforts to seek concrete solutions to environmental problems have proved ineffective owing to obstructionist attitudes and a more general lack of interest. He calls for a new and universal solidarity to redress the damage caused by human abuse of God's creation. His message is that everyone can cooperate for the care of creation, each according to his or her own culture, experience, involvements and talents.

#### **4.3.3.2 Dynamic Process**

Public participation should be made an ongoing process and not an event. Continuous consultation with the citizens should be encouraged with the roles and responsibilities of those participating being clearly outlined. Civil society predominantly in the form of Ngo's is critical actors in mobilizing the public. The contribution of the different participants should be recognized without politicization of the process. The government should empower local communities to be in a position that they feel confident of their capacity to take the initiative and solve their own problems.

Public participation in environmental governance must be viewed in perspective of it being a procedural right without which the substantive right a clean and healthy environment will not be achieved. Procedural rights thus augment accountability and transparency in decision-making by the policy makers.

#### **4.4 Further Research Areas**

---

<sup>226</sup> <http://w2.vatican.va/content/francesco/en/encyclicals/documents>

The researcher's study presented herein was limited to appraising the legal framework for public participation in environmental management and analyzing the concept of participatory forest management. Other research areas which the researcher explored in the course of the study include: tenability and scope of the right to a clean and healthy environment; impact of the Constitution of Kenya (2010) on Environmental Public interest Litigation; Sustainable development principle, fact or fallacy.

## BIBLIOGRAPHY

- Beatrice C. and Kevin R, (2003), *International Environmental Law and Policy in Africa*, (Springer, USA.
- Bowers C A (2001) “*Educating fort Eco-Justice and Community*” University of Georgia, Press, USA.
- Carol J and Renee H, (1997), “*The Practical Guide to Environmental Community Relations*”, John Wiley & Sons
- Christopher H Foreman, (1998), “*The Promise and Perils of Environmental Justice*”, Brookings Institute Press, USA.
- Christophe Schwarte, (2008) *Access to Environmental Information in Uganda Forestry and Oil Production* International Institute of Environment & Development.
- Cordonier Segger & Khalfan, (2004), *Sustainable Development Law, Principles, Practices and Prospects*, Oxford University Press.
- David Satterthwaite, (1999), *The Earthscan Reader in Sustainable Cities*, James & James/Earthscan, London.
- David Schlosberg, (2002), *Environmental Justice and the new pluralism*, Oxford University Press, Great Britain.
- F.D.P Situma,(2008) *Forestry Law and the Environment in Environmental Governance in Kenya : Implementing the Framework law 236* ( Charles Okidi, Patricia Mbote & Migai Akech eds., East Africa Educational Publishers
- Garner J F, (1970), *Administrative Law*, 3rd Edition, Butterworth’s, London
- Ghate R (2004), *Un-commons in the commons: Community Initiated Forest Resource Management*, New Delhi India, Concept Publishing Company
- Hughes, R. (1998).Environmental impact assessment and stakeholder involvement. In: A. Dounelly, B. Dalal- Clayton, and R. Hughes, (Eds). *A directory of impact assessment guidelines. 2<sup>nd</sup> Edition*. Institute for Environment and Development (IIED)
- Irvings Stevens,(1996), *Constitutional & Administrative Law*, 3<sup>rd</sup> Edition, Pitman Publishing, Great Britain.



Julian A (2002), *Just Sustainabilities*, James & James/Earthscan, London.

Kathryn M, Gary C & Douglas S,(2001), *Justice and Natural Resources*, Island Press, USA.

Kariuki Muigua, Didi Wamukoya and Francis Kariuki (2015) *Natural Resources and Environmental Justice in Kenya*, Glenwood Publishers Ltd.

Michael Frawe & Willemien du Pleiss (2011) “*The balancing on interests in Environmental Law in Africa*” Pulp Publication.

Nanda, V. P. and Pring, G. (2003).*International environmental law and policy for the 21st century*. New York: Transnational Publishers, Inc

Ojwang J B,(1993), *Environmental Law and Constitutional Order*, Acts Press, Nairobi .

Okidi C.O, (2003) *Environment, Natural Resources and Sustainable Development in Kenya’s Constitution Making*, Institute for Law & Environmental Governance, Nairobi.

Phillipe Sands (2003), *Principles of International Environmental Law*, 2<sup>nd</sup> Edition, Cambridge University Press, New York.

