

**THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013: FACILITATIVE
OR PROHIBITIVE ON GROWTH OF WILDLIFE CONSERVANCIES IN KENYA.**

BY

NJOROGE GLADYS WARIGIA

G62/67670/2013

A Thesis submitted in partial fulfilment of the requirements for the award of the degree of
Master of Laws (LL.M) of the University of Nairobi

2016

DECLARATION

This proposal is my original idea and has not been submitted for award of degree or diploma in any other institution.

Njoroge Gladys Warigia

Signature

Date

This thesis has been submitted to and accepted by the faculty for execution with my approval as the supervisor.

Supervisor:

Prof. Patricia Kameri-Mbote

Signature

Date

ACKNOWLEDGEMENT

I first thank Almighty God for the strength, good health, resources and wisdom to enable me get through this thesis. My sincere gratitude to my family: my mother Jane Wanjiru and sister Damaris Njoroge for the love, continued encouragement and prayers throughout the LL.M. program and writing of this thesis. I also thank my dear friend Fred Kuboka for his faith in me and support to undertake and complete this work. I am also grateful to my colleague Dickson Kaelo for his support and dedication of time to proof reading this thesis. Lastly but not the least, I do acknowledge my supervisor Prof. Patricia Kameri Mbote for her patience and intuitive comments that guided me into critical thinking and improved focus on my research and writing.

DEDICATION

This work is dedicated to my dear mother Jane a lady of great enthusiasm, self-drive, love and an inspiration in my life, and to my one and only sister Damaris whose affection, commitment and focus has been a constant inspiration to me.

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS	vii
TABLE OF STATUTES AND INTERNATIONAL INSTRUMENTS.....	viii
CHAPTER	1
INTRODUCTION.....	1
1.1 INTRODUCTION	1
1.2 BACKGROUND	1
1.2.1 Overview of Wildlife Conservancies.....	1
1.2.2 Statutory Regulation of Wildlife Conservation and Management in Kenya.....	3
1.3 STATEMENT OF THE PROBLEM	4
1.4 JUSTIFICATION OF THE STUDY	5
1.5 RESEARCH OBJECTIVES	5
1.6 RESEARCH QUESTIONS.....	6
1.7 HYPOTHESES	6
1.8 THEORETICAL FRAMEWORK	6
1.8.1 Sustainable Development.....	6
1.8.2 Property Rights Theory	7
1.9 LITERATURE REVIEW	10
1.9.1 Protectionist Approach to Wildlife Conservation	10
1.9.2 Community Participation in Wildlife Conservation and Management	11
1.10 RESEARCH METHODS	14
1.11 LIMITATION	15
1.12 CHAPTER BREAKDOWN	15
CHAPTER	2
GOVERNANCE AND MANAGEMENT FRAMEWORKS OF CONSERVANCIES	
2.1 INTRODUCTION	17
2.2 GOVERNANCE STRUCTURE OF CONSERVANCIES.....	17
2.2.1 Conservancy Governance Framework under Private Land Tenure	20
2.2.2 Conservancy Governance Framework under Community Land Tenure.....	22
2.2.3 Community Land Governance under Community Land Bill 2015.....	26
2.3 MANAGEMENT FRAMEWORK OF CONSERVANCIES.....	27
2.3.1 Conservancy management Structures	27
2.3.2 Conservancy Management Plan.....	29

2.3.2.1	Key Concerns on Development and Implementation of Management Plan	31
2.4	CONCLUSION	33
CHAPTER	3
DEVOLVING WILDLIFE MANAGEMENT TO LANDOWNERS: REALITY OR FALACY?		
3.1	INTRODUCTION	34
3.2	ANALYSIS OF THE CONCEPT OF DEVOLUTION	34
3.3	CONSTITUTIONAL FRAMEWORK FOR DEVOLUTION OF WILDLIFE CONSERVATION AND MANAGEMENT	36
3.4	CONTEXTUALIZING DEVOLUTION IN WILDLIFE CONSERVATION MANAGEMENT ACT	38
3.4.1	Representation in Institutional Boards	39
3.4.2	County Wildlife Conservation and Compensation Committee	40
3.4.3	Public Participation	41
3.5	CONCLUSION	45
CHAPTER	4
ADEQUACY OF CONSERVATION BENEFITS AND INCENTIVES TO LANDOWNERS		
4.1	INTRODUCTION	47
4.2	HISTORICAL DEVELOPMENT OF WILDLIFE BENEFITS AND INCENTIVES	47
4.3	CONTEXT FOR CONSERVATION BENEFITS AND INCENTIVES	49
4.4	WILDLIFE CONSERVATION BENEFITS AND INCENTIVES UNDER WCMA	50
4.4.1	Principles Guiding Access to Benefits in Wildlife Conservation	50
4.4.2	Nature of Benefits and Incentives for Wildlife Conservation	52
4.4.3	Access and Benefit Sharing of Wildlife Resources	55
4.4.4	Viability of Compensation Programmes as Conservation Incentives	57
4.5	CONCLUSION	61
CHAPTER	5
FINDINGS, CONCLUSION AND RECOMMENDATIONS		
5.1	SUMMARY OF STUDY	62
5.2	FINDINGS	63
5.3	CONCLUSION	64
5.4	RECOMMENDATIONS	65
BIBLIOGRAPHY		68

ABBREVIATIONS AND ACRONYMS

ASALs-Arid and Semi-arid Lands

AWF-African Wildlife Foundation

CBC-Community Based Conservation

CBNRM-Community Based Natural Resource Management

CBOs-Community Based Organisations

CWCCC-County Wildlife Conservation and Compensation Committee

GDP-Gross Domestic Product

ICCAs- Indigenous Peoples and Local Community Conserved Territories and Areas

IUCN-International Union for Conservation of Nature

KWCA-Kenya Wildlife Conservancies Association

KWS-Kenya Wildlife Service

NGOs- Non Governmental Organisations

NLC-National Land Commission

PA- Protected Area

PPA-Private Protected Area

TNC-The Nature Conservancy

UNCED- United Nations Conference on Environment and Development

WCMA -Wildlife (Conservation and Management) Act (Cap 376) (repealed)

WCMA 2013-Wildlife Conservation and Management Act of 2013

WWF-World Wide Fund

TABLE OF STATUTES AND INTERNATIONAL INSTRUMENTS

a) Laws of Kenya

Constitution of Kenya, 2010

Land (Group Representative) Act (Cap 287)

National Land Policy, Sessional Paper No. 3 of 2009

Societies Act (Cap 108)

Statutory Instruments Act, No. 23 of 2013

Trust Land Act (Cap 288)

Wildlife (Conservation and Management) Act (Cap 376)-Repealed

Wildlife Conservation and Management Act, No. 47 of 2013

b) Proposed Legislation

Draft National Wildlife Conservation and Management Policy, 2012

Wildlife Conservation and Management (Conservancy) Regulations 2015 (Unpublished)

Wildlife Conservation and Management (Incentives, Access and Benefit Sharing) Regulations 2015 (Unpublished)

Wildlife Conservation and Management (Community Participation) Regulations 2015 (Unpublished)

Wildlife Conservation and Management (Licensing and Wildlife User Rights) Regulations 2015 (Unpublished)

Community Land Bill, 2015 (Published on 11th August, 2015 in Kenya Gazette Supplement No. 129)

c) International Legal Instruments

Convention on Biological Diversity, 1992

Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising Out of Utilization, 2002

Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, 2004

Nagoya Protocol on Access and Benefit Sharing, 2010.

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

This research paper seeks to analyse the context in which the recently enacted WCMA in 2013 creates measures to support growth of wildlife conservancies in Kenya. The study is premised on the observation that conservancies have significantly increased in number over the past years in the absence of a specific legal framework that recognises and governs their wildlife related conservation and management activities. The research draws its findings from the analysis of specific provisions of WCMA that have an effect on conservancies as well as focused discussions from stakeholders in wildlife conservation and management. The goal of the research is to establish whether the legal framework is supportive or prohibitive of the continued development of the conservancies.

Chapter one outlines the structure of the entire research. It introduces the concept of wildlife conservancies and their development in Kenya within and outside the setting of legal framework. It identifies the research problem to be pursued by the research and the three objectives to guide the study. It also discusses the method used to obtain information for the research. The chapter sets out two theoretical frameworks within which the principles explored and discussed and anchored. An extensive literature review is made to create an understanding of the existing literature that supports and informs the subject matter of research.

1.2 BACKGROUND

1.2.1 Overview of Wildlife Conservancies

Wildlife in Kenya exists in protected areas that include national parks, national reserves, sanctuaries and wildlife conservancies. It is estimated that approximately 80% of the wildlife exists outside state protected land areas¹. The term ‘conservancy’ has been used to describe

¹ Government of Kenya, ‘National Tourism Strategy, 2013-2018’, Department of Tourism, Ministry of East Africa, Commerce & Tourism

community and private lands under wildlife conservation for about 20 years². The first conservancies were established mainly to protect certain wildlife species under threat of extinction or tied to commercial tourism ventures through entirely community owned or jointly partnership with private operators so as to create economic opportunities³. Conservancies are considered among the strategies for CBO⁴ whose goal is to engage communities in wildlife conservation while generating income from the wildlife so as to make communities understand the usefulness of wildlife. For instance, in the arid and semi-arid areas of northern Kenya, conservancies are developed for purposes of pasture management, alleviate poverty through community enterprises such as wildlife tourism and provide wildlife and human security⁵. Conservancies are also acknowledged as community strategy or institutions for conservation⁶ and currently over 120 conservancies have been established countrywide.⁷

The establishment of conservancies is voluntary⁸. Until the coming into force of WCMA, conservancies were not regulated within a legal framework for wildlife conservation. A harmonised definition of conservancies being ‘land set aside by an individual landowner, body corporate, group of owners or community for purposes of wildlife conservation⁹’ was created by WCMA, providing foundation on their governance and management structures.

² Anthony King, ‘Conservancies in Kenya’, (2013), Report to the Kenya Land Conservation Trust

³ Dilys Roe, Fred Nelson, *Community Management of Natural Resources in Africa: Impacts, Experiences and Future Directions* (2009) International Institute for Environment and Development International Institute for Environment and Development (UK) in Elizabeth Nduku, ‘The Effects of Community Wildlife Sanctuaries on Pastoral Livestock Production System’, 2012 Thesis for the Degree of Doctor of Philosophy in Dry land Resource Management In The Department of Land Resource Management and Agricultural Technology, University of Nairobi

⁴ Dilys Roe, Fred Nelson, *Community Management of Natural Resources in Africa: Impacts, Experiences and Future Directions* (2009) International Institute for Environment and Development (UK) p8

⁵ Louise Glew et al, ‘Evaluating the Effectiveness of Community Based Conservation in Northern Kenya’, A report to the Nature Conservancy, (2010) University of Southampton, School of Civil Engineering and the Environment p14

⁶ Chrystal Heidi, Anne Courtney, ‘An Investigation into the Extent to which activities in Olare Orok Conservancy, Narok District, Kenya, Conform to Ecotourism’ (2009) Unpublished Dissertation presented for the Degree of Master of Science, University of Edinburgh

⁷ KWS Community Enterprise Database (2012)

⁸ Ibid 6

⁹ WCMA 2013, s39

1.2.2 Statutory Regulation of Wildlife Conservation and Management in Kenya

The legal framework on conservation and management of wildlife in Kenya, until WCMA of 2013, was highly centralised mainly focusing on state protected land areas¹⁰. Minimal attention and support was given to community and private lands by the legal framework, thus disregarding the critical role they play in providing wildlife habitats and migratory routes. Conservation and management of wildlife in Kenya has been characterised by official protection of wildlife, a concept introduced by the British imperial rule in the 1890s leading to the establishment of game reserves and subsequently development of formal laws, the National Parks Ordinance of 1945 to support of establishment of more protected areas and also established a game department. The consequence was control of wildlife utilisation in the protected areas, alienation of natives off their land and human wildlife conflicts¹¹.

Following Kenya's Independence, the trend of preserving wildlife resources and maintaining protected areas was sustained upon the development of the Wildlife Policy of 1975 and passing of the Wildlife Act Cap 376 with the aim of addressing human wildlife conflict through a compensation structure, providing avenues to promote landowners adjacent to parks and communities tolerate wildlife by developing means for wildlife utilisation¹². Under this law, the State was recognised as the sole manager and regulator of wildlife management, thus ignoring the realities of wildlife conservation and the key role of landowners hosting wildlife on their land and general communities¹³.

Inadequacy of incentives and a legal framework to integrate community and private landowners in benefiting from wildlife conservation, led to development of local initiatives through conservancies. These gaps led to KWS identifying the need for a policy document in 2010 to guide development and support to conservancies through a legally recognised setting¹⁴. Following promulgation of the Constitution of Kenya in 2010, a duty was imposed on the state to ensure sustainable exploitation, utilisation, management and conservation of the environment

¹⁰ Mike Norton-Griffiths, 'Wildlife Losses in Kenya: An Analysis of Conservation Policy', (2000) vol13 no1, Natural Resource Modeling, Spring

¹¹ Mungumi Bakari Chongwa, 'The History and Evolution of National Parks in Kenya', (2012) vol. 29, no.1 The George Wright Forum, pp39-42

¹² WCMA Cap 376, s29

¹³ Ibid 15

¹⁴ KWS Corporate Policy Document on Establishment of Conservancies, Training and Management of County Reserves, Private and Community Rangers (October2010)

and natural resources, and equitable sharing of the accruing benefits¹⁵. The Constitution also required the state to engage the public in management, protection and conservation of the environment¹⁶. Consequently the Wildlife Act Cap 376 was repealed by WCMA of 2013 to allow for reforms on wildlife conservation that promote the spirit of the Constitution.

Efforts by KWS to coordinate wildlife conservancies led to the establishment of a landowners' driven umbrella institution, KWCA¹⁷. WCMA recognises the umbrella wildlife conservancy body¹⁸ whereby it requires that representation of community conservancies in KWS board of trustees is through nomination by the body.

1.3 STATEMENT OF THE PROBLEM

The near exponential growth of wildlife conservancies in Kenya happened outside a specific legal framework. The conservancies have proliferated in the past 20 years within fragmented legal regimes that are not specific to wildlife conservation, yet they have been primarily recognised as institutions for wildlife conservation. It remains unclear whether the recently enacted WCMA in 2013 will ultimately erode or destroy the gains made in protecting wildlife or whether its implementation will further enhance the growth of conservancies in Kenya.

The repealed Wildlife Act Cap 376 largely failed to recognise and support community and landowners efforts of wildlife conservation. Wildlife conservation was centralized with and prohibited profitable consumptive wildlife utilization. Landowners consequently had no form of property rights to wildlife resources. This centralized structure of wildlife conservation therefore had no room for providing incentives to communities and landowners to embrace conservation nor provided framework for accessing and sharing benefits¹⁹.

Significant wildlife losses in Kenya have been attributed to among other factors, policy, institutional and market failures. Conservancies that have proliferated in the past 20 years within fragmented legal regimes that are not specific to wildlife conservation have been recognised as a viable measure to address the key challenges in wildlife conservation that include wildlife habitat

¹⁵ Art 69 (1) (a)

¹⁶ Art 69(1)(d)

¹⁷ <<http://www.kwakenya.com>> accessed 20th March 2015

¹⁸ WCMA 2013, s8 (2) (f) (ii)

¹⁹ Mike Norton-Griffiths, 'Wildlife Losses in Kenya: An Analysis of Conservation Policy', (2000) vol13 no1, Natural Resource Modeling, Spring

loss and poaching both linked to lack of support to landowners and communities to obtain equitable benefits from wildlife.

The enactment of WCMA saw the first time recognition of conservancies as wildlife conservation institutions. Concern exists whether the new statute provides an opportunity to promote and harmonize development and management of the conservancy concept in Kenya for the years to come.

This paper will identify the extent to which WCMA 2013 provides enabling framework to devolve wildlife conservation and management to conservancies. It will analyze the incentives created to encourage landowners embrace wildlife conservation as a beneficial land use.

1.4 JUSTIFICATION OF THE STUDY

Kenya stands to lose more than 60% of its wildlife and wildlife habitat if conservation efforts outside the state protected areas are not successful. This study will assess the extent to which the Wildlife Act will either impede or foster the continued growth of wildlife conservancies in Kenya. The absence of specific formal policy and legislation allowed for experimentation, ownership and minimal government interference in the management of conservancies, but absence of legal recognition as a land use restricted government and other partners support. The current legal environment where conservancies are recognised and promoted while has the potential of ensuring government support may be become restrictive, costly, intrusive to private land rights or bureaucratic potentially discouraging adoption of the conservancy model.

The extent to which the wildlife Act 2013 creates a disabling or enabling environment for conservancies needs to be analysed to inform the implementation of the Act, developments of enabling regulations and possible future amendments. This analysis will be useful for policy makers, government agencies, landowners, communities and conservancy support organizations and will inform future engagements with the conservancy stakeholders.

1.5 RESEARCH OBJECTIVES

The overall objective of the research is to identify the effect of the WCMA 2013 on the community wildlife conservancies. The specific objectives include:

1. To analyse whether WCMA creates a framework to support the governance and management of conservancies
2. To evaluate the extent to which WCMA facilitates devolution of wildlife conservation and management to support development of conservancies
3. To determine whether the incentives created by WCMA are adequate to facilitate adoption of a conservancy as a preferred land use.

1.6 RESEARCH QUESTIONS

The questions that this research seeks to answer include:

1. Does WCMA create frameworks under which conservancies are governed and managed?
2. Does WCMA facilitate devolution of wildlife conservation and management to promote formation and management of conservancies?
3. Does WCMA create adequate incentives to encourage landowners adopt conservancy as preferred land use?

1.7 HYPOTHESES

The hypotheses to be tested by the research include:

1. A clear governance and management framework for conservancies has not been developed by WCMA.
2. The devolution provisions under WCMA are not adequate to facilitate wildlife conservation on community and private lands.
3. The absence of adequate incentives in WCMA is a drawback to development of conservancies.

1.8 THEORETICAL FRAMEWORK

1.8.1 Sustainable Development

This study is based on the notion that conservancies are established to conserve wildlife and the same time enable landowners attain benefits from conserving the wildlife. In this regard, the study falls within the concept of sustainable development and demonstration will be made on how it has influenced development of wildlife conservancies.

Sustainable development was defined at UNCED in Rio 1992²⁰ which sought to promote sustainable use of biological resources that meets the needs of the current generation without compromising the ability of future generations in meeting their need through protection of these resources²¹. This principle underlined the importance of managing natural resources in a manner that promotes economic and social well-being of the society, thus placing human beings at the centre of sustainable development²². The 1992 Convention on Biological Diversity further created path for indigenous and local communities with immense ecological knowledge to be environmental managers and key partners in conservation and sustainable use of biodiversity²³. This was anchored within its objectives which include conservation, sustainable utilisation and fair and equitable benefit sharing of benefits from genetic resources²⁴.

Sustainable development thus seeks to take into account the ecological, economic and social components. In order to achieve the goal of sustainability, various instruments and tools have been developed to promote its development. Reforms in wildlife resources management have used the sustainable development principle as the base to demand the shift from a protectionist approach of managing wildlife to a participatory approach that promotes interaction of wildlife with people who are to assume responsibilities to the well-being of the wildlife and in return obtain economic profitability alongside with societal development²⁵. Conservancies are such instruments which support meet ecological demands by providing space for wildlife through opening migratory corridors generate revenue for landowner through wildlife utilisation such as tourism and develop social amenities such as schools.

1.8.2 Property Rights Theory

The importance of property rights theory in the context of development of community and private conservancies cannot be overlooked due to the interaction between the property rights regimes on land and wildlife management. In a proper legal framework, there exist principles

²⁰ Principle of sustainable development adopted in 1992 Rio Declaration on Environment and Development which reaffirmed the United Nations Conference on the Human Environment adopted at Stockholm in 1972

²¹ Report by The World Commission on Environment and Development (Brundtland Commission) 1987

²² Rio Declaration on Environment and Development, Principle 1

²³ Andreas Kotsakis, 'Community Participation in Biodiversity Conservation: Emerging Localities of Tension', in Amanda Perry-Kessaris (Ed), *Law in the Pursuit Development: Principle into Practice?* (2009) Routledge at 1

²⁴ Convention on Biological Diversity 1992, art1

²⁵ Friedrich Reimoser et al, *Integrated Sustainable Wildlife Management: Principles, Criteria & Indicators for Hunting, Forestry, Agriculture, Recreation*, (2013) 2nd ed Vienna at 9

that protect the sustainable use of wildlife resources through a range of property rights that are freely exercised by landowners and security of tenure to allow conservation²⁶.

In the context of this paper, property refers to a bundle of rights in the use and transfer of natural resources²⁷. Property right is enforceable authority to undertake particular actions in specific domain²⁸. Property rights are recognised as social institutions that define or limit the range of privileges granted to individuals to specific assets such as land. Property rights institutions assign ownership to valuable assets and designate who bears the benefits of costs of resource use²⁹. Clearly defined and enforced property rights are said to contribute to political and economic development. Further, secured property rights are said to encourage people to invest their resources and protect investments against expropriation³⁰. According to Bromley, there exist four categories of property rights regimes that include private, common, state and non-property³¹.

In the setting of this paper, focus shall be on communal and privatized property rights regime which articulate different bundle of rights. Institutions based on common property have been regarded to play a social and economic beneficial role in management of natural resources³². Communal tenure denotes a regime of rights and duties where a well-defined group of users interact with environmental resources according to a mutually agreed set of rules, thus not everybody resources. This system thus maintains rights as a group with institutional arrangements mostly in place to govern access of the shared resources thus reducing instances of

²⁶ Patricia Kameri-Mbote, 'Land Tenure, Land Use and Sustainability in Kenya: Towards Innovative Use of Property Rights in Wildlife Management', International Environmental Law Research Centre Working Paper 2005-4, at 14

²⁷ S.V. Ciriacy-Wantrup, Richard C. Bishop, 'Common Property' as a Concept in Natural Resources Policy', (1975), vol15 Natural Resources Journal p713-27

²⁸ John R. Commons, 'Legal Foundations of Capitalism', (1968), University of Wisconsin Press, Madison in Elinor Ostrom, 'Private and Common Property Rights', (2000) Encyclopedia of Law & Economics, vol II Civil and Economics ed. Cheltenham, England: Edward Edgar pp332-79

²⁹ Gary D. Libecap, '*Contracting for Property Rights*', (1989) Cambridge University Press

³⁰ Sandra Fullerton Joireman, 'Applying Property Rights Theory to Africa: The Consequences of Formalizing Informal Land Rights', (2006) Paper prepared for the 2006 Meeting of the International Society for New Institution of Economics in Boulder, Colorado

³¹ Daniel W. Bromley, '*Making the Commons Work: Theory, Practice and Policy*', (1992) ICS Press

³² Ibid 34

overuse and degradation³³. The range of property rights in the common property includes access³⁴, withdrawal³⁵, management³⁶, exclusion³⁷ and alienation³⁸ rights³⁹.

Private property rights depend on existence and enforcement of a set of rules that define who has rights to undertake which activities on their own initiative and how returns from the activity are allocated⁴⁰. These rights exclude others from the resource thus said to facilitate efficient exploitation of the resource and its productive use.

The sources of the above rights can originate from two sources. First, they may originate from the government to the resource user which is referred to as de jure rights in the sense that these rights are given lawful recognition by formal legal instrument. In this setting, the rights holders have the chance of sustaining their rights if challenged. Secondly, they may originate from the resource users which is referred to as de facto rights and considered as less secure compared to de jure rights. A combination of de jure and de facto rights may exist within the same common property thus overlapping or complementing each other⁴¹.

In conclusion, the principles set out by WCMA to support effective wildlife conservation and management including devolution of conservation to landowners, promoting it as a land use and ensuring that benefits from conservation are shared equitably, is all designed towards achieving sustainable development. These principles promote provision of property rights in wildlife resources as a means to co-management of the wildlife. The sustainable development and property rights theoretical frameworks discussed above are therefore well placed to provide the setting upon which WCMA can be examined to establish whether it is supportive or prohibitive on growth of conservancies in Kenya.

³³ Ibid

³⁴ Access right is the right to enter a defined area and enjoy benefits

³⁵ Withdrawal rights is the right to obtain resources

³⁶ Management rights is the right to regulate internal use patterns and transform resource by making improvements

³⁷ Exclusion right is the right to determine who can have access rights and withdrawal rights and how the rights can be transferred

³⁸ Alienation right is the right to sell or lease either of the management and exclusion rights

³⁹ Edella Schlager and Elinor Ostrom, 'Property Rights Regimes and Natural Resources: A Conceptual Analysis', (1992) vol68 no 3 Land Economics, University of Wisconsin Press pp249-62

⁴⁰ Vincent Ostrom, 'Some Developments in the Study of Market Choice, Public Choice and Institutional Choice', (1989) in Elinor Ostrom, 'Private and Common Property Rights', (2000) vol II Encyclopedia of Law & Economics, Civil and Economics, ed. Cheltenham, England: Edward Edgar pp.332-79

⁴¹ Edella Schlager and Elinor Ostrom, 'Property Rights Regimes and Natural Resources: A Conceptual Analysis', (1992), vol68 no3 Land Economics, University of Wisconsin Press pp249-62

1.9 LITERATURE REVIEW

This section examines the literature on development of community wildlife conservancies in Kenya. The different concepts and issues that have evolved to shape the different elements and stages of conservancy development will be discussed.

1.9.1 Protectionist Approach to Wildlife Conservation

Wildlife conservation and management in Kenya in pre and post-independence has focused on state protected areas. The conservation approach adopted was preservationist that entailed establishment of national parks and game reserves followed by ‘Fences and Fines’ and Command and Control⁴² management approaches. This is despite having majority of wildlife existing on community lands where wildlife losses were recorded high. Legislative measures were considered viable to address wildlife loss. The Wildlife Policy Sessional Paper No. 3 of 1975 and the subsequent Wildlife Act Cap 376 were adopted. The Policy recognised the need to engage community and private landowners in active wildlife conservation and subsequently create benefits including consumptive wildlife use such as sport hunting, cropping and dealing with trophy. In addition, compensation for losses or damages occasioned by wildlife was introduced to promote tolerance to wildlife⁴³.

Unfortunately, the Wildlife Act Cap 376 failed to adopt key policy guidelines on promoting conservation on community lands. In addition, a ban on hunting and trade of wildlife trophy made in 1977 controlled use of wildlife resources. Human wildlife conflicts consequently increased and community land were subdivided to private land parcels due to limited benefits accruing from hosting wildlife on communal lands. In the late 1980s and early 1990s, Wildlife the Conservation and Management Department (WCMD) underwent institutional reforms aimed at improving relations with communities to support wildlife conservation by replacement with KWS⁴⁴.

⁴² Means prohibition on consumptive use of wildlife and prohibition on use of resources within Protected Areas

⁴³ Mike Norton-Griffiths, ‘Wildlife Losses in Kenya: An Analysis of Conservation Policy’, (2000) vol13 no1, Natural Resource Modeling, Spring

⁴⁴ John Mburu, “Wildlife Conservation and Management in Kenya: Towards a Co-management Approach”, (2004) Natural Resource Management, Center for Development Research, University of Bonn

Legislative reforms towards a participatory approach that promotes transfer of wildlife rights and responsibilities to local institutions culminated to the enactment of WCMA. The protectionist approach in the above regard was considered a failure in protecting wildlife in Kenya⁴⁵.

1.9.2 Community Participation in Wildlife Conservation and Management

Community and private wildlife conservancies fit within the framework of Private Protected Areas (PPAs) recognised during the World Parks Congress of 2003. They were defined as, “a land parcel of any size that is 1) predominantly managed for biodiversity conservation; 2) protected with or without formal government recognition; 3) owned or secured by individuals, communities, corporations or non-governmental organisations⁴⁶”. The conservancies are also classified under the multiple-use management areas in the World Conservation Union categories VI⁴⁷.

Wildlife conservancy is one of the strategies promoting CBNRM with the aim of moving away from protectionist approach to wildlife conservation⁴⁸. CBNRM is based on the rationale that local people participate in decisions and benefits to reduce hostility towards conservation⁴⁹. Its objective is to pro-actively involve communities in wildlife conservation through income generating activities from wildlife to ensure communities view wildlife as a valuable resource thus support in their conservation⁵⁰.

CBNRM which refers to management of natural resources by collective, local institutions for local benefits⁵¹ is based on the rationale that conservation is most effective when placed in the

⁴⁵ Ibid 6

⁴⁶ <<http://www.iucn.org>>

⁴⁷ Elizabeth Nduku Muthiani, “The Effects of Community Wildlife Sanctuaries on Pastoral Livestock Production System”, (2012) Thesis Submitted in Fulfillment for the Degree of Doctor of Philosophy in Dry Land Resource Management in the Department of Land Resource Management and Agricultural Technology, University of Nairobi

⁴⁸ Ibid

⁴⁹ David Western and R. Michael Wright, “The Background to Community Based Conservation”, in David Western and R. Michael Wright, *Natural Connections: Perspectives in Community Based Conservation* (1994), Island Press, Washington D.C. pp1-33

⁵⁰ David Western, “Ecosystem Conservation and Rural Development: The Case of Amboseli”, in David Western and R. Michael Wright, *Natural Connections: Perspectives in Community-based Conservation* (1994) Island Press, Washington DC, USA pp15-52

⁵¹ Dilys Roe, “Community-based Natural Resources Management: An Overview and Definitions”, in Max Abensperg-Traun, Dilys Roe, Colman O’Criodain, ‘The Relevance of CBNRM to the Conservation and Sustainable Use of CITES-listed Species in Exporting Countries’ (2011) CITES and CBNRM: Proceedings of an International Symposium, Vienna, Austria, 18-20 May 2011. Gland Switzerland: IUCN and London, UK: IIED

hands of landholders⁵². The concept of CBNRM is regarded to have developed in the jurisdiction of wildlife conservation in Southern Africa with its key pillars including conservation, empowerment and benefits⁵³. The key features of CBNRM that have developed over time include⁵⁴:

- a) Sustainable use as a conservation standard
- b) Economic instrumentalism
- c) Devolution
- d) Collective proprietorship

Setting up of conservancies involves the setting aside of community or private land for development of wildlife related user rights such as tourism and provide land for wildlife. In this regard, it is based on the following principles⁵⁵:

- a) wildlife will generate income from wildlife user rights;
- b) opportunity cost will be lower than the benefits from wildlife;
- c) benefits will be shared fairly and equitably especially for community land and
- d) ecosystem balance will be maintained sustainably

In Kenya, the history of locally driven wildlife conservation on private and community land dates back to over 40 years ago such as Solio ranch established in 1970 and Taita Hill sanctuary established in 1973. The concept was further promoted in the 1990s upon realisation that the survival of wildlife including in formal protected areas relied on engagement of landowners in conservation⁵⁶. This saw the initial use of the term ‘conservancy’ to describe non-state protected

⁵² Brian Child, ‘Introduction’ in B-Child (ed) *In Parks in Transition: Biodiversity, Rural Development and The Bottom Line* London, Earthscan 2004

⁵³ Aurélie Binot, et al, ‘What has CBNRM Achieved in Africa? The ‘3Es’ – Empowerment, Economics, Environment’ in Dilys Roe, et al, *Community management of natural resources in Africa: Impacts, experiences and future directions* (2009), International Institute for Environment and Development,

⁵⁴ Brian Jones, Marshall Murphree, ‘Community Based Natural Resource Management as a Conservation Mechanism: Lessons and Directions’ in Brian Child, *In Parks in Transition: Biodiversity, Rural Development and the Bottom Line* Earthscan, London 2004

⁵⁵ Ibid 58

⁵⁶ Anthony King, ‘No Reason to Conserve: Exploring the Drivers and Performance of Wildlife Conservation in Kenya’, in Max Abensperg-Traun, Dilys Roe, Colman O’Criodain, ‘The Relevance of CBNRM to the Conservation

areas in early 1990s with key incentives to their establishment being consumptive wildlife utilisation through cropping for meat and skins. The Lewa wildlife conservancy and Namunyak conservancy were among the first conservancies to be established with the former on private land while the latter on community land⁵⁷. The term conservancy, until 2013 was used in an informal manner with no legal definition or reference in the legislative frameworks.

Conservancies have been characterised by free-ranging wildlife populations on community and private land holdings in the absence of a specific and supportive legislative framework in their evolution⁵⁸. They have thus developed through different models across the country with different standards of managements. Diverse definitions have in the past been used to identify the concept in the absence of a common national definition. For instance, conservancies in the Northern Kenya under the umbrella organisation of Northern Rangeland Trust (NRT) define conservancy as “*community-owned and community-run institution which aims to improve biodiversity conservation, land management and the livelihoods of its constituents over a defined area of land traditionally owned, or used, by that constituent community*”⁵⁹. The definition is also advanced by Dr. King having consulted with over 50 community and landowners as, “*A clearly defined and legally owned geographical area not being a National Park, National Reserve or Wildlife Sanctuary, registered by the legal owner/s under the appropriate Wildlife and Lands Acts and dedicated and managed to achieve the long term conservation of wildlife and/or their supporting habitats together with other compatible forms of land use*”⁶⁰.

The drivers for establishment of conservancies are varied and range from private initiatives to conserve wildlife to increase in financial returns by deriving benefits from wildlife through various user rights or third party agreements with landowners to set aside land for wildlife conservation in return of benefits such as social welfare services⁶¹.

The demand for legal recognition of conservancies and support from government by the landowners has been based on various rationales. First, the land area on which locally driven

and Sustainable Use of CITES-listed Species in Exporting Countries’, (2011) CITES and CBNRM: Proceedings of an International Symposium , Vienna, Austria, 18-20 May 2011. Gland Switzerland: IUCN and London, UK:IIED

⁵⁷ Anthony King, ‘Conservancies in Kenya’, (2013), Report to the Kenya Land Conservation Trust

⁵⁸ Ibid 67

⁵⁹ Juliet King, et al, ‘A Guide to Establishing Community Conservancies: The NRT Model’, (2015) Version 1

⁶⁰ Ibid 68

⁶¹ Ibid

conservation has been taking place is over 30,000km² and is still expanding which equates to 68% of formally protected areas⁶². Conservancies are also considered to provide social and economic benefits that include employment through wildlife tourism; create a sense of security in regions that have rampant conflicts over use and sharing of natural resources such as Northern Kenya; development of social amenities including schools, education bursaries, improving health centres, improving access to water and infrastructure development from profits earned through wildlife tourism building school, providing⁶³. Other benefits include increase in household income through land lease fees for wildlife conservation and tourism development and improved grazing management⁶⁴. Conservancy is also recognised as a land use just like agriculture or livestock keeping whereby the landowners weigh the opportunity costs from wildlife against the alternative land uses. In this regard, the need for incentives and a supportive legal framework to lure landowners to venture and maintain their land for wildlife conservation cannot be overlooked.

1.10 RESEARCH METHODS

The research methods used to carry out the research were qualitative in nature. They included:

1. Literature review-A wide range of literature was reviewed including published articles and books, conference proceedings and reports, scholarly reports, statutes and internet commentaries. Considering that the research was primarily analysing WCMA, there was significant reference to the statute's provisions.
2. Field study- unstructured interviews were conducted with conservancy landowners and representatives especially from areas that have well developed conservancies including NRT, Maasai Mara and Amboseli. These representatives were from the umbrella bodies of the conservancies from an ecosystem level including Maasai Mara Wildlife Conservancies Association, Amboseli Ecosystem Trust and NRT. Interviews were also conducted with staff from KWCA, the national conservancy body which has significant interaction with WCMA by supporting conservancies implement the WCMA as well as

⁶² Anthony King, 'No Reason to Conserve: Exploring the Drivers and Performance of Wildlife Conservation in Kenya', in Max Abensperg-Traun, Dilys Roe, Colman O'Criodain, 'The Relevance of CBNRM to the Conservation and Sustainable Use of CITES-listed Species in Exporting Countries', (2011) CITES and CBNRM: Proceedings of an International Symposium, Vienna, Austria, 18-20 May 2011. Gland Switzerland: IUCN and London, UK:IIED

⁶³ Anthony King, 'Conservancies in Kenya', (2013) Report to the Kenya Land Conservation Trust

⁶⁴ Ibid

create awareness on its provisions. Interviews were made with KWS staff with a focus on its challenges in addressing compensation claims for losses occasioned by wildlife. The interviews sought to establish practical knowledge and experience that does not exist within literature.

1.11LIMITATION

This research limits itself to analysing the development of conservancies within the WCMA 2013 with the objective of understanding the extent to which it meets the needs of the landowners and conservation; promote devolution in wildlife conservation and management and puts in place measure to support operations and management of conservancies.

1.12 CHAPTER BREAKDOWN

Chapter 1- Introduction

This chapter expounds the topic by describing its background, the need to carry out this research, the objectives aimed to be achieved and the procedure of carrying out the research.

Chapter 2- Governance and management frameworks of conservancies

This chapter shall identify structures established by WCMA to support decision making by landowners and promote efficient management of conservancies.

Chapter 3- Devolving wildlife management to landowners

This chapter shall analyse the structures within WCMA to promote devolution of wildlife conservation and management to community and private landowners. It shall identify drawbacks to effective devolution.

Chapter 4- Adequacy of conservation benefits and incentives to landowners

This chapter shall analyse the nature of benefits and incentives provided by WCMA to promote and appeal community and private landowners to set their land aside for wildlife conservation. The systems created to access the benefits shall be considered to determine whether they form bureaucracies that discourage landowners to access the benefits.

Chapter 5: Conclusion and Recommendations

This chapter shall summarize the findings and develop conclusions and recommendations based on the findings.

CHAPTER 2

GOVERNANCE AND MANAGEMENT FRAMEWORKS OF CONSERVANCIES

2.1 INTRODUCTION

This chapter seeks to establish whether WCMA creates a framework to support the governance and management of conservancies. An analysis of ownership, decision making and management structures of conservancies within WCMA will be carried out.

2.2 GOVERNANCE STRUCTURE OF CONSERVANCIES

The governance structure in a conservancy largely depends on the legal regime under which land is owned. WCMA provides that conservancy can be established on land owned by an individual, community or on collectively owned land⁶⁵. These three categories of land ownership create the distinct categories of governance of wildlife on conservancies. They include private, community and group governance.

The 'IUCN protected area matrix' identifies two categories of governance that include private and community governance⁶⁶. Private governance comprises lands under individual, cooperative or corporate control and ownership. Community governance include territories established and run by local communities with the management authority and responsibility vested in communities through various forms of customary or legal, formal or informal, institutions and rules⁶⁷.

Governance according to IUCN refers to the institutions and processes used by right holders and stakeholders to make and influence decisions to exercise authority and responsibility in society. Governance is assessed by examining the institution that holds authority and responsibility,

⁶⁵ WCMA 2013, s39

⁶⁶ Grazia Boorrini-Feyerabend, Ashish Kothari, and Gonzalo Oviedo, (2004) *Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation* (IUCN, Gland, Switzerland and Cambridge, UK series No11. 2004) xviii + 111pp

⁶⁷ Nigel Dudley, (ed) *Guidelines for Applying Protected Area Management Categories* (IUCN Gland, Switzerland 2008) x + 86pp. p26 With Sue Stolton, Peter Shadie and Nigel Dudley *IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types* (Best Practice Protected Area Guidelines Series No. 21, IUCN Gland, Switzerland 2013) xxpp.

legally or through customary recognized mechanisms, the structural arrangement of the institution and the nature of decisions made by the institution⁶⁸.

Further, governance is described to encompass policies, institutions, processes and power. The nature of governance depends on the institutional rules for decision making and the capacity of people to participate in decision making processes that affect them. A good governance framework ought to facilitate among others, democratic, transparent and accountable institution⁶⁹. Weak governance on the other hand is identified as key driver of biodiversity loss and poverty⁷⁰.

WCMA recognizes a wildlife conservancy, either on private or community land, as a new category of protected area⁷¹ in addition to national parks, reserves and sanctuaries. This recognition enables non-state actors including individual private landowners, groups of private landowners with contiguous land parcels, communities and corporate bodies on whose land wildlife reside to establish conservancies⁷². WCMA provides the definition of a wildlife conservancy as “*land set aside by an individual landowner, body corporate, group of owners or a community for purposes of wildlife conservation*”⁷³. This definition forms the scope of examining the conservancy governance structure, thereby influencing the quality of their management and will determine the future evolution of conservancies in Kenya.

The definition on conservancy by WCMA considers a conservancy only as a tool for wildlife conservation. A wildlife conservancy as described in chapter one reflects a conservancy beyond conservation but as an institution that addresses multiple socio-economic interests and needs of landowners. These include employment creation, revenue generation through wildlife based activities, rangeland management, platform to promote peace and security and platform for community governance.

⁶⁸ Grazia Borrini-Feyerabend et al, *Governance of Protected Areas: From understanding to action* (Best Practice Protected Area Guidelines, IUCN Gland, Switzerland, Series No. 20 2013) xvi + 124pp

⁶⁹ Krystyna Swiderska et al ‘The Governance of Nature and the Nature of Governance: Policy that Works for Biodiversity and Livelihoods’ (2008) vol8 IIED p18

⁷⁰ *ibid*

⁷¹ Protected area is described by Nigel Dudley in *Guidelines for applying protected area management categories* N. Dudley, (ed), Gland: IUCN as ‘A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values’.

⁷² WCMA 2013, s39

⁷³ *ibid* s3

WCMA definition of conservancy is therefore less robust compared to other descriptions such as under the IUCN classification of protected areas. A conservancy which qualifies as a protected area under IUCN category VI includes an area that conserves ecosystems and habitats together with associated cultural values and traditional natural resource management systems. A proportion of such protected area is under sustainable natural resource management with low impact activities compatible with natural resource conservation permitted. Among the objectives of conservation under this category is to promote sustainable use of natural resources while considering ecological, economic and social dimensions and promoting their benefits to local communities⁷⁴.

In Namibia, where the concept of conservancy is well developed, conservancy is described as a legally recognised geographical defined area that has been formed by communities to manage and benefit from wildlife and other natural resources⁷⁵. Conservancy in Zimbabwe is described as voluntary, co-operative environmental management of an area by community and its user groups⁷⁶.

The above three descriptions of conservancy, unlike WCMA go beyond wildlife conservation to include elements of social and economic benefits as a result of wildlife management. This gap by WCMA raises concern on its goodwill to promote holistic development of conservancies. A focus only on the ecological dimension of conservancy narrows down its principles of sustainable use of the natural resource and access to benefit from the use. The definition and scope of conservancy by WCMA ignores its difference from parks and reserves whose objective is primarily wildlife conservation. This definition provides basis upon which the governance and management frameworks of conservancy are examined.

⁷⁴ IUCN Protected Areas Categories System, <www.iucn.org/pa_categories/> accessed 27 June 2015

⁷⁵ Chris Weaver and Theunis Petersen, 'Namibia Communal Area Conservancies', (2008) Best Practices in Sustainable Hunting pp48-52

⁷⁶ Rosaleen Duffy. Review of Harry Wels, *Private Wildlife Conservation in Zimbabwe: Joint Ventures and Reciprocity*. (H-South Africa, H-Net Reviews) 2004

2.2.1 Conservancy Governance Framework under Private Land Tenure

The participation of private landowners in conservation has over the years had minimal attention and support in policy frameworks both at the national and international levels⁷⁷. Recent developments have seen recognition of the private landowners' conservation efforts. The CBD in its 12th conference of parties held on October 14th, 2014 in Korea recognised the contribution of PPAs in conservation of biodiversity and encouraged the private sector to continue its efforts to protect and sustainably manage ecosystems for biodiversity conservation⁷⁸. In addition, the World Parks Congress in its meeting in November 2014 acknowledged the increasing role of privately-conserved areas and territories in reaching biodiversity conservation and societal goals⁷⁹.

In recognising private stakeholders in wildlife conservation, WCMA provides that a person may individually or collectively establish a conservancy on their land⁸⁰. A 'person' includes natural and legal person such as companies, corporations, associations, cooperatives and NGOs. The effect of recognition of private conservancies gives them legitimate status as conservation areas. Currently, the number of private conservancies in Kenya is almost the same the number of community conservancies⁸¹.

Private conservancy in this study is equated to PPA based on the IUCN governance classification⁸². A conservancy owned by one or more individuals is governed by the individual landowner or collectively by the landowners based on type of land ownership. Ownership of conservancy by NGO or body corporate creates a governance structure through the board, management committee or shareholders⁸³.

⁷⁷ Peter Andrew Lindsey et al, 'Benefits of wildlife-based land uses on private lands in Namibia and limitations affecting their development', [2013], vol47, (iss1) Oryx pp. 41-53 at p12 <<http://journals.cambridge.org>> accessed 9 September 2015

⁷⁸ <www.cbd.int/doc/?meeting=cop=12> accessed 9 September 2015

⁷⁹ IUCN World Parks Congress, 'The Promise of Sydney: Vision' 2014 <http://worldparkscongress.org/about/promise_of_sydney_vision.html> accessed 9 September 2015

⁸⁰ WCMA 2013, s39

⁸¹ Joanna Elliott et al, 'Exploring Environmental Complementarity between Types of Protected Areas in Kenya' (2014) AFD p28

⁸² Sue Stolton, Nigel Dudley, 'Private governance of protected areas in Africa: Cases studies, lessons learnt and conditions of success' [2015] Equilibrium Research and London, UK, IIED p43

⁸³ Brent A. Mitchell, 'Who's Doing the Protecting in Protected Areas?: A Global Perspective on Protected Area Governance' (2007) vol24, The George Wright Forum p85

Several individual private landowners with contiguous parcels of land may come together to form group conservancy. Governance under group conservancy is collective by all the landowners based on agreed terms such as shares contribution to the group conservancy. Majority of group conservancies establish companies, trusts or associations to form effective governance structure of conservancy. An example of the private governance of group conservancy is majority of the conservancies neighbouring the Maasai Mara National Reserve including Lemek, Mara North, Naboisho, Motorogi, Olkinyei and Enonkishu. The land around the National reserve was previously held as communal but subdivided into individual land titles between 1999 and 2009. The individual land holdings later came together to form group conservancies comprising between 90 to more than 700 private landowners⁸⁴.

Both group and private conservancies could have another category of governance referred as shared or mixed governance. This type of governance occurs when ownership of the conservancy and its management are different. The conservancy may engage a management company or tourism operating company to share decision making power with the landowner⁸⁵. Several conservancies in the Mara region such as Mara North, Naboisho Olchorro and Motorogi have the shared governance structure.

WCMA fails to provide for a clear and harmonized governance structure for private conservancies as that developed under the IUCN framework. This omission by WCMA results in a fragmented governance framework for conservancies with no clear roles, functions or powers in relation to wildlife management. Private landowners are left with the choice to identify the governance structure that suits their circumstances within different legal frameworks that are not wildlife management specific.

The discretion by landowners to determine governance structure for private conservancies is not desirable in wildlife management despite wildlife occurring on private land. This is because wildlife is recognised as a public resource⁸⁶ whose benefits should not be restricted to the private landowner alone but to other people affected by its conservation and management such as the

⁸⁴ Joanna Elliott et al, 'Exploring Environmental Complementarity between Types of Protected Areas in Kenya' (2014) AFD p52

⁸⁵ Sue Stolton, Nigel Dudley , 'Private governance of protected areas in Africa: Cases studies, lessons learnt and conditions of success' [2015] Equilibrium Research and London, UK, IIED p9

⁸⁶ The Wildlife Society, *The Public Trust Doctrine: Implications for Wildlife Management and Conservation in the United States and Canada* (Technical Review) 2010 p9

surrounding communities. Further, sustainable use of wildlife resources on private land is determined by nature of the legal framework developed to regulate decision making powers on the wildlife⁸⁷. Provision of governance model for private conservancies by WCMA is therefore important to ensure conservation, sustainability and equitable access of benefits from wildlife.

Despite PPAs decision making structure and ability to maximize benefits being considered more effective than community protected areas, their commitment to long term security of land for conservation is key challenge to private governance. The long term security is especially limited where land ownership passes from a land owner who is committed to maintain land for conservation to another landowner with different land use priorities. Ineffective accountability and transparency are also considered challenges in the private governance model especially where there is minimal government or legislative intervention.

Legal or formal binding commitments by landowners to set aside their land for long period of time for biodiversity conservation have been recognised as effective measure to address long term commitment challenges⁸⁸. The legal agreements include conservation easements and development of long-term management plans. WCMA allows creation of conservation easements by providing that they may be voluntarily created by private arrangement for a long period of time or for an equivalent interest as agreed by the parties⁸⁹. Development of management plans is a requirement by WCMA for purposes of making landowners commit to sustainable management of managing a conservancy which will be further discussed in this chapter.

2.2.2 Conservancy Governance Framework under Community Land Tenure

Community governance is pegged on the notion that a certain community is exercising rights over specific land it owns and has authority to determine its use and management. Governance in this sub-section specifically refers to the traditions and institutions by which authority is

⁸⁷ ibid

⁸⁸ Nigel Dudley, (ed) *Guidelines for Applying Protected Area Management Categories* (IUCN Gland, Switzerland 2008) x + 86pp. p32 With Sue Stolton, Peter Shadie and Nigel Dudley *IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types* (Best Practice Protected Area Guidelines Series No. 21, IUCN Gland, Switzerland 2013) xxpp

⁸⁹ WCMA 2013, s65(1) and (3)

exercised for the common good and includes the capacity to effectively manage resources and implement policies and practices⁹⁰.

Community is described by the Constitution in respect to a group of people identified on basis of ethnicity, culture or similar community interest⁹¹. WCMA defines community as a group of individuals or families who share common heritage, interest or stake in unidentifiable land, land based resources or benefits derived from the resources. Community land is further described by the Constitution⁹² and the authority over such unregistered land vested on the respective County government to hold in trust the land for the community⁹³.

The Constitution requires legislation to be developed to give life to the provisions relating to community land⁹⁴. This Constitutional requirement follows the National Land Policy recommendation⁹⁵ on development of a specific legal framework to recognize, protect and register community land rights and land based resources⁹⁶.

WCMA recognises that communities can also establish conservancies on land owned by the communities⁹⁷. However, WCMA fails to provide a governance framework for community conservancies. The conservancies therefore largely rely on the governance structures of fragmented land and institutional legal registration regimes such as Trusts Land Act and Land Group Representatives) Act and Companies Act.

Currently, community conservancies are developed on either trust lands or group ranches. Trust lands are governed through the Trust land Act⁹⁸ which vests ownership of the land on County governments and previously on county councils before promulgation of the Constitution in 2010.

⁹⁰ Definition of Governance by World Bank in Margie Buchanan-Smith et al, 'Governance for Peace Over Natural Resources: A Review of Transitions in Environmental Governance Across Africa as a Resource for Peace-building and Environmental Management in Sudan' [2013] United Nations Environmental Program p13

⁹¹ WCMA 2013, s63(1)

⁹² Constitution of Kenya 2010, Art63(1)(2) provides definition of community land as land lawfully registered in the name of group representatives under the provisions of any law; land lawfully transferred to a specific community by any process of law; land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; or lawfully held as trust land by the county governments and land declared to be community land by an Act of Parliament

⁹³ Constitution of Kenya 2010, Art 63(3)

⁹⁴ Ibid, Art 63(5)

⁹⁵ Sessional Paper No. 3 of 2009

⁹⁶ Ibid s3.3.1 para66 (d)(i)

⁹⁷ WCMA 2013, s39

⁹⁸ Cap 288, Laws of Kenya

The Trust Land Act grants communities rights of occupation, use, control, inheritance, succession and disposal of trust lands. Any expropriation of the trust land for public purpose requires that there is compensation but this has been ignored with the irregular and illegal disposal of trust lands being the norm⁹⁹.

Group ranches include lands held in common as adjudicated group ranches and are governed through the Land (Group Representatives) Act¹⁰⁰. The Act aimed at streamlining the group ranch concept through which trust lands mainly in ASALs with pastoralism as main economic activity would be transformed to deed holdings with rights and responsibilities of land ownership invested in group ranch members to improve productivity of such lands¹⁰¹. The Act incorporates nominated representatives or members of the group ranch who are vested with ownership on behalf of its members. The group ranch is managed by the group ranch committee which develops internal by-laws to guide its responsibilities and actions. The committee has power to allocate land to third parties. However, the members of the group ranch should be informed and accept to the allocation of land to third parties.

The group ranch system of communal land management has been subject to abuse especially by committees who have been accused of lack of transparency and corruption in management of the group ranches by illegally and irregularly allocating the lands. As a result and particularly in the last two decades, majority of the group ranches have opted to subdivide group ranch land and allocate to individuals members thus privatizing the land management¹⁰². Some of the group ranches that have subdivided within Amboseli ecosystem include Kimana, Eselenkei and Olgulului is proposed to be subdivided¹⁰³.

⁹⁹ Collins Odote, 'The Legal and Policy Framework Regulating Community Land in Kenya: An Appraisal' Friedrich Ebert Stiftung
Nairobi, Kenya <[www.fes-kenya.org/media/publications/Legal and Policy Framework Regulating Community Land in Kenya 2013.pdf](http://www.fes-kenya.org/media/publications/Legal_and_Policy_Framework_Regulating_Community_Land_in_Kenya_2013.pdf)> accessed 25 August 2015

¹⁰⁰ Cap 287, Laws of Kenya

¹⁰¹ J.C. Ngethe, 'Group ranch concept and practice in Kenya with special emphasis on Kajiado District', (1993)

¹⁰² Fred Nelson, 'Recognition and Support of ICCAs in Kenya' [2012] in Ashish Kothari et al (eds) 'Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global Overview and National Case Studies' (Technical Series no64) Secretariat of the Convention on Biodiversity, ICCA Consortium, Kalpavriksh and Natural Justice, Montreal, Canada

¹⁰³ Shauna BurnSilver, Esther Mwangi, Beyond Group Ranch Subdivision: Collective Action for Livestock Mobility, Ecological Viability, and Livelihoods (2007) CAPRI Working Paper no66 p3

Land under trust lands and group ranches are therefore characterized with poor governance structures that are largely unaccountable and insensitive to its members or beneficiaries' interests. Community conservancies have been developed on the trust lands and group ranches as a means to address the challenges identified on these land tenure systems. The conservancies register under different legal regimes such as companies, trusts, associations, or CBOs in order to develop stronger, more accountable and transparent institutions to effectively manage individual and common land resources. These legal management regimes are considered to create clearer and improved governance frameworks compared to those under Trust land Act and Group (Land Representatives) Act¹⁰⁴.

Community conservancies have also explored shared governance between the community as the landowners and private entities such as tourism operating companies being the management structures¹⁰⁵. Such conservancies include Olderkesi in the Mara region. This is geared towards improving the efficiency in governance and management of the conservancies.

While developing conservancies on trust lands and group ranches can be considered a commendable progress in improving management of these land tenure systems, absence of a harmonized legal framework to demarcate, register and secure communal land rights remains a gap. A harmonized legal framework that enables such rights be ascertained, enforced and empower communities have full ownership and control of their lands is essential.

The Constitution envisaged addressing the malpractices in the legislations managing communal lands through enactment of the community land law by August 2015. Community conservancies are not a complete remedy for the malfunctions of the current legal frameworks managing communal land rights. The different legal regimes through which they are registered and managed fail to effectively address governance issues that are specific to communally managed natural resources. The future growth success of community is highly determined by the nature of community land law developed.

¹⁰⁴ *ibid*

¹⁰⁵ Sue Stolton, Nigel Dudley, 'Private governance of protected areas in Africa: Cases studies, lessons learnt and conditions of success' [2015] Equilibrium Research and London, UK, IIED p10

2.2.3 Community Land Governance under Community Land Bill 2015

The community land law will have significant impact on governance and management of community conservancies. The conservancies will be required to comply with the registration, governance and management provisions so as to have access, ownership and use of community land.

The Community Land Bill¹⁰⁶ vests community land in community and the land can be held either under customary, freehold or leasehold land tenure systems. The right of ownership of land by community is not absolute since the community is required to first register their interest in particular land. Unregistered community land shall be held by the respective County governments in trust for the communities. The County government is restricted from disposing unregistered land that it is holding in trust for the community. The process of recognition and registration of community land under this law will determine the success of communities to actually own land. A complicated and cumbersome process to communities will result to majority of community land being left unregistered and consequently denying communities the opportunity to secure land rights. Further, the current inefficiencies occasioned by the Trusts Lands will be perpetuated.

The Community land Bill requires a community claiming interest in land to first register as a society in accordance to law relating to societies. Consequently, the community as a unit is responsible for management and administration of their community land. Registration of community under the Societies Act¹⁰⁷ fails to confer community a body corporate status and powers thus limiting it from dealing with the land as a body corporate would. This weakens the ability and right of communities to effectively manage their land leaving them with a weak tenure system that is not accorded equal rights with private land tenure.

Further, the Act lacks proper governance structure to provide oversight on varied land use and management of natural resources by multiple community members. Communities are therefore expected to adopt institutional governance and management structures under the Societies Act¹⁰⁸. Societies are marred with wide government interference through extensive discretion of powers

¹⁰⁶ Community Land Bill (2015) National Assembly Bill no45 (11 August 2015, Kenya Gazette Supplement no129)

¹⁰⁷ Cap 108, Laws of Kenya

¹⁰⁸ *ibid*

by the registrar of societies to determine whether or not to register a community. Government officers' interference in the daily management of the society exit through powers to investigate, arrest, enter and search the society's premises.

The community if registered as society, will be burdened with submission of annual returns and filing with the registrar of societies besides the regulations imposed by the Community land law. Failure of submission of the annual returns and contravention of the Societies Act attracts penalties and can lead to cancellation of registration of the society¹⁰⁹. The subsequent effect of cancellation of registration of the community as society affects the community's right to security of tenure and related rights.

The Bill therefore fails to meet the spirit of the National Land Policy¹¹⁰ and the Constitution¹¹¹ that envisaged and required that clear framework and procedures for recognition, protection and registration of community rights to land are developed.

2.3 MANAGEMENT FRAMEWORK OF CONSERVANCIES

Conservancy management in this context refers to the management practices of active administration of conservancy institution and the mechanisms to achieve the conservancy objectives. The management of community and private conservancies varies from simple to complex structures. The management authority vests with the respective landowners, who determine the conservation objective, develop and enforce management plans subject to applicable legislation. The exercise of this right or authority is regulated by informal and legal systems and structures that include policies and management structures.

2.3.1 Conservancy management Structures

WCMA does not provide for any management structures of conservancies. In this regard, conservancies have discretion to determine their respective management structures. The management goals of a conservancy as well as the land tenure under which the conservancy occurs, whether private or community, largely determine the management structures. Currently, community and private conservancies have varied structures but generally employ management

¹⁰⁹ Societies Act Cap 108, s12

¹¹⁰ Sessional Paper No. 3 of 2009

¹¹¹ The Constitution of Kenya, 2010

staffs with expertise to oversee day to day administration. The management staffs include conservancy manager who oversees conservation and management of wildlife and the conservancy institution and community wildlife scouts responsible for wildlife security. The conservancy manager may include individuals or corporates who are accountable to landowners. The overall strategic oversight and management roles are carried out by the conservancy board that includes the landowners¹¹².

Community conservancies' management is more complex than that of private conservancies. The complexity is resulted by the requirement to ensure equity in representation of the diversity in the community including sub-ethnic groups, age and gender factors. In well-structured and governed conservancies, the traditional governance structures such as council of elders play an important role in determining the management structures and objectives for the conservancies. The elders are perceived to understand and represent the interests of the community. For instance the conservancies under the support of NRT require that the management is comprised of the council of elders have a role in determining the management objectives of the conservancy based on the immediate needs of the members. The elders are consulted prior to election or nomination of the board as well as employment of community wildlife scouts¹¹³.

The management structure of community conservancies is also comprised of a range of staff depending on the programs of the conservancy. Certain positions of employment especially those demanding specialised skills require external sourcing while non-skilled labour is sourced within the community. Considering that employment is perceived as a key form of benefit to the conservancy members, principles of equity and transparency are crucial. The conservancy elders play an important role in ensuring that equity is applied in employments.

In the absence of a framework to guide management of conservancies within WCMA, the requirement for development of subsidiary regulations to regulate activities in conservancies would be considered opportunity in bridging this gap¹¹⁴. The draft Wildlife Conservation and Management (Conservancy and Sanctuary Regulations) 2015 has one of its objectives to harmonize standards of conservancy management. The Regulations provide that a conservancy

¹¹² Louise Glew at al, 'Evaluating the Effectiveness of Community Based Conservation in Northern Kenya'(2010) A report to The Nature Conservancy, University of Southampton, School of Civil Engineering and the Environment

¹¹³ Juliet King et al, A Guide To Establishing a Community Conservancy-The NRT Model 2015

¹¹⁴ WCMA 2013, s116(2)(d)

may employ a conservancy manager, management company or institution to conduct day to day management of the conservancy.

2.3.2 Conservancy Management Plan

It is widely recognised that every protected area including a conservancy needs to be managed through a management plan to guide its management and ensure effective use of limited resources. Management planning is described to include interpretation and integration of a range of policies, strategies, business plans and legislative requirements into a geographical area to guide management of a particular protected area and assure the public that the area is being responsibly managed. Management plan is considered important for the following reasons¹¹⁵:

- i. to ensure protected areas are managed to achieve conservation objectives, corporate goals, legislation and stakeholder expectations;
- ii. to prevent increment in degradation through ad hoc decision making;
- iii. to create a shared understanding of the vision and
- iv. to ensure public accountability

WCMA requires management standards of conservancy are in accordance to approved management plan. The minimal standards for the management plan are set in the fifth schedule of WCMA¹¹⁶. Conservancies have previously developed management plans not as a legal obligation but as a best practice on effective management. In the development of management plans, conservancies have been guided by various international and national principles and standards to meet the interests and circumstances of the conservancy. Their implementation has largely been voluntary with no legal consequences for non-compliance.

A management plan is characterized by WCMA as an instrument that describes all ingredients for active management, particular activities to be undertaken and responsible entity to undertake the activities. For a management plan to be effective, it is advised that it should be simple, practical and designed to the capacities of the agencies involved. It is further required to have annual update with an annual compliance report developed as well as a 5 year third-party

¹¹⁵ Philip Muruthi, 'The Process of Preparing a General Management Plan for a Protected Area' (2006) African Wildlife Foundation Working Papers <[www.awf.org/sites/default/files/media/Resources/Books and Papers/AWF_GMP_for_Protected_Areas_paper.pdf](http://www.awf.org/sites/default/files/media/Resources/Books_and_Papers/AWF_GMP_for_Protected_Areas_paper.pdf)> accessed 9 September 2015

¹¹⁶ WCMA 2013, s44

management report¹¹⁷. Some of the key and minimal information required to be captured in the management plan include¹¹⁸:

- i. Legal description of area covered by the conservancy including its boundaries;
- ii. Wildlife management goals and objectives;
- iii. Species and habitat covered by the plan;
- iv. Time period for the plan;
- v. Activities being undertaken;
- vi. Description of the how the conservancy includes the neighbouring in development of the plan;
- vii. Anticipated benefits and beneficiaries

A conservancy practicing non-consumptive and consumptive wildlife utilization and has vast area of coverage, many species, habitats and activities is required to provide more information in its management plan. The additional information is in relation to wildlife utilization; zoning and management objectives of each zone; management of migratory species and identification of breeding areas and the monitoring plan and historical data on the consumptive utilization activities¹¹⁹.

The development of a management plan by a conservancy is under the oversight of CWCCC¹²⁰. Where a conservancy has limited capacity in development of the management plan, it can seek support and from KWS¹²¹. An approved management plan is gazetted by the cabinet secretary¹²² which is a prerequisite for any development in the conservancy to be accepted¹²³.

A conservancy is expected to meet the management plan standards in the course of its operations. WCMA provides for redress measures where the management standards are not

¹¹⁷ WCMA 2013, sch5 pt1

¹¹⁸ WCMA 2013, sch5 pt2(1)

¹¹⁹ WCMA 2013, sch5 pt29(2)(3)

¹²⁰ WCMA 2013, s19(b)

¹²¹ WCMA 2013, s7(j)

¹²² WCMA 2013, s44 (3)

¹²³ WCMA 2013, s44(4)

achieved by empowering CWCCC to make recommendations to bring the conservancy up-to the required standards. The recommendation may include¹²⁴:

- i. activities to be undertaken by the conservancy
- ii. activity to be undertaken by KWS on behalf of the conservancy with expenses incurred offset by conservancy
- iii. joint action by KWS and conservancy with expenses incurred offset by conservancy or
- iv. de-registration of the conservancy

The standards set by WCMA for development of conservancy management plan as described above require technical and financial capacity. Majority of conservancies especially community conservancies are limited with such capacity obliging them to seek external support. The legal prerequisite for management of private and community conservancies through government approved management plans is described by some writers as a way of surrendering a portion of management rights by the landowners to the government.

The management plans according to Nigel, are a means through which the government monitors activities in conservancies by evaluating the management objectives, their effectiveness and alignment to national rules and regulations on wildlife management. He further considers management plan as a measure to secure legal-binding commitment by land owners to conservation over a considerable period of time that would yield conservation benefits¹²⁵.

WCMA creates an offence of wilful and without reasonable cause contravention or fraudulent alteration of an approved management plan. The offence attracts a fine of not less than one hundred thousand shillings¹²⁶. The creation of an offence is meant to secure commitment to implementation of the approved management plan thus qualifying the statement above by Nigel.

2.3.2.1 Key Concerns on Development and Implementation of Management Plan

Key issues that arise from the provisions of WCMA on standards of management set out include:

¹²⁴ WCMA 2013, s43

¹²⁵ Nigel Dudley, (ed) *Guidelines for Applying Protected Area Management Categories* (IUCN Gland, Switzerland 2008) x + 86pp. p32 With Sue Stolton, Peter Shadie and Nigel Dudley *IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types* (Best Practice Protected Area Guidelines Series No. 21, IUCN Gland, Switzerland 2013) xxpp

¹²⁶ WCMA 2013, s88(10) and(2)(b)

- i. The procedure for developing a management plan involves supervision by multiple government institutions thus the risk of excessive time consumption, expensive and cumbersome process. CWCCC is mandated to oversee development and implementation of management plans as well as monitor whether the management standards are consistent with the plan. CWCCCs are setup by KWS in all counties of Kenya to facilitate devolution of certain functions of wildlife conservation and management¹²⁷. KWS is responsible to approve management plans that have been reviewed by CWCCCs. Following approval, a management plan is published in the gazette notice by the cabinet secretary prior to its implementation.
- ii. CWCCC is mandated by WCMA to oversee the development and implementation of the management plan¹²⁸. WCMA however does not expound on what the oversight role of the CWCCC includes. This provides CWCCC with wide discretion to interpret its oversight role thus the risk of mis-use or mis-interpretation of this power. This is likely to cause conflict between CWCCC and the landowner ultimately affecting the successful management of the conservancy.
- iii. The capacity of the CWCCC to provide oversight and monitoring role on development and implementation of conservancy management plan is questioned. This is in consideration of its composition and the fact that it is not a permanent institution but an ad hoc committee. Nine of the thirteen members of CWCCC are public officers performing specific designated official roles. Their reliable availability to provide oversight and monitoring role is not guaranteed thus affecting smooth process of development and implementation of the management plans.

With the standards of conservancy management legally heightened, landowners expect WCMA to create opportunities and incentives to encourage landowners adopt conservancy as land use option. Further, this would be a means to balance the law such that it is not only inclined to prescribe but also to facilitate management and development of conservancies otherwise it would end up being a dis-incentive for conservancy movement growth.

¹²⁷ *ibid* s7(c)

¹²⁸ WCMA 2013, s19(b)

2.4 CONCLUSION

The governance and management framework on conservancies by WCMA are inadequate to support development of conservancies. The deficiencies in governance are largely associated with the definition of conservancy which describes a conservancy in the context of land set for conservation purpose. The definition detaches the conservancy from the human needs that would complement sustainable wildlife conservation.

Further, considering that a conservancy is expected to support national wildlife conservation objectives, absence of a framework to support effective governance threatens the nature of decisions likely to be made by landowners to promote sustainable conservation. The governance gap has higher impact on community conservancies whose current legal frameworks under either Trusts land or Land (Group Representatives) Act are considered ineffective and not responsive to community interests. Although a flexible and non-prescriptive legal framework to support development of conservancies is desired, absence of principles to harmonize the governance and management only leaves conservancies to be governed by diverse legal regimes.

Although management standards are set by WCMA to ensure conservancies address wildlife conservation objectives, the structures set to monitor implementation of the management plans could inhibit effective management. The management standards would require technical expertise which most conservancies especially community led would not have. The approval processes of the plans and oversight of effective management involves different levels of bureaucratic endorsement. Conservancy management is thus made complex and fails to link with the day to day management objectives and structures of the conservancy.

CHAPTER 3

DEVOLVING WILDLIFE MANAGEMENT TO LANDOWNERS: REALITY OR FALACY?

3.1 INTRODUCTION

Conservation and management of wildlife under WCMA is required be devolved to land owners where wildlife occurs¹²⁹. Wildlife conservancies, recognised by WCMA therefore facilitate the principle of devolution of wildlife conservation. However, this chapter will analyse of the extent to which WCMA supports actual realisation of the devolution principle to enable landowners participate in wildlife conservation.

3.2 ANALYSIS OF THE CONCEPT OF DEVOLUTION

Devolution is a concept that has evolved in Kenya over the years and construed differently based on the political leadership of the day. It has been pursued mainly in reaction to failures of inclusion and proper planning for national development or weakness in various sectors of the government¹³⁰. Over these years, devolution debate has been rooted on concentration of power by the executive and centralized institutions which operate in a framework that fails to check on their powers, lack of accountability and exclusion of groups and communities from natural resources¹³¹. Devolution is characterized as a form of decentralization¹³² with the latter being described as an ideological principle whose objectives include self-reliance, democratic decision making, popular participation in governance, and accountability of public officials to citizens¹³³.

¹²⁹ Ibid, s4(a)

¹³⁰ Dennis A. Rondinelli et al, 'Decentralization in Developing Countries: A Review of the Recent Experience' (1983) World Bank Staff Working Papers no581 p10 www-wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/1983/07/01/000009265_3980928162717/Rendered/PDF/multi0page.pdf accessed 04 October 2015

¹³¹ Dan Juma, Devolution of Power as Constitutionalism: The Constitutional Debate and Beyond, in Ethnicity, Human Rights and Constitutionalism in Africa, (2008) International Commission of Jurists (eds) pp36-58 <<http://ssrn.com/abstract=1382821>> accessed 04 October 2015

¹³² Steve O. Odero, Devolved Government in PLO Lumumba et al, *The Constitution of Kenya: Contemporary Readings* (Law Africa Publishing, 2011) p203

¹³³ Dennis A. Rondinelli et al, 'Decentralization in Developing Countries: A Review of the Recent Experience' 1983 World Bank Staff Working Papers no 581 p12 p10 www-wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/1983/07/01/000009265_3980928162717/Rendered/PDF/multi0page.pdf

Devolution according to Rondinelli involves creation of financially or legally subnational units of government that are substantially outside the direct control of the central government. Central authority only exercises indirect supervisory control over the sub national units¹³⁴. Devolution is also described as the transfer of rights and assets from the central to local governments or communities within the context of national laws that set the limit for the devolution¹³⁵.

Despite devolution being described in varied contexts, it has common principles and objectives. The ultimate purpose of devolution is recognized as placing decision making in the hands of the people through representation which is closer and more directly accountable thus promoting democracy and good governance¹³⁶. From a political context, devolution is termed as a practice through which the power to make and implement decisions in selected spheres of public policy is conferred to elected lower or sub-national levels of government by the law. It is a means through which the state is restructured to achieve democratic processes. The key principles of effective devolution aimed at responding to local people's needs include¹³⁷:

- 1) public participation
- 2) accountability
- 3) self-rule
- 4) good governance
- 5) equitable development

In a natural resource management context, devolution is described as the transfer of decision making authority over natural resources and benefits from central state to local actors with the aim of increasing resource user participation in decision making and accessing benefits¹³⁸. The

wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/1983/07/01/000009265_3980928162717/Rendered/PDF/multi0page.pdf accessed 04 October 2015

¹³⁴ *ibid* p24

¹³⁵ Carol J. Pierce Colfer and Doris Capistrano (eds), *The Politics of Decentralisation: Forests, Power and People* (1st edn, Earthscan, 2005) p124 <http://books.google.com/books?isbn=1136552588> accessed 18 September 2015

¹³⁶ Muna Ndulo, 'Decentralisation: Challenges of Inclusion and Equity in Governance' in Muna Ndulo (ed), *Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation* (James Currey, Oxford Ohio University Press 2006) p95

¹³⁷ Dan Juma, Devolution of Power as Constitutionalism: The Constitutional Debate and Beyond, in Ethnicity, Human Rights and Constitutionalism in Africa, (2008) International Commission of Jurists (eds) pp36-58 <<http://ssrn.com/abstract=1382821>> accessed 04 October 2015

¹³⁸ Sheona Shackleton et al, 'Devolution and Community Based Natural Resource Management: Creating Space for Local People to Participate and Benefit?' (2002) Natural Resource Perspectives no76 London Overseas Development Institute

absence of devolution or failure to transfer adequate decision making powers to local actors is recognised as a key barrier to participation of communities in management of natural resources¹³⁹.

Devolution however, does not automatically ensure good governance¹⁴⁰ especially if it is wrongly planned or entirely anarchic¹⁴¹. Further, capacity constraints and weak institutional frameworks are likely to undermine the effectiveness of devolution. The success of devolution is safeguarded by addressing the following key objectives¹⁴²:

- Balance of power between national government and the sub-national entity or community through clear rules on devolution
- Development of rules dealing with the structure, roles and funding of the sub-national entities or community

3.3 CONSTITUTIONAL FRAMEWORK FOR DEVOLUTION OF WILDLIFE CONSERVATION AND MANAGEMENT

Devolution has been central to Constitutional reforms in Kenya with its development highlighted in the last two decades. The Constitution of Kenya 2010 has in its heart devolution, setting new parameters for environmental, social and political governance and the basis of legislative reforms. The Constitution recognises sharing and devolution of power among the national values and principles of governance¹⁴³. The objectives of devolution advanced by the Constitution include¹⁴⁴:

- Promotion of democratic and accountable exercise of power;
- Provide people with powers of self-governance;

¹³⁹ Jesse C Ribot, *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization* (World Resource Institute, Washington, DC 2004)

¹⁴⁰ Muna Ndulo, 'Decentralisation: Challenges of Inclusion and Equity in Governance' in Muna Ndulo (ed), *Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation* (James Currey, Oxford Ohio University Press 2006) p80

¹⁴¹ Carol J. Pierce Colfer and Doris Capistrano (eds), *The Politics of Decentralisation: Forests, Power and People* (1st edn, Earthscan, 2005) p124 <http://books.google.com/books?isbn=1136552588> accessed 18 September 2015

¹⁴² Muna Ndulo, *Decentralisation: Challenges of Inclusion and Equity in Governance* in Muna Ndulo (ed), 'Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation' James Currey, Oxford Ohio University Press 2006 p83

¹⁴³ Constitution of Kenya 2010, Art10(2)(a)

¹⁴⁴ *ibid*, Art174

- Enhance people’s participation in making decisions that affect them;
- Recognise the right of communities to manage their own affairs and further their development;
- Promote social and economic development and provision of proximate, easily accessible services;
- Ensure equitable sharing of national and local resources;
- Facilitate decentralization of state organs including their functions and services and
- Enhance checks and balances and the separation of powers

In order to facilitate devolution, the Constitution outlines functions and resources that are devolved to county government and those of national government responsibility. Natural resources are classified as public land and include government game reserves, national parks and government animal sanctuaries¹⁴⁵. These wildlife protected areas are under the control of the national government in trust for the people of Kenya¹⁴⁶. Further, the protection of environment and natural resources including wildlife is vested with the national government with the aim of developing a durable and sustainable system of development¹⁴⁷. Despite the Constitution vesting the national government with the responsibility of wildlife management, it requires the government to encourage the public in participation of environment management, protection and conservation¹⁴⁸.

The promulgation of the Constitution in 2010 necessitated legislative and institutional reforms to enable alignment to its key principles and provisions. Reforms in wildlife governance were desired due to the failures that characterized wildlife management over 30 years under the regime of WCMA Cap 376. A centralized system of conserving and managing wildlife that largely excluded community and private landowners, inadequate incentives and benefits for landowners and communities to participate in wildlife conservation and increased conflicts between wildlife and people were among the key failures¹⁴⁹. Wildlife governance reforms aimed at mainstreaming the needs and goals of landowners in wildlife areas into wildlife

¹⁴⁵ Constitution of Kenya 2010, Art62(1)(g)

¹⁴⁶ *ibid* Art62(3)

¹⁴⁷ Constitution of Kenya 2010, sch4 pt1 Art22(b)

¹⁴⁸ Constitution of Kenya 2010, Art69(1)(d)

¹⁴⁹ The National Wildlife Conservation and Management Policy 2012 (Draft), pt5

conservation planning and in decision making processes¹⁵⁰. Further, a legal framework that decentralized and devolved wildlife management to communities and private sector was desired¹⁵¹.

3.4 CONTEXTUALIZING DEVOLUTION IN WILDLIFE CONSERVATION MANAGEMENT ACT

Wildlife in Kenya is vested in the national government in trust for the people. This is because wildlife is recognised as a common property to all people. A common property is described as a natural resource with social, cultural, economic and political importance subject to collective ownership but to either individual or communal use¹⁵². Subsequently, wildlife conservation and management are functions entrusted to KWS a state corporation, for the benefit of the nation¹⁵³. KWS executes these functions within areas that are under its jurisdiction that include national parks, wildlife conservation areas¹⁵⁴ and sanctuaries¹⁵⁵.

Community and private lands accounts for majority of wildlife in Kenya. It is on this basis that WCMA regards devolution as one of the guiding principles to enable sustainable wildlife conservation. Devolution is defined by WCMA as “the transfer of rights, authority and responsibilities by the national wildlife agencies to the local delimited geographic and functional domains”¹⁵⁶. The effectiveness of devolution of wildlife management to landowners is determined by the ability of WCMA to promote democratic local governance and local participation in the use and management of the wildlife resource. This requires that the landowners have a voice and leverage decisions over the natural resource they manage and use through sufficient transfer of decision making, rule-making and dispute resolution powers¹⁵⁷.

¹⁵⁰ ibid

¹⁵¹ ibid

¹⁵² C. Ford Runge, ‘Common property and collective action in economic development’(1986) World Development, forthcoming in Robert Wade, ‘The management of common property resources: collective action as an alternative to privatisation or state regulation’ (1987) Cambridge Journal of Economics pp95-106

¹⁵³ Patricia Kameri Mbote, ‘Land Tenure, Land Use and Sustainability in Kenya: Towards Innovative Use of Property Rights in Wildlife Management’ (2005-4) IELRC Working Paper p7

¹⁵⁴ Wildlife Conservation Areas are defined by WCMA 2013, as ‘a track of land, lake or sea that is protected by law for purposes of wildlife and biological diversity conservation and may include a national park, national reserve, game reserve or sanctuary

¹⁵⁵ WCMA 2013, s7(a)

¹⁵⁶ WCMA 2013, s3(1)

¹⁵⁷ Jesse C Ribot, *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization* (World Resource Institute, Washington, DC 2004) pp5-6

The institutional structures and processes through which conservancies have a stake in decision making include:

- i. Representation in Institutional boards
- ii. Representation in County wildlife conservation and compensation committees
- iii. Public participation in development of subsidiary regulations and conservation plans

3.4.1 Representation in Institutional Boards

WCMA requires community and private conservancies be represented in the board of trustees of KWS¹⁵⁸. Community managed areas representation is through two persons of opposite gender nominated by an umbrella wildlife conservancy body¹⁵⁹ whereby one of them is positioned as the vice-chair of the board¹⁶⁰. Privately managed wildlife areas representation is by one person directly appointed by the cabinet secretary¹⁶¹. The board of trustees is mandated to oversee implementation of the national wildlife policy and approve strategic plans, policies and recurrent budgets of KWS¹⁶².

Though the above provisions of WCMA are positive development towards landowners' interest represented in the national dialogue of wildlife conservation, the mode of appointment of the representatives is a drawback to realisation of devolution principles. The direct appointment of private landowners' representative by the cabinet secretary without giving chance for the landowners themselves to nominate their representative challenges democratic power of the people and independence of the representatives. Further, transparency of the process to nominate and appoint both community and private representatives is questioned since WCMA fails to provide for nomination or appointment criteria leaving it at the discretion of the umbrella wildlife conservancy body and the cabinet secretary. The power vested in the umbrella wildlife conservancy body is in the assumption that it represents landowners' interests and no accountability measures exists to ensure that persons nominated act in the best interests of the community conservancies. Effective representation of landowners in KWS board is therefore compromised by undemocratic processes that constrain practical devolution.

¹⁵⁸ WCMA 2013, s 8

¹⁵⁹ WCMA 2013, s8(2)(f)(ii)

¹⁶⁰ *ibid* s8(3)

¹⁶¹ WCMA 2013, s8(2)(f)(iii)

¹⁶² WCMA 2013, s9

Community and private landowners are also included in the board of the Kenya Wildlife Research and Training Institute (Institute) which is mandated to undertake and coordinate wildlife research¹⁶³. Community and privately managed wildlife areas have representation by two persons who are competitively nominated and appointed by the cabinet secretary. Unfortunately, WCMA fails to provide the platform through which the two representatives are nominated thus limiting opportunity for appropriate representatives to be nominated.

3.4.2 County Wildlife Conservation and Compensation Committee

WCMA creates a new institution to facilitate devolution and delegation of certain wildlife conservation and management functions at the County level. KWS is empowered to set up CWCCC in every county of the country¹⁶⁴. The objective of CWCCC is to devolve management of compensation and certain conservation activities of wildlife to the County level.

CWCCC has a composition of thirteen persons with eight of them being public officers based at county government and a county government representative. The other five include one person being the chair of CWCCC who is competitively recruited and appointed by the cabinet secretary¹⁶⁵ and four persons nominated by community wildlife areas¹⁶⁶. The community representatives nominated by community wildlife associations need not be land owners but required to have knowledgeable in wildlife matters and not public officers¹⁶⁷.

CWCCC oversees important wildlife conservation and management matters at the county level that include¹⁶⁸:

- Facilitate registration and establishment of wildlife user rights;
- Oversee development and implementation of management plans on community and private lands;
- Facilitate benefit sharing from use of wildlife resources;
- Make recommendations on ecosystem based plans developed by KWS;
- Participate in mitigating human wildlife conflict and

¹⁶³ WCMA 2013, s51

¹⁶⁴ Ibid s7(c)

¹⁶⁵ Ibid s18

¹⁶⁶ Ibid s18(g)

¹⁶⁷ Ibid s18(g)

¹⁶⁸ WCMA 2013, s19

- Assess and make recommendations on compensation claims

The spirit of devolving the above functions to CWCCC is undermined by several factors. To start with, the structure of CWCCC is not one to operate on a daily basis rather as a committee that meets to address the functions when they arise. The functions given to the committee are central to devolution of wildlife conservation and management to landowners thus requiring an institution that operates on a permanent basis. Further, the composition of CWCCC is largely made of public officers working outside the jurisdiction of wildlife conservation. This challenges their commitment to achieve the mandates of the committee considering that they are not administratively bound by WCMA.

Secondly, absence of a clear and independent financial structure to support the functioning of CWCCC limits achievement of devolution as envisaged by WCMA. CWCCC relies on KWS to facilitate its allowances and other expenses¹⁶⁹, making it financially dependent on the national government institution which is responsible for its establishment and oversight. Absence or limited funding to CWCCC would therefore paralyse its operations since it has no powers to generate or seek additional or substitute funding. Lack of adequate financial resources has been considered as a key constraint on successful implementation of devolution¹⁷⁰. Further, WCMA fails to provide guidelines on the mode of funds transfer from KWS to CWCCC and the manner in which the funds are managed and accounted. This creates opportunity for mis-management of funds and uncertainty on the financial security and sustainability of the CWCCCs.

Thirdly, the nature of qualification for community representation in CWCCC undermines effective representation and participation of landowners. The qualifications fail to prioritize nomination of landowners who bear the cost of managing wildlife on their land and are directly affected by the mandates of CWCCC thus limiting devolution.

3.4.3 Public Participation

Public participation is a key principle of devolution that promotes inclusion of the public or relevant stakeholders in decision making processes. In natural resource management, public

¹⁶⁹ WCMA 2013, s16(2)(b)

¹⁷⁰ James Manor, 'Democratic Decentralization in Africa and Asia' (1995) vol26 iss2 IDS Bulletin pp81-88 in Jesse C. Ribot, *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation* (World Resource Institute, 2002 p29)

participation is considered essential to ensure environmental sustainability and the realization of development objectives¹⁷¹. Kenya's Constitution identifies public participation as one of the national values and principles of governance¹⁷² and requires the state to encourage public participation in environment conservation and management¹⁷³. WCMA recognises and promotes public participation as one its guiding principles in its implementation¹⁷⁴ and makes it a prerequisite in various decision making processes. The extent to which conservancy landowners engage in public participation in various decision making process is subject of discussion in this section.

Public participation is defined by WCMA as “active involvement by the citizenry in decision making processes through, inter alia, use of the national media, relevant consultative mechanisms and public hearings”. Sefton Derby simply defines public participation as consultative or empowered participation. Consultative participation occurs when a government provides its citizens and their representatives chance to be heard with no guarantee that the participation will be regarded. Empowered participation on the other hand occurs when participants are invested with decision making power and influence to processes¹⁷⁵. Katerere identifies two contexts of public participation being the right of public participation and the legal concept of public participation. The latter is based on the right to object to decisions but no role in decision making thus reactive while the former is proactive and creates opportunity for individuals to participate in formulation of management strategies and their implementation¹⁷⁶.

The term public participation is used in different ways and at times interchangeably with public consultation. Participation tends to refer to the active involvement of individuals in influencing and contributing in decision making processes through setting objectives, undertaking joint analysis and reaching decisions together¹⁷⁷. Consultation on the other hand refers to a more

¹⁷¹ Jennifer Mohamed Katere, ‘Participatory Natural Resource Management in the Communal Lands of Zimbabwe: What Role for Customary Law?’ (2011) vol5 iss3 African Studies Quarterly

¹⁷² Constitution of Kenya 2010, Art 10(2)(a)

¹⁷³ *ibid* Art 69(1)(d)

¹⁷⁴ WCMA 2013, s4(b)

¹⁷⁵ Sefton Darby, ‘Natural resource governance: New frontiers in transparency and accountability’ (2011) Transparency & Accountability Initiative, London, p 9 www.transparency-initiative.org/wp-content/uploads/2011/05/natural_resources_final1.pdf accessed 8th June 2015

¹⁷⁶ *ibid*

¹⁷⁷ Kirsty Blackstock et al, ‘Public Participation and Consultation in SEPA Regulatory Regimes’ (2006)The Macaulay Institute p4

passive engagement in decision making between decision maker and individuals. In consultation, individuals' views are gathered through for instance written comments to a consultation document¹⁷⁸. WCMA is more focused on providing guidelines on public consultation rather than public participation that has higher chances of ensuring public interests are taken into consideration.

The requirements for public consultation are set out in fourth schedule of WCMA to include:

- Publishing the consultation notice in media accessible to majority of the public such as in at least three national and one local newspapers broadcasting in a radio station of the locality;
- A summary of the proposed subject matter and location for its inspection be provided in the notice;
- Invitation requiring the public to submit their comments on the proposed subject matter either in writing or oral and
- Specification of the date and venue to which the comments are to be presented which should be no earlier than sixty days from date of notice.

The process of public engagement by WCMA in decision making through consultation as described above is more passive rather than active. This is contrary to devolution principle which considers public participation and not public consultation as central. Despite public consultation being regarded as a key regulatory tool to improve transparency, efficiency and effectiveness of in decision making, there is no obligation to act on the comments or recommendations of the public or individual beyond ensuring they are given fair consideration. The public or individuals consulted are only notified on the final decision¹⁷⁹.

Public participation in development of policies, laws and regulation is a key principle to ensure democratic governance. WCMA requires several subsidiary regulations be developed to

<http://www.macaulay.ac.uk/ruralsustainability/PublicParticipationinRegulatoryRegimesFinal.pdf> accessed 4th October 2015

¹⁷⁸ Kirsty Blackstock et al, 'Public Participation and Consultation in SEPA Regulatory Regimes' (2006) The Macaulay Institute p4

<http://www.macaulay.ac.uk/ruralsustainability/PublicParticipationinRegulatoryRegimesFinal.pdf> accessed 4th October 2015

¹⁷⁹ *ibid*

facilitate conservation and management of wildlife by the landowners. These regulations include¹⁸⁰:

- granting of wildlife user rights;
- conditions for licencing and permitting,;
- activities in wildlife conservancies and sanctuaries;
- measures to enhance community participation in wildlife conservation and management;
- prescribing manner of nomination of communities to the KWS board of trustees and CWCCC

Landowners, in a system that promotes devolution have opportunity to participate in development of above regulations that directly affect them. However, WCMA fails to impose a requirement for public participation in the development of these regulations. This omission creates a situation whereby regulations can be developed without contribution of the landowners and other relevant stakeholders failing to address their interests or concerns. The overall effect is that landowners may reject the regulations, discouragement on establishment of conservancies, or widespread un-cooperation in their implementation.

Despite the above omission by WCMA, the Statutory Instruments Act¹⁸¹ plays a supervisory role to legislative making process by the regulations making authorities to ensure that public consultation is carried out. The standards set by this Act to ascertain whether consultation was carried out include¹⁸²:

- i. persons likely to be affected by the proposed legislation have adequate opportunity to comment on it;
- ii. Notification be made to persons likely to be affected by the proposed legislation and
- iii. Invitation of submissions or participation in public hearings of the proposed legislation on specified date

¹⁸⁰ *ibid* s116(2)

¹⁸¹ No. 23 of 2013

¹⁸² Statutory Instruments Act, s5

Unfortunately, the above criterion for public consultation in the Statutory Instrument Act is still faced with deficiencies that ensure accountability in public consultations through active participation. Public consultation is therefore more reinforced in the statutory framework leaving it to the concern of whether it is by virtue of the intention to maintain participation at the level of inactive engagement or it is by mere misconception that consultation and participation are one and the same.

In the words of Kariuki Muigua, the quality and extent of participation is important so that it is not enough for people to participate but also appreciate the implications of the decisions to be made, otherwise it becomes a matter of formality¹⁸³. Cernea identifies that empowering people to mobilize social actors, resource managers, and decision makers and allowing for control of activities that affect their lives is important to ensuring effective participation¹⁸⁴. WCMA fails to promote factors that facilitate and ensure effective public participation contrary to devolution principles.

3.5 CONCLUSION

WCMA falls short of providing adequate framework to facilitate devolution of wildlife management. The Act does not provide sufficient transfer of power, adequate resources and lacks adequate democratic requirements to facilitate functioning of the devolved entities. This is despite its creation of bottom-up wildlife conservation and management institutions and processes aimed at facilitating devolution. The drawbacks identified in this chapter depict a likely scenario where the local institutions such as the CWCCC were created to facilitate devolution but strained in undertaking its mandates by the structural and financial shortcomings.

Democratic processes in nomination of landowners representation in decision making organs for instance KWS board of trustees is also constrained by national government interference. There exists vagueness on whether WCMA actually supports public consultation or public participation considering the use of both principles but an elaboration of public consultation. The effect of

¹⁸³ Kariuki Muigua, 'Towards Meaningful Public Participation in Natural Resource Management in Kenya' (2014)

¹⁸⁴ Michael M. Cernea, *The Building Blocks of Participation: Testing Bottom-Up Planning* (World Bank Discussion Papers 166, World Bank 1992) in Jennifer Mohamed Katere, 'Participatory Natural Resource Management in the Communal Lands of Zimbabwe: What Role for Customary Law?' (2011) vol5 iss3 African Studies Quarterly

public consultation as discussed in this chapter depicts shortcomings in ensuring effective devolution in wildlife conservation and management to landowners.

The goodwill of the government in facilitating realisation of devolution is there uncertain. These inadequacies limit the capacity of conservancies to develop to meet the ecological needs in wildlife conservation as well as social and economic needs of landowners.

CHAPTER 4

ADEQUACY OF CONSERVATION BENEFITS AND INCENTIVES TO LANDOWNERS

4.1 INTRODUCTION

Successful conservation of wildlife by community and private landowners is highly pegged on the concept that benefits and profits must be realised from the management of the wildlife¹⁸⁵. A benefits based approach to conservation is determined by the nature of benefits, access to benefits and the bundle of rights on wildlife conferred to landowners. Incentives are also crucial in conservation as they encourage local resource users to change behaviour that impacts on wildlife and natural habitat¹⁸⁶. This chapter seeks to identify and analyse the nature of benefits and incentives provided by the WCMA. The analysis will guide establish whether the benefits and incentives are adequate to promote community and private land owners take up wildlife conservation as a competitive form of land use.

4.2 HISTORICAL DEVELOPMENT OF WILDLIFE BENEFITS AND INCENTIVES

The growth of conservancies in Kenya on private and community lands has been rapid in the last two decades. Currently, it is estimated that conservancies covers about 5.5 % of Kenya's land mass¹⁸⁷. The benefits that conservancies provide to landowners have been considered as the key factors attributed to the rapid growth of conservancies. These benefits vary from economic, social and ecological in nature. The economic benefits are largely connected to wildlife tourism which results to revenue and income generation and employment. The social benefits which are more associated with community conservancies include land tenure security in the absence of property rights regime that protect communal land rights, social cohesion and security in communities conflicting over use of natural resources such as pastures and effective rangeland

¹⁸⁵ Elizabeth Rihoy, *The Commons Without Tragedy?: Strategies for Community Based Natural Resources Management in Southern Africa* : Proceedings of the Regional Natural Resources Management Programme Annual Conference, Kasane, Botswana, April 3-6 1995 in Michael L. Kipkeu et al, *Incentives for Enhanced Community Participation in Wildlife; Conservation in Amboseli*, (2014) vol2 iss5 Kenya Impact Journals, Department of Peace, Security and Social Studies, Egerton University, Nakuru, Kenya p77

¹⁸⁶ Lucy Emerton, 'Using Economic Incentives for Biodiversity Conservation' (2000) IUCN p1

¹⁸⁷ KWS Enterprise Database 2013

management. Wildlife conservation is considered important is so far as it enables communities access the above mentioned benefits. These benefits associated with conservancies have not been created within a legal framework but initiatives of the landowners to address their varied interests in a context where land rights compete with wildlife rights.

Kenya's wildlife conservation in pre and post-independence was characterised by precluding communities from accessing and using wildlife resources. The conservation policy in the early 1970's shifted by encouraging landowners to maintain wildlife through provision of a range of incentives including sport hunting, cropping, and wildlife based tourism, export of wildlife products and trophy dealing. Further, compensation for damages occasioned by wildlife including loss of livestock, crop damage and loss of life, were provided. Unfortunately, in 1977, all consumptive uses of wildlife and trade in wildlife products were prohibited and all compensation schemes abandoned as they were tainted with ineffectiveness, abuse, mismanagement and corruption. The resulting effects were conservation based on command and control, increase in wildlife poaching, heightened human wildlife conflict and non-tolerance of wildlife on community and private lands¹⁸⁸.

Re-introduction of conservation incentives characterised reforms aimed at reducing the alarming wildlife losses experienced in the 1980s. Certain consumptive uses of wildlife including cropping, ranching, game farming and trade in game meat were permitted in mid- 1990's. However, the most profitable wildlife uses to landowners such as sport hunting, tanning of skin and dealing in trophy were not permitted. In addition, communities benefitted from social development through the wildlife development fund facilitated by KWS. Communities were also supported by KWS to develop tourism enterprises and negotiation with tourism operators on concession fees¹⁸⁹. Cropping, an experimentation initially planned for five years was again banned in 2003 due to allegations of corruption, mismanagement, abuse of the designated quotas

¹⁸⁸ Mike Norton-Griffiths, 'Wildlife Losses in Kenya: An Analysis of Conservation Policy', (2000) vol13 no1, Natural Resource Modeling, Spring p2

¹⁸⁹ Mike Norton-Griffiths, 'Wildlife Losses in Kenya: An Analysis of Conservation Policy', (2000) vol13 no1, Natural Resource Modeling, Spring p4

and the findings that it led to poaching for bush meat and only benefitted licenced landowner and not surrounding local communities¹⁹⁰.

Policy and legislative reforms in wildlife management currently and in the last decade have aimed at addressing inadequacy of incentives to encourage communities and land owners to adopt compatible land use practices with wildlife conservation. Inadequate incentives have mostly been heightened by existence of incentives in other sectoral policies of competing land uses such as agriculture that distort land use decisions¹⁹¹.

The Wildlife Act Cap 376 only focused on compensation for human injury and death and disregarded compensation for property loss and damage to crops and livestock. The compensation value for human injury and death were highly underrated and included bureaucratic processes that resulted in delayed or failed awards. WCMA was designed to fulfil the spirit of the National Wildlife Conservation and Management Policy¹⁹². This chapter will establish the extent to which WCMA addresses the reform agenda on benefits and incentives to support landowners' initiatives of conserving wildlife on their lands.

4.3 CONTEXT FOR CONSERVATION BENEFITS AND INCENTIVES

Provision of benefits and incentives to landowners' forms an important strategy to promote conservation of biodiversity. They are perceived to provide a win-win situation where wildlife is conserved effectively while landowners and community welfare is improved. The concept of providing landowners with benefits is advanced from the traditional exclusionist approach to wildlife conservation that largely denied communities access and gain from wildlife resources¹⁹³. It is perceived that incentives play a complementing role to other conservation tools designed to

¹⁹⁰ Josphat Ngonyo, 'The Usual Suspects Try Again to Reintroduce Trophy Hunting In Kenya' (2013) Animal People Online www.animalpeoplenews.org/anp/2013/10/25/the-usual-suspects-try-again-to-reintroduce-trophy-hunting-to-kenya/ accessed 18th October 2015

¹⁹¹ National Wildlife Conservation and Management Policy Draft 2012

¹⁹² Draft of 2012

¹⁹³ Lucy Emerton, *The Nature of Benefits and The Benefits of Nature: Why Wildlife Conservation Has Not Economically Benefitted Communities in Africa*, Community Conservation Research in Africa, Paper no9, Institute for Development Policy and Management, University of Manchester 1999 p3

promote conservation of wildlife such as land tenure security and effective regulations¹⁹⁴. The benefits based approach to conservation is premised on the notion that wildlife conservation involves costs and benefits which should both be taken into account so as to obtain ideal outcome¹⁹⁵.

Conservation incentives are described as inducements offered by government or private providers to encourage landowners to undertake voluntary conservation on their land¹⁹⁶. Public-private partnership to tap for wide range of incentives is important considering that public funding for landowners incentives program is limited. A variety of incentives and opportunities for benefit to landowners have been identified to include:

- Provision of consumptive and non-consumptive wildlife use rights;
- Financial support such as provision of government funding to provide cost-sharing program and reduction of conservation expenses;
- Tax relief for conservation of wildlife and
- Technical assistance including training of landowners and relevant staff on conservation tools and techniques

4.4 WIDLIFE CONSERVATION BENEFITS AND INCENTIVES UNDER WCMA

4.4.1 Principles Guiding Access to Benefits in Wildlife Conservation

The reforms in conservation and management of wildlife in Kenya through WCMA aimed at addressing the failures of exclusion of landowners and communities from accessing and benefiting from wildlife. Further, WCMA was envisioned to be revolutionary to the extent it would provide for incentives that would motivate landowners to conserve and manage wildlife on their lands.

¹⁹⁴ Frank Casey et al, 'Incentives for Biodiversity Conservation: An Ecological and Economic Assessment' (2006) Defenders of Wildlife p8

¹⁹⁵ Erwin H. Bulte, G. Cornelis Van Kooten and Timothy Swanson, 'Economic Incentives and Wildlife Conservation' (2003)

¹⁹⁶ Evergreen Funding Consultants, Conservation Incentives Program in Washington State: Trends, Gaps and Opportunities p1 www.rco.wa.gov/documents/biodiversity/ConservationIncentivesWA.pdf accessed 20th October 2015

WCMA is founded on the principle that benefits derived by a land user from wildlife conservation shall be used to offset incurred costs and safeguard the value and management of wildlife¹⁹⁷. This principle is in line with the Addis Ababa Practical Principle 13 which states that “the costs of management and conservation of biological diversity should be internalized within the area of management and reflected in the distribution of the benefits from the use¹⁹⁸.” The principle is premised on the rationale that wildlife conservation and management incurs costs which if not adequately covered, can result to decline in the population and value of the wildlife.

However, though the principle of using benefits to offset costs of wildlife management a noble concept, there are instances where wildlife management fails to provide sufficient benefits that can be used to offset costs. The language used by WCMA assumes that benefits obtained by landowner are adequate enough to offset multiple costs accrued that may include¹⁹⁹:

- physical inputs of conserving wildlife;
- management costs such as wages, equipment, policing and operational costs;
- livelihood loss;
- human injury and
- opportunity costs such as fore-gone profits and time incurred

The risk of costs outweighing benefits of wildlife management or a break-even situation places wildlife as an encumbrance rather than beneficial. This undermines wildlife conservation as a land use that can compete with other land uses thus failing to adequately secure land for wildlife. In a system that seeks to promote landowners to participate in conservation, benefits from wildlife should not only be provided to a level that balances value of wildlife costs, but they must also be able to directly compensate for the economic activities precluded by the presence of wildlife²⁰⁰. Further, the benefits should be of such a nature that they enhance ability of wildlife management to compete with other land uses and livelihoods²⁰¹.

¹⁹⁷ WCMA 2013, s4(e)

¹⁹⁸ www.cbd.int/doc/publications/addis-gdl-en.pdf accessed 23rd October, 2015

¹⁹⁹ Lucy Emerton, *The Nature of Benefits and The Benefits of Nature: Why Wildlife Conservation Has Not Economically Benefitted Communities in Africa*, Community Conservation Research in Africa, Paper no9, Institute for Development Policy and Management, University of Manchester 1999 p12

²⁰⁰ Lucy Emerton, *The Nature of Benefits and The Benefits of Nature: Why Wildlife Conservation Has Not Economically Benefitted Communities in Africa*, Community Conservation Research in Africa, Paper no9, Institute for Development Policy and Management, University of Manchester 1999 p15

²⁰¹ Ibid p17

The principle of sustainable development acknowledged by the WCMA requires that conservation and management of wildlife is exercised in harmony with the principles of sustainable utilization in order to meet the needs of present and future generations²⁰². It recognises that natural resources are critical in attaining human needs and aspirations for improved life, placing people in an important relationship with wildlife. The principle requires that exploitation of the natural resources must maintain ecosystem's integrity whose depletion would compromise the ability of future generations to meet their needs²⁰³.

Successful and long term sustainability of wildlife is believed to be achieved upon integration of economic and social concerns of people in decision making affecting wildlife²⁰⁴. It further entails monitoring use of wildlife resources, management of wildlife on a holistic approach and founding management measures on scientific research²⁰⁵. The approach adopted by WCMA for wildlife conservation fails to provide adequate guidance on use of wildlife resources in a manner that does not lead to long term decline. It also fails to effectively capitalize on economics as a model to improve wildlife conservation by landowners. The economic model is based on the concept that wildlife is competes with alternative land uses.

4.4.2 Nature of Benefits and Incentives for Wildlife Conservation

Provision of wildlife user rights is one avenue through which landowners can benefit from conservation. Wildlife utilization attaches economic value to wildlife thus capable of providing real benefits to landowners and compete against alternative land uses²⁰⁶. WCMA allows for consumptive use of wildlife through: game farming, game ranching, live capture, research involving take-off, cropping and culling²⁰⁷. In addition, non-consumptive uses of wildlife are

²⁰² WCMA 2013, s4(f)

²⁰³ Bruntland Commission, 'Report on Environment and Development: Our Common Future', (1987) United Nations General Assembly

²⁰⁴ Hannah Stoddart (Ed), A Pocket Guide to Sustainable Development Governance, (2011) Stakeholder Forum, Commonwealth Secretariat p10

²⁰⁵ Elisa Morgera, James Wingard, 'Principles for Developing Sustainable Wildlife Management Laws', (2008) FAO Legal Papers p6 www.fao.org/legal/prs-ol accessed 23rd October, 2015

²⁰⁶ David Pearce, 'An Economic Overview of Wildlife and Alternative Land Uses', (1996) CSERGE Working Paper GEC97-05 p7

²⁰⁷ WCMA 2013, s80(1)

allowed through filming, research, educational, wildlife-based tourism cultural, and commercial photography²⁰⁸.

Access to wildlife use rights requires licensing²⁰⁹ by the cabinet secretary through application with CWCCC²¹⁰. Unfortunately, public consultation in development of the user rights subsidiary regulations is not made a requirement by WCMA thus compromising the interests and concerns of landowners and relevant stakeholders. Regulations that make the application process expensive and cumbersome are likely to discourage and limit access to wildlife user rights. On the other hand, regulations that are too flexible to compromise monitoring of wildlife use are subject to abuse and likely to cause unsustainable use of wildlife.

Despite WCMA recognising and conferring property rights over wildlife resource to landowners through wildlife user rights²¹¹, it fails to make connection between the type of wildlife use to the associated values and management regime²¹². This gap is attributed by failure of WCMA to promote integration of economic valuation studies of wildlife resources in decision making and consideration in land use by landowners²¹³. Further, a poor law enforcement structure by WCMA that primarily focuses on monitoring and repressive measures through penalties and fines to control unsustainable use fails to take a holistic approach to wildlife conservation and use.

A holistic approach to wildlife conservation and management entails not only repressive measures but also laws that promote and provide for incentives to landowners and communities to conserve wildlife. WCMA fails to provide incentives to landowners and communities and instead requires that subsidiary legislation²¹⁴ and the National Strategy on Wildlife Conservation and Management recommend the incentives²¹⁵.

²⁰⁸ WCMA 2013, s80(3)

²⁰⁹ WCMA 2013, s79

²¹⁰ WCMA 2013, s 80

²¹¹ WCMA 2013, s80

²¹² Elisa Morgera, James Wingard, 'Principles for Developing Sustainable Wildlife Management Laws', (2008) FAO Legal Papers p27

²¹³ Addis Ababa Principles and Guidelines Practical Principle 10, first to third operational guidelines

²¹⁴ WCMA 2013, s76(1)

²¹⁵ WCMA 2013, s 5(2)(e)

Absence of incentives and existence of economic disincentives create a regime that undermines landowners to effectively conserve as a beneficial land use. Consequently, wildlife conservation fails to compete with other land uses such as agriculture whose policies provide tax subsidies²¹⁶.

It is envisaged that the subsidiary regulations on incentives shall take into consideration economic incentives to that promote conservation on community and private lands. Economic and non-economic incentives desirable include:

- tax exemptions on imported equipment used for conservation;
- lower interests rates on credit facilities aimed at investing in conservation;
- creation of markets for wildlife products;
- transfer of knowledge and technology on wildlife conservation and management and
- capacity building of landowners and communities managing wildlife

However, ascribing to the economic value to wildlife in theory is not sufficient but putting in place mechanisms to value the wildlife. Capturing of wildlife value involves establishment of property rights in the wildlife resource through collection of revenue or flow of real benefits²¹⁷. Realization of benefits from use of wildlife is not guaranteed in the absence of willingness to pay for the uses of wildlife or the presence of a market for the wildlife products²¹⁸. Consequently, absence of reliable market and policies that support market for wildlife use is also a limitation to the wildlife user rights.

A bureaucratic system of accessing and securing wildlife user rights, absence of cost-benefit analysis and rigid regulations over use of wildlife will restrict wildlife utilization by landowners and ultimately limiting economic value of wildlife.

²¹⁶ Lucy Emerton, *The Nature of Benefits and The Benefits of Nature: Why Wildlife Conservation Has Not Economically Benefitted Communities in Africa*, Community Conservation Research in Africa, Paper no9, Institute for Development Policy and Management, University of Manchester 1999 p15

²¹⁷ David Pearce, 'An Economic Overview of Wildlife and Alternative Land Uses', (1996) CSERGE Working Paper GEC97-05 p6

²¹⁸ David Pearce, 'An Economic Overview of Wildlife and Alternative Land Uses', (1996) CSERGE Working Paper GEC97-05 p15

4.4.3 Access and Benefit Sharing of Wildlife Resources

Sharing of benefits accruing from wildlife conservation and management is fundamental in successful sustainable conservation programmes. It is aimed at ensuring that needs of communities living with or affected by use or conservation of wildlife and their contribution to conservation is reflected in the equitable distribution of benefits from use of wildlife resources²¹⁹. Equitable and fair sharing of benefits obtained from use of genetic resources is among the objectives of the Convention on Biodiversity²²⁰ guiding benefit sharing of wildlife resources.

Fair and equitable sharing principle has been advanced by WCMA which provides that benefits accruing from wildlife conservation and management shall be enjoyed and equitably shared by the people of Kenya²²¹. The principle is affirmed by the provision that entitles every person to reasonable access to wildlife resources and enjoyment of the benefits accruing from the access without undue hindrance²²². Substantive measures to facilitate equitable sharing of benefits have not been provided by WCMA. Instead, WCMA requires that the strategy on national wildlife conservation and management to provide measures to ensure equitable sharing of benefits²²³. Further, WCMA requires that guidelines are developed on benefit sharing as well as nature of benefits and manner for their distribution²²⁴. CWCCC is tasked by WCMA to oversee that benefits distribution in consistent with the Act²²⁵.

Bio prospecting is one of the wildlife use activities that require a benefit sharing agreement as a prerequisite to permitting. Where there exist bio prospecting interest, a benefit sharing agreement between the interested party and the community is a condition to issuance of a permit²²⁶. WCMA also requires that a conservancy describes anticipated benefits and beneficiaries within its conservancy management plan²²⁷.

²¹⁹ Addis Ababa Principles and Guidelines, Practical Principle 12

²²⁰ Art I

²²¹ WCMA 2013, s4(g)

²²² WCMA 2013, s71(1)

²²³ WCMA 2013, s5(2)(h)

²²⁴ WCMA 2013, s76(1)

²²⁵ WCMA 2013, s19(c)

²²⁶ WCMA 2013, s22(5)(b)

²²⁷ WCMA 2013, sch5 pt2

WCMA adopts concept of benefit sharing in relation to social development. It requires that any investments made by private entities or individuals within conservancies benefit the communities. The benefits identified include developing infrastructure, and other social services²²⁸. The social development benefit sharing approach limits communities from receiving economic benefits that directly improve their livelihoods or support offset wildlife management costs. This creates low confidence by landowners on the commitment of the government to support their conservation initiatives through direct economic benefits.

In situations where landowners facilitate ease of wildlife migration on their lands, WCMA requires that parties involved develop a benefit sharing agreement which is to be filed with the cabinet secretary within twenty-one days for approval²²⁹. The interest by government to approve the benefit sharing plan for private arrangement on private or communal lands clearly indicates that wildlife does not create private entitlement rights but rather interests regulated by government. As such, the general principles of contracting by parties that allow them to have terms that are mutually agreeable and binding and confine such terms to only the contracting parties are curtailed by government supervision. This is to protect the interest of third parties including the public who though not party to such agreement are nevertheless affected in the sense that benefits from wildlife conservation and management should benefit persons who though not in active management, but could be affected by the presence of wildlife. In this regard, government supervisory powers exist where benefits accrued from wildlife are to be shared. The bureaucracy of having the cabinet secretary approve benefit sharing agreements on wildlife resource is likely to discourage landowners from engaging in wildlife use activities that require such agreements to be developed.

Absence of timelines set by WCMA to ensure benefit sharing guidelines are developed by the cabinet secretary is key hindrance to equitable and timely access of benefits. Of more concern to landowners is the nature of benefits to be developed since they will significantly determine the future participation of community and private landowners in wildlife conservation.

²²⁸ WCMA 2013, s76(5)

²²⁹ WCMA 2013, s74(4)

WCMA fails to consider other key principles that guide effective benefit sharing framework. Prior informed consent²³⁰ is a key principle that aims at ensuring communities and landowners participate in decision making regarding activities that may affect their land or the wildlife within their land. It also guarantees landowners opportunity to give, withhold or negotiate land use and related issues through a process they are not coerced and that which discloses all material information of proposed activity. The principle promotes equitable relationships between the parties and recognises the right of the landowners to have control over their land²³¹. Mutually agreed terms²³² (MAT) is another principle that seeks to ensure that parties to a benefit sharing agreement include in the agreement provisions that are commonly agreeable to both parties. Such provisions relate to the nature of benefits to be shared, the manner in which the benefits are to be shared and stakeholders to be included in the sharing of benefits.

4.4.4 Viability of Compensation Programmes as Conservation Incentives

Wildlife conservation, management or co-existence imposes costs on landowners in form of damage to crops, livestock predation, property damage, human injury or loss of human life. In wildlife conservation policies and initiatives, compensation programs are designed to reimburse for economic losses inflicted by wildlife. As such, they are considered as a form of financial incentive aimed at providing support or tolerance to wildlife conservation. In majority of compensation programs, the compensation is made in respect to damage occasioned by specific wildlife species. Compensation programs are also considered as a means to redress the inequitable benefits distribution and costs of wildlife conservation²³³.

²³⁰ Nagoya Protocol 2010, Art 6(1)

²³¹ Ronald Busiinge, 'Free Prior and Informed Consent (FPIC) concept to responsible mining in sustaining rivers and communities', p2 <http://archive.riversymposium.com/index.php?element=BUSIINGE> accessed 25th October 2015

²³² Nagoya Protocol 2010, Art 6(3)(e) & (g)

²³³ Frank Casey et al, 'Incentives for Biodiversity Conservation: An Ecological and Economic Assessment', (2006) Defenders of Wildlife p22

A wildlife compensation scheme is created by WCMA for purposes of compensating claims for human death or injury and damage occasioned by wildlife²³⁴. The compensation scheme is classified into two categories²³⁵:

- i. Funds directly allocated by the government through budget process and from sources which the cabinet secretary approves;
- ii. Insurance scheme

The compensation amounts for successful proof of human death is Kenya shillings five million, while that of injury resulting to permanent disability is Kenya shillings three million. Other forms of injury have compensation value of a maximum of Kenya shillings two million depending on extent of injury²³⁶. Damage or loss to crops, livestock or other property leads to compensation valued at the prevailing market rates²³⁷. The claimants to property, livestock and crops loss or damage are required to prove to have taken reasonable measures to prevent the damage²³⁸.

The ability of compensation to achieve long term goal of promoting beneficial behaviour to wildlife is critiqued. Financial sustainability of the program is of key concern considering that it relies mainly on government budgetary allocations and other funds approved by government. Further, the funding for the program compared to the rising incidents of human wildlife conflicts and the sums of money payable for compensation challenges its long term viability. The past experiences of compensation program under WCMA Cap 376 which only covered for human bodily injury and death only were characterized by corruption, inefficiencies, high administration costs and under-funding²³⁹.

The current structure and procedure of making compensation claims under WCMA involve multiple institutions. A claimant is required to lodge claim with the respective CWCCC for verification and recommendation. The claim is then forwarded to KWS for consideration before

²³⁴ WCMA 2013, s24(2)

²³⁵ WCMA 2013, s24(a), (b) & (c)

²³⁶ WCMA 2013, s25(3)

²³⁷ WCMA 2013, s25(4)&(5)

²³⁸ WCMA 2013, s25(5)

²³⁹ E. Bowen-Jones, 'The Kenyan Compensation Experience', (2012) PCLG Case Study, IIED

the cabinet secretary makes payment²⁴⁰. The process of first submitting claim to a county level institution was aimed at devolving compensation settlement to enable reach the services to local people in an effective process that is not delayed. However, the absence of timelines in WCMA to guide the compensation process fails to cure the problem of delayed or failed compensation. It is envisaged that subsidiary regulations and guidelines shall be developed to address some of the administrative challenges identified to the compensation program. Failure to address the identified challenges in the compensation scheme under WCMA poses serious impacts on conservation of wildlife outside state protected areas.

The shortfalls in the government compensation program have resulted to establishment of private compensation programs over the years. Several conservancies in the Amboseli and Maasai Mara regions have developed compensation schemes to substitute the challenged government compensation program. Most famously known is the Mbirikani Predator Consolation Fund (MPCF) established in 2003 through private initiatives and negotiated with the group ranch members²⁴¹.

The key difference between the conservancies' compensation schemes from that managed by the government is the existence of an incentive element in the structure of compensation under the private model. The incentive element involves structuring the compensation in a manner that precludes adverse behaviour. For instance, the compensation structure under WCMA can easily allure communities and landowners create human wildlife conflict so as to benefit from compensation. Other incentives to the compensation model include support by the government to communities construct predator proof fences to reduce livestock loss and partnering with communities to develop wildlife-friendly businesses²⁴².

Insurance has also been advanced by WCMA as a form of compensation scheme that requires to be developed. However, there is no time limit or guidelines provided for its establishment. Further, no structures have been put in place to guide on its administration. Nevertheless, there are key issues that would need to be considered in development of the insurance scheme. The nature of property or value subject of insurance is of key concern to guide the nature of insurance

²⁴⁰ WCMA 2013, s25(2)&(5)

²⁴¹ E. Bowen-Jones, 'The Kenyan Compensation Experience', (2012) PCLG Case Study, IIED

²⁴² Frank Casey et al, 'Incentives for Biodiversity Conservation: An Ecological and Economic Assessment', (2006) Defenders of Wildlife p50

scheme to be developed. Wildlife as a natural resource is vested in the government whose use and management is for the benefit of people in an equitable manner²⁴³. In this regard, wildlife does not vest private rights but rather public rights. However, since wildlife occurs on private and communal rights, it creates rights to the extent individuals are permitted to use the wildlife resources or invest in their conservation and management. Nevertheless, public interests against government would require that insurance is best developed through public insurance rather than private insurance schemes.

Further, considering that compensation claims are lodged against the government, then liability exists with the government to compensate against wildlife risks incurred by public. Public liability insurance therefore becomes a key issue of concern. This form of insurance would cover the government against claims from wildlife risks to claimants who would be third parties to the insurance contract. Since government has the overall responsibility over natural resources²⁴⁴, then it would be assumed that government has the insurable interest over the wildlife. Insurable interest is regarded as the financial loss or gain the insured has in the existence or non-existence of the subject matter²⁴⁵.

Whether principles that govern insurance contracts are arrangements would effectively apply in this case is of key concern. Considering that government would assume the insurable interest, it would be required to make the consideration of premium in order for insurance risks to be covered by the insurer. Insurance premium payable is based on value of property and nature of risks to be assumed, then concern exists on the principles that government would use to assess premium payable.

In the above, the success of the insurance scheme would be based on how it handles the issues identified.

²⁴³Constitution of Kenya, Art 69(1)(a)

²⁴⁴Constitution of Kenya, Art69(1)(a)

²⁴⁵<https://www.scribd.com/document/288079032/Insurance-Law-Kenya> accessed 9th November 2016

4.5 CONCLUSION

Despite WCMA providing a framework for benefits and incentives to encourage wildlife conservation on community and private lands, landowners are unable access them since they are not substantively provided. It is assumed that benefits will be derived from wildlife user rights but this would mean that only those person who apply for user rights permits would be able to enjoy benefits derived thereof. This would result to inequitable sharing of benefit sharing from wildlife conservation and management.

Measures to create incentives for wildlife conservation are unclear except for the compensation model provided for losses resulted by wildlife. Unfortunately, effective management and sustainability of the compensation scheme poses the concern of its viability. The insurance scheme proposed requires a well-thought structure to address insurance principles that are not well developed in the country.

The subsidiary regulations provide opportunity to address the issues and gap on wildlife benefits and incentives. Institutional and policy reforms that link conservation to economic value are desired to enable sustainable conservation that not only meets ecological needs but landowners needs.

According to Emerton, provision of benefits is not equated to provision of economic incentives for purposes of conservation. In order to achieve successful conservation by community and private landowners, a range of economic benefits and factors must be coupled with the benefits approach model. These include consideration of costs related to wildlife management, degree to which landowners have economic choice and control over wildlife on their land and policy factors that discriminate against wildlife as a profitable land use²⁴⁶.

²⁴⁶ Lucy Emerton, 'The Nature of Benefits and the Benefits of Nature: Why Wildlife Conservation has Not Economically Benefitted Communities in Africa' (1999)Community Conservation Research in Africa, Paper no9, Institute for Development Policy and Management, University of Manchester

CHAPTER 5

FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 SUMMARY OF STUDY

This study was premised on the concept that the future development of community and private conservancies in Kenya is determined by an enabling WCMA framework. Analysis of WCMA with a focus on the provisions that affect conservancies was carried to establish whether it creates a supportive environment for growth of conservancies in Kenya. The study was conducted based on the hypotheses that environment created by WCMA for conservation and management of wildlife on community and private lands is largely interfered by government with minimal support for conservancies growth. This is prompted by inadequate devolved system to support landowners participate in conservation and decision making on issues that affect them. Further, inadequate provision of conservation benefits and incentives by WCMA discourages landowners from conserving wildlife.

The main arguments of this research paper were advance and illustrated by expounding three research objectives. The first objective analysed the governance and management structures developed by WCMA²⁴⁷ to support conservancies. In particular, ownership and decision making authorities and the administrative structures for private and community conservancies were discussed. The Community land Bill 2015 was also subject of discussion to the extent that if passed into law, it will affect the management and governance of community conservancies. International standards for governance of wildlife protected areas also formed basis of this study. The management standards for conservancies were also analysed to determine their expediency.

The second objective examined the capacity of structures and processes, conservation and management functions devolved to enable conservancies effectively participate in wildlife conservation. The Constitution²⁴⁸ provided the foundation of discussing and evaluating the development of devolution principle under WCMA.

²⁴⁷ Act No 47 of 2013

²⁴⁸ The Constitution of Kenya, 2010

The third objective identified the nature of benefits and incentives provided to encourage landowners adopt wildlife conservation as a competitive and beneficial land use. The economic viability of the wildlife utilisation rights was assessed as well as the frameworks to equitably share benefits derived from wildlife use. Further, the advancement of compensation by WCMA as an incentive to tolerate wildlife conservation was examined.

5.2 FINDINGS

This study establishes two key findings. To start with, WCMA creates a legal framework which for the first time recognises wildlife conservancies as formal protected areas in Kenya. This in effective creates validity and confidence in landowners who have adopted wildlife conservation as a land use. It also creates authority for government and donors and investors to provide financially and technically support to conservancies. The legal recognition also provides opportunity for landowners to bargain for policy and administrative based incentives with other government departments including the National Treasury and Kenya Revenue Authority for tax exemption or subsidies on conservation activities.

On the other hand, WCMA provisions are inadequate to support sustainable development of conservancies in Kenya. This failure is first occasioned by the scope in which WCMA recognises conservancy just as a conservation model with no regard to other key functions they serve to complement wildlife conservation. Principles to support conservancy development as both conservation and human development institutions have not been addressed by WCMA, leaving them to be governed through fragmented legal regimes. The alternative legal frameworks are left to create the governance and management structures mainly for community conservancies.

Further, despite WCMA recognising that benefits derived from wildlife conservation should be equitably shared, it fails to provide the nature of such benefits and a benefit sharing framework. The assumption that wildlife utilisation derives benefits is not accurate especially in the absence policy support to market oriented approaches that put value into the wildlife resources. This gap leaves it open for landowners to speculate and have a sense of uncertainty on whether or not to develop land for wildlife conservation as profitable land use.

The principle of devolution of wildlife conservation and management although well developed in theory of WCMA, is not conceptualised to address the practical issues that downcast realisation of devolution. It is not enough for WCMA to create positions that allow landowners representation in various decision making bodies at the local, county and national levels, but democratic processes that facilitate their representation to ensure actual devolution are important. Devolution is not guaranteed by creation of multiple institutions from the national to local level to promote good governance. The devolved institutions and processes, if bureaucratic, anarchic, cumbersome and expensive, they tend to obstruct devolution. Devolution does not also involve creation of local institution with limited technical and financial capacities thus constraining ability to function as demonstrated by structure of CWCCCs.

Finally, the omission of the requirement for public participation in various key decision making processes including development of subsidiary legislations and absence of its clear guidelines, is a drawback towards ensuring landowners participate in wildlife conservation and management.

5.3 CONCLUSION

Based on the findings of this study, three key conclusions are reached. To start with, wildlife conservation on community and private lands is not adequately supported by either WCMA or the government. This is despite over 60% of wildlife in Kenya exists on these lands with significant contribution to Kenya's GDP. There is absence of provision of benefits and incentives to landowners by WCMA to enable them obtain sufficient revenue to offset costs and obtain value for wildlife being on their land. Sustainable growth of conservancies is therefore not guaranteed in the absence of a legal framework that supports conservation while compromising landowners' needs and interests. WCMA therefore disconnects to the real issues that affect the success of wildlife conservation.

Secondly, WCMA provides a general framework rather than adequate substantive law to support conservation on community and private lands. WCMA leaves excessive leeway for substantive law to be developed through regulations with no obligation to subject them to public participation.

5.4 RECOMMENDATIONS

Community and private wildlife conservancies create good opportunity for Kenya to reduce wildlife loss, create jobs and income generating opportunities, improve management of natural resources and improve land tenure security. This study has demonstrated that the legal framework under WCMA is not adequate to facilitate growth of conservancies and enable them deliver all the important services above mentioned. Consequently, government support, landowners and investors' confidence in investing in conservation and community tolerance to wildlife are insecure.

Based on the findings of this study, policy and institutional recommendations aimed at reforming the wildlife conservation and management legal framework have been suggested. To start with, amendments to WCMA need to be considered. The definition of wildlife conservancy and its scope need to be expounded beyond wildlife conservation to enable address existing real threats to wildlife including competition from other land uses and fragmentation of wildlife habitats to meet landowners' interests. The definition and scope of conservancy needs to provide clear frameworks for their governance and management to enable sustainable development. The frameworks should be inclusive of all relevant stakeholders and allow their active participation in decision making.

Secondly, devolution provisions to enable landowners participate in decision making in different levels of wildlife governance including KWS and KWRTI need to be amended to provide powers to landowners to nominate their representatives directly in a fair and transparent manner. Further, devolution of wildlife conservation and management to landowners will only be realised if there is allocation of enough financial and technical resources to devolved institutions such as CWCCC and enable them to independently fundraise for sustainability.

Public participation need to be expressly made mandatory in all provisions requiring development of subsidiary regulations and guidelines in WCMA. Further, a clear and exhaustive guide on public participation need to be developed to ensure quality engagement of stakeholders. WCMA fails to obligate public participation in such provisions thus weakening opportunity for landowners to engage in developing laws that affect them.

WCMA proposes development of regulations and guidelines that facilitate growth of conservancies. Regulations on activities in conservancies are among the proposed regulations. The general view of landowners as established in this study is that the nature of regulations developed will either promote growth or collapse of conservancies in Kenya. The regulations should therefore provide clear, practical and flexible frameworks of registration, management and governance of the different categories of conservancies. They should go beyond recognising conservancy as a conservation tool by establishing benefits and incentives to promote development of conservancies and enable them compete with other land uses.

The incentives to be created by proposed regulations both monetary and non-monetary should be feasible and not pegged to multiple government agencies or institutions to enable access. Government commitment to realise benefits that are beyond the wildlife legal framework such as tax exemptions on conservation equipment and on stamp duty on land leases for conservation should be demonstrated. Benefit sharing framework to be developed should be based on principles that ensure fair access and transparency; enable all parties to fairly negotiate for the benefits and promote not only short term but also long term benefits. Measures should also be put in place to monitor and enforce implementation of benefit sharing agreements.

Adequate government budget allocation to directly support conservancies is also recommended considering the significance of these areas to the well-being of wildlife. The funds are proposed to support activities that ordinarily would have government services such as training of conservancy wildlife scouts to improve wildlife security, purchase of conservation equipment and general development of conservancies. Government allocation of funds to support conservancies would also bridge the double standards of wildlife conservation within and outside state protected areas.

Finally, sustainable financing of the compensation and insurance schemes is crucial to secure support for hosting and tolerating wildlife on community and private lands. Transparent and accountable management structures need to be developed to oversee the compensation and insurance schemes. Further, the compensation model needs to go beyond focusing on issuance

of compensation awards. It needs to include programs that work together with communities and landowners develop measures that reduce human wildlife conflict and promote incentives for reduced predation and loss of property.

Considering that legislative reforms may not be conclusive and effective means to address the gaps identified within WCMA, innovative measures to promote development of conservancies need to be advanced. For instance public- private partnerships need to be encouraged to foster both wildlife conservation objectives as well as landowners needs. Further, administrative negotiations between landowners on one side and KWS and relevant government departments on the other side need to be explored to facilitate development of incentives and benefits that would encourage growth of conservancies in Kenya.

Wildlife conservation approach by WCMA needs to have embraced communities and landowners and government as equal and complementing partners. This is critical if greatest threats to wildlife loss being habitat fragmentation, competition from alternative land uses and unsustainable use of wildlife resources are to be managed.

BIBLIOGRAPHY

BOOKS

Bromley D W, *Making the Commons Work: Theory, Practice and Policy* (ICS Press 1992)

Child B, 'Introduction' in B-Child (ed) *In Parks in Transition: Biodiversity, Rural Development and The Bottom Line* London, Earthscan (2004)

Colfer C J. P, Capistrano D (eds), *The Politics of Decentralisation: Forests, Power and People* (1st edn, Earthscan, 2005) p124 <http://books.google.com/books?isbn=1136552588>
accessed 18 September 2015

Cotterrell R, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy*,
(Butterworths London and Edinburgh 1989)

Dudley N, (ed) *Guidelines for Applying Protected Area Management Categories* (IUCN Gland, Switzerland 2008) x + 86pp. p26 With Stolton S, Shadie P and Dudley N, 'IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types' (2013) Series No. 21 Best Practice Protected Area Guidelines, IUCN Gland, Switzerland

Duffy R, *Private Wildlife Conservation in Zimbabwe: Joint Ventures and Reciprocity* (H-South Africa, H-Net Reviews 2004)

Ehrlich E, *Fundamental Principles of Sociology of Law* (Cambridge, Mass, Harvard University Press 1936)

Jones B, Murphree M, 'Community Based Natural Resource Management as a Conservation Mechanism: Lessons and Directions' in Child B (ed), *In Parks in Transition: Biodiversity, Rural Development and the Bottom Line* (Earthscan, London 2004)

Kotsakis A, 'Community Participation in Biodiversity Conservation: Emerging Localities of Tension', in Perry-Kessaris A (Ed), *Law in the Pursuit Development: Principle into Practice?* (2009) Routledge, UK

Libecap G D, *Contracting for Property Rights*, (Cambridge University Press 1989)

Mungumi B C, 'The History and Evolution of National Parks in Kenya', (2012) vol. 29, no.1 The George Wright Forum, pp39-42

Ndulo M, 'Decentralisation: Challenges of Inclusion and Equity in Governance' in Muna Ndulo (ed), *Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation* (James Currey, Oxford Ohio University Press 2006)

Norton-Griffiths M, 'The Economic of Wildlife Conservation Policy in Kenya' in E.J. Milner-Gulland E J and Mace R, *Conservation of Biological Resources*, (Blackwell Science Ltd. Oxford, UK 1998)

Odero S O, Devolved Government in PLO Lumumba et al, *The Constitution of Kenya: Contemporary Readings* (Law Africa Publishing, 2011)

Reimoser F, et al, *Integrated Sustainable Wildlife Management: Principles, Criteria & Indicators for Hunting, Forestry, Agriculture, Recreation* (2nd Ed Vienna 2013 Vienna)

Ribot J.C , *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation*, (World Resource Institute 2002)

_ _ , *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization* (World Resource Institute, Washington, DC 2004)

Western D, Wright M R, 'The Background to Community Based Conservation', in Western D, Wright M R, *Natural Connections: Perspectives in Community-based Conservation* (1994) Island Press, Washington DC USA pp15-52pp1-33

JOURNAL ARTICLES

Bashir M A, Udoto P, 'Beyond Philanthropy: Community Nature Based for Wildlife Conservation' (2012) vol. 29 no.1 The George Wright Forum

Binot A, et al, 'What has CBNRM Achieved in Africa? The '3Es' – Empowerment, Economics, Environment in Roe D, et al, 'Community management of natural resources in Africa: Impacts, experiences and future directions' (2009) Natural Resource Issues No. 18, International Institute for Environment and Development

Blackstock K et al, 'Public Participation and Consultation in SEPA Regulatory Regimes' (2006) The Macaulay Institute p4
<http://www.macaulay.ac.uk/ruralsustainability/PublicParticipationinRegulatoryRegimesFinal.pdf> accessed 4th October 2015

Brent A M, 'Who's Doing the Protecting in Protected Areas: A Global Perspective on Protected Area Governance' (2007) vol24, The George Wright Forum

Buchanan S M et al, 'Governance for Peace over Natural Resources: A Review of Transitions in Environmental Governance across Africa as a Resource for Peace-building and Environmental Management in Sudan' [2013] United Nations Environmental Program

Bulte E H., Van Kooten G. C, and Swanson T, 'Economic Incentives and Wildlife Conservation' (2003)

BurnSilver S, Mwangi E, 'Beyond Group Ranch Subdivision: Collective Action for Livestock Mobility, Ecological Viability, and Livelihoods' (2007) CAPRI Working Paper no66

Casey F, et al, 'Incentives for Biodiversity Conservation: An Ecological and Economic Assessment' (2006) Defenders of Wildlife

Cernea M. M, 'The Building Blocks of Participation: Testing Bottom-Up Planning' (1992) World Bank Discussion Papers 166 in Katere J M, 'Participatory Natural Resource

Management in the Communal Lands of Zimbabwe: What Role for Customary Law?' (2011) vol5 iss3 African Studies Quarterly

Commons J R, 'Legal Foundations of Capitalism', (1968), University of Wisconsin Press, Madison in Ostrom E, 'Private and Common Property Rights' (2000) vol. II. Encyclopaedia of Law & Economics, Civil and Economics, Cheltenham, England pp332-79

Darby S, 'Natural Resource Governance: New Frontiers in Transparency and Accountability' (2011) Transparency & Accountability Initiative, London, p 9 www.transparency-initiative.org/wp-content/uploads/2011/05/natural_resources_final1.pdf accessed 8th June 2015

Elliott J, et al, 'Exploring Environmental Complementarity between Types of Protected Areas in Kenya' (2014) AFD

Emerton L, 'The Nature of Benefits and The Benefits of Nature: Why Wildlife Conservation Has Not Economically Benefitted Communities in Africa', (1993) Paper no9 Community Conservation Research in Africa, Institute for Development Policy and Management, University of Manchester

Emerton L, 'Using Economic Incentives for Biodiversity Conservation' (2000) IUCN

Feyerabend G B, Kothari A, and Oviedo G, (2004) 'Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation' (2004) series No11, IUCN, Gland, Switzerland and Cambridge, UK

Griffiths M N, 'Wildlife Losses in Kenya: An Analysis of Conservation Policy', (2000) vol13 no, Natural Resource Modeling, spring p2

Jones E.B, 'The Kenyan Compensation Experience', (2012) PCLG Case Study, IIED

___, et al, 'Governance of Protected Areas: From Understanding to Action' (2013) Series No. 20 Best Practice Protected Area Guidelines, IUCN Gland, Switzerland

King A, 'No Reason to Conserve: Exploring the Drivers and Performance of Wildlife Conservation in Kenya', in Abensperg-Traun M, Roe D and O'Criodain C, 'The Relevance of CBNRM to the Conservation and Sustainable Use of CITES-listed Species in Exporting Countries', CITES and CBNRM: Proceedings of an International Symposium (2011), Vienna, Austria, 18-20 May 2011. Gland Switzerland: IUCN and London, UK: IIED

Lindsey P A, et al, 'Benefits of wildlife-based land uses on private lands in Namibia and limitations affecting their development', [2013], vol47, (iss1) Oryx pp. 41-53

Manor J, 'Democratic Decentralization in Africa and Asia' (1995) vol26 iss2 IDS Bulletin pp81-88 in Jesse C. Ribot, *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation* (World Resource Institute, 2002 p29

McManaman L J, 'Social Engineering: The Legal Philosophy of Roscoe Pound' (1958) vol33 Art 1 iss1 St. John's Law Review

Mohamed Katere J M, 'Participatory Natural Resource Management in the Communal Lands of Zimbabwe: What Role for Customary Law?' (2011) vol5 iss3 African Studies Quarterly

Muigua K, 'Towards Meaningful Public Participation in Natural Resource Management in Kenya' (2014)

Nelson F, 'Recognition and Support of ICCAs in Kenya' [2012] in Ashish Kothari et al (eds) 'Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global Overview and National Case Studies' (Technical Series no64) Secretariat of the Convention on Biodiversity, ICCA Consortium, Kalpavriksh and Natural Justice, Montreal, Canada

Ngethe J C, 'Group ranch concept and practice in Kenya with special emphasis on Kajiado District', (1993)

Norton-Griffiths M 'Wildlife Losses in Kenya: An Analysis of Conservation Policy', *Natural Resource Modeling* (2000) vol13, no1, spring

Odote C, 'The Legal and Policy Framework Regulating Community Land in Kenya: An Appraisal' Friedrich Ebert Stiftung Nairobi, Kenya <[www.fes-kenya.org/media/publications/Legal and Policy Framework Regulating Community Land in Kenya 2013.pdf](http://www.fes-kenya.org/media/publications/Legal%20and%20Policy%20Framework%20Regulating%20Community%20Land%20in%20Kenya%202013.pdf)> accessed 25 August 2015

Ostrom E, 'Private and Common Property Rights', (2000) vol. II *Encyclopaedia of Law & Economics, Civil and Economics*, (ed) Cheltenham, England: Edward Edgar pp.332-79

Ostrom V, 'Some Developments in the Study of Market Choice, Public Choice and Institutional Choice', (1989) in Ostrom E, 'Private and Common Property Rights', (2000) vol. II *Encyclopaedia of Law & Economics, Civil and Economics* (ed) Cheltenham, England: Edward Edgar pp332-79

Roe D, Nelson F, *Community Management of Natural Resources in Africa: Impacts, Experiences and Future Directions* (2009) International Institute for Environment and Development (UK) p8

Rondinelli D A, et al, 'Decentralization in Developing Countries: A Review of the Recent Experience' (1983) World Bank Staff Working Papers no581 www.wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/1983/07/01/000009265_3980928162717/Rendered/PDF/multi0page.pdf accessed 04 October 2015

Runge C. F, 'Common property and collective action in economic development' (1986) *World Development*, forthcoming in Wade R, 'The management of common property resources: collective action as an alternative to privatisation or state regulation' (1987) *Cambridge Journal of Economics* pp95-106

Schlager E and Ostrom E, 'Property Rights Regimes and Natural Resources: A Conceptual Analysis', (1992) vol68, No. 3 Land Economics University of Wisconsin Press pp249-62

Shackleton S et al, 'Devolution and Community Based Natural Resource Management: Creating Space for Local People to Participate and Benefit?' (2002) Natural Resource Perspectives no76 London Overseas Development Institute

Stolton S, Dudley N, 'Private governance of protected areas in Africa: Cases studies, lessons learnt and conditions of success' [2015] Equilibrium Research and London, UK, IIED
Swiderska K, et al, 'The Governance of Nature and the Nature of Governance: Policy that Works for Biodiversity and Livelihoods' (2008) vol8 IIED

The Wildlife Society, 'The Public Trust Doctrine: Implications for Wildlife Management and Conservation in the United States and Canada' (2010) Technical Review

Wantrup- Ciriacy S V, Richard C and Bishop R C, 'Common Property' as a Concept in Natural Resources Policy', (1975) vol15 Natural Resources Journal p713-27

Warigia G, Kaelo D, 'Wildlife Act 2013: A New Approach to Wildlife Conservation in Kenya', (2014) iss7 Mazingira Yetu

Weaver C, Petersen T, 'Namibia Communal Area Conservancies', (2008) Best Practices in Sustainable Hunting

Western D, 'Ecosystem Conservation and Rural Development: The Case of Amboseli', in Western D, Wright M R, *Natural Connections: Perspectives in Community-based Conservation* (1994) Island Press, Washington DC, USA pp15-52

Western D, Waithaka J, Kamanga J, 'Finding Space for Wildlife Beyond National Parks and Reducing Conflict Through Community Based Conservation; The Kenya Experience' Parks 2015 vol21.1 2015 p56 <http://parksjournal.com/wp-content/uploads/2015/03/PARKS-21.1->

Western-et-al-10.2305IUCN.CH_.2014.PARKS-21-1DW.en_.pdf accessed 27 September 2015

PAPERS

Brundland Commission, 'Report on Environment and Development: Our Common Future', (1987) United Nations General Assembly

Evergreen Funding Consultants, 'Conservation Incentives Program in Washington State: Trends, Gaps and Opportunities'

www.rco.wa.gov/documents/biodiversity/ConservationIncentivesWA.pdf accessed 20th October 2015

Glew L, et al, 'Evaluating the Effectiveness of Community Based Conservation in Northern Kenya', A report to the Nature Conservancy, (2010) University of Southampton, School of Civil Engineering and the Environment

Joireman S F, 'Applying Property Rights Theory to Africa: The Consequences of Formalizing Informal Land Rights', (2006) Paper prepared for the 2006 Meeting of the International Society for New Institution of Economics in Boulder, Colorado

Juma D, 'Devolution of Power as Constitutionalism: The Constitutional Debate and Beyond, in Ethnicity, Human Rights and Constitutionalism in Africa, (2008) International Commission of Jurists (eds) pp36-58 <<http://ssrn.com/abstract=1382821>> accessed 04 October 2015

King A, 'Conservancies in Kenya' [January 2013] Report to Kenya Land Conservation Trust
King J, et al, 'A Guide to Establishing Community Conservancies: The NRT Model', (2015) Version 1

Morgera E, Wingard J, 'Principles for Developing Sustainable Wildlife Management Laws', (2008) FAO Legal Papers p6 www.fao.org/legal/prs-ol accessed 23rd October, 2015

Mbote P K, 'Land Tenure Land Use and Sustainability in Kenya: Towards Innovative Use of Property Rights in Wildlife Management', (2005-4) IELRC Working Paper

Mburu J, 'Wildlife Conservation and Management in Kenya: Towards a Co-management Approach', (2004) Natural Resource Management, Center for Development Research, University of Bonn

Muruthi P, 'The Process of Preparing a General Management Plan for a Protected Area'

(2006) African Wildlife Foundation Working Papers

<[www.awf.org/sites/default/files/media/Resources/Books and](http://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/AWF_GMP_for_Protected_Areas_paper.pdf)

[Papers/AWF_GMP_for_Protected_Areas_paper.pdf](http://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/AWF_GMP_for_Protected_Areas_paper.pdf)> accessed 9 September 2015

Pearce D, 'An Economic Overview of Wildlife and Alternative Land Uses', (1996) CSERGE Working Paper GEC97-05

Stoddart H, 'A Pocket Guide to Sustainable Development Governance', (2011) Stakeholder Forum, Commonwealth Secretariat p10

Rihoy E, 'The Commons Without Tragedy?: Strategies for Community Based Natural Resources Management in Southern Africa: Proceedings of the Regional Natural Resources Management Programme Annual Conference, Kasane, Botswana, April 3-6 1995 in Michael L. Kipkeu et al, Incentives for Enhanced Community Participation in Wildlife; Conservation in Amboseli, (2014) vol2 iss5 Kenya Impact Journals, Department of Peace, Security and Social Studies, Egerton University, Nakuru, Kenya

Roe D, 'Community-based Natural Resources Management: An Overview and Definitions', in Abensperg-Traun M, Roe D and O'Criodain C, 'The Relevance of CBNRM to the Conservation and Sustainable Use of CITES-listed Species in Exporting Countries', CITES and CBNRM: Proceedings of an International Symposium (2011), Vienna, Austria, 18-20 May 2011. Gland Switzerland: IUCN and London, UK: IIED

Rondinelli D A, et al, 'Decentralization in Developing Countries: A Review of the Recent Experience' 1983 World Bank Staff Working Papers no 581 p12 p10 www-

wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/1983/07/01/000009265_3980928162717/Rendered/PDF/multi0page.pdf accessed 04 October 2015

Watson R, Fitzgerald K H and Gitahi N, 'Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements'(March 2010) Technical Papers no2, African Wildlife Foundation

INTERNET SOURCES

Busiinge R 'Free Prior and Informed Consent (FPIC) concept to responsible mining in sustaining rivers and communities',
<http://archive.riversymposium.com/index.php?element=BUSIINGE> accessed 25th October 2015

IUCN Protected Areas Categories System, <www.iucn.org/pa_categories/> accessed 27 June 2015

Murphy J, 'Can Compensation Schemes Work?' (2010) <http://lionalert.org/page/article-compensation> accessed 26th October 2015

Ngonyo J, 'The Usual Suspects Try Again to Reintroduce Trophy Hunting In Kenya' (2013) Animal People Online www.animalpeoplenews.org/anp/2013/10/25/the-usual-suspects-try-again-to-reintroduce-trophy-hunting-to-kenya/ accessed 18th October 2015

<<http://www.iucn.org>> accessed 20th March 2015

<<http://www.kwakenya.com>> accessed 20th March 2015

THESIS

Brockington D, 'Fortress Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania' (2002) Indiana University Press in Heidi C, Courtney A, 'An Investigation into the Extent to which Activities in Olare Orok Conservancy, Narok District, Kenya, Conform to Ecotourism' (2009) Unpublished Dissertation presented for the Degree of Master of Science , University of Edinburg

Heidi C, Courtney A, 'An Investigation into the Extent to which activities in Olare Orok Conservancy, Narok District, Kenya, Conform to Ecotourism'(2009) (Unpublished Dissertation presented for the Degree of Master of Science, University of Edinburgh)

Nduku M E, 'The Effects of Community Wildlife Sanctuaries on Pastoral Livestock Production System', (2012)Thesis Submitted in Fulfilment for the Degree of Doctor of Phylosophy in Dry Land Resource Management in the Department of Land Resource Management and Agricultural Technology, University of Nairobi