Patricia Birnie, Alan Boyle, Catherine Redgwell, (2009), *International Law & the Environment*, Oxford University Press.

Robert Kibugi (2011) “*Development and the balancing of interests in Kenya*” in: *The balancing of interests in environmental law in Africa*, Pulp Publication.

Rostow, W. W. (1998). *The Great Population Spike and After: Reflections on the 21st Century* New York and Oxford, UK: Oxford University Press

Wamukoya G.M & Situma F.D.P,(2000) *Environmental Management in Kenya: A Guide to the Environmental Management and Coordination Act*, Centre for Research and Education in Environmental Law, Nairobi.

### **Journals, Conference Papers and Articles**

Aaron de Grassi “Constructing Subsidiarity, Consolidating Hegemony. Political Economy & Agro-Ecological Processes in Ghanaian Forestry” World Resource Institute.

Albert Mumma, (2005) “*The Role of local Communities in Environmental and Natural Resources Management. The Case of Kenya*”, Published in *Compliance & Enforcement in Environmental Law*. IUCN Academy of Environmental Law Series

Constitution and Reform Education Consortium (CRECO) “*Model Policy Framework for Public Participation in County Governments*” 2014

Coulibaly-Lingani, P.P Savadogo, M Tigabu & P.C Oden (2011). *Factors influencing people's participation in forest management program in Burkina Faso West Africa*. Forest Policy and Economics Vol. 13

C.K.Koech, P.O.Ongugo, M.T.E Mbuvi & J.O.Maua (2009) *Community Forest associations in Kenya: Challenges and opportunities*. Kenya Forestry Research Institute, Nairobi

De Vries M.S, (2007), *Public Participation in Policy Processes: Towards a Research Agenda*; Radboud University, Netherlands

International Association for Public Participation (2007) "Core Values of Public Participation"

Food and Agriculture Organization of the UN (FAO) *Introduction in Forestry for Local Community Development (FAO Forestry paper no 7)*

GH Brundtland and World Commission on Environment and Development. Our Common Future: Report of the World commission on Environment and Development. Oxford University,1987

Christopher Heyns & Magnus Killander, eds (2010) *Compendium of Key Human Rights Documents of the African Union 95*. Pretoria U. L. Press

Institute for Law and Environmental Governance (ILEG) research report (2003), "*Promoting Environmental Procedural Rights in Kenya*".

Hartley, N and C,Wood (2005). Public participation in environmental impact assessment: implementing the Aarhus Convention. *Environmental Impact Assessment Review*,

John Sinclair, Susan A Collins & Harry Spaling (2003) *The Role of Participant Learning in Community Conservation in the Arabuko Sokoke Forest, Kenya*

Joram Kagombe & James Gitonga,(2005) *Plantation Establishment in Kenya : A Case Study on Shamba System 2* Kenya Forestry Research Institute & Forest Department

Kallert S R, Mehta, J N, Ebbin & Litchenfed L (2000), "*Community Natural Resources Management Promise, Rhetoric and Reality*" Journal of Society and Natural Resources

Kabutha, C & Humbly, H (1996) *Gender concerns in agro forestry. In people and Institutional Participation in Agro Forestry and sustainable Development*

Kameri-Mbote, P (2000). Strategic planning and implementation of policies involved in environmental decision- making as they relate to environmental assessment in Kenya. *International Environmental Law Research Center working paper*.

Mantzara, B. (1998). *Public participation: guidelines for the organisation of round table discussion*. Greece: Mediterranean information office for environment culture and sustainable development

Michael Gachanja, (2003) *Public Perception of Forests as a Motor for Change: The Case of Kenya* 55(213) Unasylva

Mohan Prabhu, (1995) “*Criminal Law and Environmental Management*”, published in Unep’s *New Way Forward: Environmental Law and Sustainable Development*

Mogaka, H (1991), *Local utilization of Arabuko Sokoke Forest Reserve*, Nairobi. Forest conservation/Forest Department, Ministry of Environment and Natural Resources.

Myers, N R.A Mittermeier, G.A.B da Fonseca and J.Kent (2000) Biodiversity hotspots for conservation priorities. *Nature* 403

Nick Okello, Lindsay Beevers, Wim Douven & Jan Leentvaar (2009) “*The doing and un-doing of public participation during environmental impact assessments in Kenya*”

Nicholas N. Kimani, (2010) ‘*Participatory Aspirations of Environmental Governance in East Africa*’, *Law, Environment and Development Journal*,

Norgaard, Richard B. (1994). “*Development Betrayed: The End of Progress and a Co revolutionary Revisioning of the Future*”, New York and London: Routledge

Nurse, M.C & Edward, *Strategies for Sustainable Conservation of Forests under Threat from their Adjacent Communities*. KIFCON Kenya and Birdlife International

Odhiambo Michael Ochieng, (1998) “*Legal and institutional constraints to public interest litigation as a mechanism for the enforcement of environmental rights and duties in Kenya*”, (a paper presented at the fifth International conference on environmental compliance and enforcement Monterey California

Ongugo P O, Mogoi J N , E Obonyo, Oeba V.O ,(2008) *Examining the roles of Community Forest Associations (CFAs) in The Decentralization Process of Kenyan forests*, Paper presented to the IASC Conference , England

Our Common Future (1987) Report of the World commission on Environment and Development. Oxford University.

Paul Matiku, Mireri Caleb & Ogol Callistus, (2013) *The Impact of Participatory Forest Management on Local Community Livelihoods in the Arabuko-Sokoke Forest, Kenya*

Paul Ongugo, (2007) *Participatory Forest Management in Kenya: Is there anything for the Poor?* Paper Presented at the International Conference on Poverty Reduction and Forests, Bangkok.

Peter Allan Oduol, (1986) *The Shamba System: An Indigenous System of Food production from Forest Areas in Kenya* Agro Forestry Systems

Portman, M (2008). "Involving the public in the impact assessment of offshore renewable energy facilities". Woods Hole, MA: Marine Policy Center

P. Smith and M. McDonough, (2001) *'Beyond Public Participation: Fairness in Natural Resource Decision Making', Society and Natural Resource*

Reed ed. (1997), *Structural Adjustment, the Environment and Sustainable Development*.

R Kibugi, (2015) *Conceptualizing Regulatory Frameworks to Forge Citizen Roles to Deliver Sustainable Natural Resource Management in Kenya*, World Bank Legal Review Vol. 6,

Robert Kibugi (2014) "Fostering Development through Opportunity, Inclusion ,and Equity." *The World Bank Legal Review, Volume 5*

Robertson, S.A and W.R.O Luke (1993). The report of the NMK/WWF Coast Forest Survey. WWF Project 3256 Kenya, Coast Forest Status, Conservation and Management, Kenya Indigenous Forest Conservation programme

Sumudu A. Atapattu (2006) *"Emerging Principles of International Environmental Law"* Transnational Publishers Inc, New York.

Sinclair, J and Diduck, A. (1995). *Public education: an Undervalued Component of the Environmental Assessment Public Involvement Process*. Environmental Impact Assessment Review

Soneryd, L and S Weldon (2003). Noise and news: public engagement in the UK and Sweden. *Environmental Impact Assessment Review*,

*The case of Leita and Lembus communities in Kenya. In Participatory Forest Management, Biodiversity and livelihoods in Africa*. International Journal of Science and Research (IJSR) Vol. 3 Issue 9, 2014

Warah S, 2008, *Participatory management of forests: a trainer's manual*. Bangkok: Regional Community Forestry Training Center for Asia and Pacific (RECOFTC)

Werner Vandenbruwaene (2014) "The Legal enforcement of The Principle of Subsidiarity" Paper for workshop on federalism, Identity and Distributive Justice.

The Impact of Environmental Assessment (1996). A Review of World Bank Experience. World Bank Technical Paper No 363, Environment Department, Washington Dc

## **WEBSITES**

[www.iap2.org](http://www.iap2.org)

[www.pulp.up.ac.za](http://www.pulp.up.ac.za)

<http://www.lead-journal.org/content/10200.pdf>

[www.crecokenya.org](http://www.crecokenya.org)

<http://www.lead-journal.org/content/10200.pdf>

[www.uantwerp.be/en/staff/wevanden//  
www.un.org/docs](http://www.uantwerp.be/en/staff/wevanden//www.un.org/docs)

[www.ielrc.org](http://www.ielrc.org)

[www.unep.org/documents](http://www.unep.org/documents)

[www.globalpolicy.org](http://www.globalpolicy.org)

[www.karuraforest.org](http://www.karuraforest.org)

[www.ngongroadforest.com](http://www.ngongroadforest.com)

[www.conservationandsociety.org](http://www.conservationandsociety.org)

Comment [m1]: