

BOOK REVIEW by ENDOO DORCAS CHEPKEMEI*

NATURAL RESOURCES AND ENVIRONMENTAL JUSTICE IN KENYA

Kariuki Muigua, Didi Wamukoya and Francis Kariuki

Glennwood Publishers, Nairobi: Kenya (2015)

ISBN 978-9966-046-05-5

Natural resources play an important role in sustaining people's livelihoods as well as national economies the world over. Natural resources undoubtedly contribute to the economic, social, cultural and political development. There are diverse and plenty of natural resources in the African continent making, Africa potentially the richest continent in the world. However, the African nations, Kenya included, have not fully benefitted from the natural resources found within their territories, but instead continue to wallow in abject poverty and natural resource based conflicts. There is no continent where the abundance and exploitation of natural resources has brought about as many problems as in Africa. Despite having massive resources, the *paradox of plenty* remains a big obstacle in economic development of Africa as a continent. Armed conflicts have often erupted in various African countries in the rush for exploitation of natural resources. Poor economic development still manifests in many African developing countries despite the immense resources and the immeasurable benefits that flow out of them. There is competition for the resources amongst communities and regions. Incidentally, foreign investors also seek to have a share of this wealth. Both international environmental law and domestic environmental laws strive to promote best practices in natural resources management so as to maximize benefits to the communities while minimizing conflicts. The aim is to achieve efficacious management of natural resources while ensuring maximum environmental protection. This calls for examination and incorporation of the best international practices that are aimed at balancing between natural resource exploitation and environmental management. The book, *Natural Resources and Environmental Justice in Kenya*, authored by Dr. Kariuki Muigua, Ms. Didi Wamukoya and Mr. Francis Kariuki answers just that. The book contains such running themes as environmental justice, sustainable development, good resource governance, human rights, social conflict management and climate change. It seeks to offer the reader a better understanding of the relationship between natural resources and each of the particular themes as highlighted. The book runs through seventeen chapters, with each chapter focusing on a unique component of natural resources, where the same has been exhaustively discussed and the potential challenges addressed.

In the introductory chapter, basing the study in Kenya, the authors give a background to natural resource management in Kenya and also highlight the role of law in managing natural resources. In recognition of the current reality of globalization, the authors authoritatively examine the impact of globalization and developments in international environmental law. The chapters offer an overview of the salient features of the Kenyan legal, policy and institutional framework on the management of natural resources especially under the Constitution of Kenya 2010 and the

challenges hampering their effectiveness. The authors argue that the current legal framework does not guarantee achievement of environmental justice, sustainable development, effective conflict management, climate change mitigation, amongst other factors.

Borrowing from the international best practices and framework on environmental and natural resources management, chapter two of the book examines the principles of natural resource management and their application in Kenya. The authors analytically discuss the principles that inform international best practices and consequently domestic laws on natural resources management. These include sustainable development, sustainable use of resources, public trust doctrine, eminent domain, reasonable use and equitable utilization, precautionary principle and public participation amongst others. The discussion is intended to enable readers appreciate existing legal regime on natural resources in Kenya vis-à-vis the international regime. This is an especially important discussion in light of the sustainable development agenda which binds all countries around the world.

Chapter three critically discusses the variety of approaches available to policymakers when legislating to enable holistic protection of the environment and natural resources. These approaches include command and control, market-based approaches, incentives (taxation and subsidies), Community Based Natural Resource Management (CBNRM), traditional resource management institutions, ecosystem-based approaches such as integrated water resources management (IWRM) or River basin management, integrated coastal zone management (ICZM) and integrated management of land and other resources, amongst others. The chapter assesses their role in sustainable development, and proposes reforms on how to improve natural resource management in light of the provisions of the Constitution of Kenya 2010. The chapter also highlights lessons that Kenya's young devolved system can learn from other jurisdictions.

Chapter four discusses the concept of environmental justice as a tool for effective management of natural resources in the Kenyan context. The authors argue that while natural resources are vital for human survival as the sources of livelihood for most communities in Africa, access to, control and use of natural resources in most of Africa has been limited, denied or undermined by laws and policies carried over from the colonial period. They argue that current environmental injustices, as highlighted in the book, in Kenya have roots in colonial laws and policies. They advocate for adequate statutory provisions that ensure that all persons participate in environmental decision-making and allow them to have access and enjoy a fair share of natural resources.

Chapter five discusses devolution as a form of decentralisation, within the context of the Constitution of Kenya 2010 and its implication on natural resource management (NRM) in Kenya. The authors assert that devolution, as a form decentralisation, has the potential to contribute to good governance by increasing opportunities for public participation in economic, social and political decisions, developing people's capacities, and enhancing government responsiveness, transparency and accountability. They have justified decentralisation in natural resource management on several grounds: It enables local people to identify and prioritise their

environmental problems accurately; ensure efficient resource allocation; promote greater respect for decisions made with local inputs such as rules for resource use; allow for easier monitoring of resource use and give marginalised groups greater influence on local policy. The chapter puts forward a strong case for devolution in natural resources management in the country.

Chapter six discusses land as a natural resource and its management and highlights the current challenges in the sector. In Kenya specifically, the land as a natural resource has been a source of environmental injustice largely due to ineffective and inefficient land management and administration systems. The authors critically discuss land ownership as a human right and also gives a historical analysis of land management in Kenya and the shortcomings thereof. Authors argue that land plays an important role in the economic, social, cultural and spiritual aspects of a community, making it a very sensitive issue for the authorities. Thus, although there are laws in place now for the regulation of its use and management, political goodwill is still required to ensure that such laws are fully enforced and implemented. They advocate for goodwill and commitment from everyone to ensure a smooth implementation of the reforms.

Chapter seven discusses forest management in Kenya, in light of constitutional provisions recognizing the need to conserve biodiversity and to increase the area under tree cover. The legal and institutional arrangements on forest management are discussed and their interaction with other natural resources sectors examined. The authors also critically analyse the international best practices in forest management and also evaluate their applicability in the Kenyan scenario. They authoritatively assert that efforts to tackle climate change cannot bear any meaningful fruits without the world's forests since the transition to sustainable, resource-efficient and low-carbon economies will depend on forest resources.

Chapter eight discusses how water and wetlands resources can be sustainably managed to benefit all Kenyans. It also reviews existing policy, legal and institutional frameworks to assess their efficacy in water and wetlands governance. Apart from adopting the international best practices in management, the authors assert that there is need to ensure quality public participation and information dissemination in water governance and wetlands management. This is justified by the argument that it is important that the general public, and particular groups of people, be fully involved from an understanding point of view to help them make informed decisions and to enable them resourcefully participate in sustainable development.

Kenya prides itself in tourism as an income generating activity, particularly wildlife and biodiversity. Climate change however continues to threaten the livelihood and sustainability of wildlife and biodiversity in Kenya and the world at large. Illegal trading of games, human wildlife conflict pollution are some of the contributing factors to the diminishing natural resource. The authors discuss the national and international framework that seeks to protect wildlife and biodiversity. Chapter nine on wildlife and biodiversity, recognises wildlife and biodiversity to be important resources since play a role in both the social and economic lives of man. The authors observe that biodiversity is a renewable resource, but only if conserved and managed sustainably.

The extinction of species and their habitats and the destruction of ecosystems are an ecological tragedy that has profound implications for social and economic development.¹ The authors have captured the state of affairs with regard to wildlife and biodiversity in the country by observing that the Kenya Wildlife Service's (KWS) new mission to 'save the last great species and places on earth for humanity' is a departure from their last mission which was 'to sustainably conserve and manage Kenya's wildlife and its habitats for posterity.' That is, KWS is moving from sustainable conservation of wildlife in Kenya to saving species which shows the amount of loss of biodiversity in the country. The chapter thus calls for striking delicate balance between preservation and sustainable utilization to ensure that Kenya's biological resources do not become extinct.

Chapter ten discusses minerals as critical to the social, political and economic activity of any country. The chapter examines the challenges and prospects of this sector in the country.

Chapter eleven critically discusses the energy sector in Kenya and explores international best practices in the area. The chapter also explores the linkage between the energy sector and the environment.

Chapter twelve offers a critical discussion on coastal and marine resources in Kenya and offers recommendations on how best Kenya can manage them to ensure optimum benefits while guaranteeing their conservation.

Chapter thirteen discusses fisheries as a natural resource in Kenya, their importance and the policy, legal and institutional frameworks regulating their management. The authors advocate for transparency, public participation, sustainability and accountability in the sector.

As a sovereign state, Kenya has an obligation towards the international community to protect the transboundary natural resources by not causing any harm such as pollution. Since natural resources are shared along borders, the authors have explicitly discussed the management of transboundary natural resource in Kenya and the legal framework regulating it. Chapter fourteen examines the management of transboundary resources that Kenya shares with its neighbors and discusses the international principles on management of such resources.

The aspect of international trade introduces the impact of multinational corporations (MNCs) and investors on natural resource management in Kenya. The book discusses the salient aspects of sovereignty and violation of human rights by MNCs in various countries. Chapter fifteen of the book offers a critical discussion on multinational corporations, investment and natural resource management in Kenya. The authors examine the relationships between such multinationals and host governments and also discusses concerns arising from the involvement of multinationals in natural resource exploration and exploitation especially in the area of regulation.

¹ P. 236.

Taking into account the Hobbesian theory that human beings are naturally in a state of war, *Natural Resources and Environmental Justice in Kenya* presents a useful discussion on natural resources and conflict management. Chapter sixteen of this book examines the various approaches to the management of natural resource based conflicts in Kenya with a view to determining their efficacy in achieving environmental justice for the Kenyan people in light of management of natural resource based conflicts. The authors recommend adoption of an integrated approach to both conflict resolution and dispute settlement mechanisms in order to promote peace, coexistence, justice for all and participation by all the involved parties. The authors advance means through which conflicts may be resolved, placing reliance on litigation, Alternative Dispute Resolution as well as Traditional Dispute Resolution Mechanisms.

Chapter seventeen is a wrap up of the discussion in the preceding chapters of the book and concludes by offering viable options that would guarantee enjoyment of environmental justice, realisation of the principles of sustainable development, as well as efficient and effective resolution of conflicts in the natural resources sector in Kenya. The chapter offers a recap of the important aspects of inclusivity, access to environmental information and eradication of poverty, being the way forward towards environmental justice for all and the principles that the Constitution of Kenya underlie.

The relevance and analysis is so immense that the Supreme Court of Kenya in a landmark decision of *In the Matter of the National Land Commission [2015] Advisory No. 2 of 2014*, paragraph 346 cited pages 24 to 25 of this book.

This book bridges the gap in environmental law literature in Kenya. It analyses and simplifies Kenyan legislation that governs the environmental facets. *Natural Resources and Environmental Justice in Kenya*, is premised on the current legal framework and environmental challenges and emphasizes on environmental protection, conservation and promotion of environmental rights *vis-à-vis* human rights. The book covers both the national and international legal framework and gives a proper comparison of the same. It has numerous statistical illustrations, figures, maps and tables that give the reader an easy understanding of the discussion. The book has analyzed sound judicial decisions from Kenya and other international courts/ tribunals and this places the reader in a real life scenario. The book has been written in simple English that can be understood by everyone at whichever level, without necessarily presenting the ideas in a simplistic manner.

The book is undoubtedly rich in content and wide enough to cover many aspects of natural resources. The launch of the Sustainable Development Goals will in no doubt provide an opportunity for the attainment of the Environmental Justice for All. It is hoped that future editions will track the implementation of the SDGs and discuss their efficacy in practice.

Suffice to say, the authorship of the book is indisputably by experts who are rich in environmental knowledge and experience. *Natural Resources and Environmental Justice* is definitely a must read for all students, teaching fraternity, members of the bar and the bench, policy makers, legislators

and the general public. I have only succinctly summed up. Get yourself a copy and read for yourself.

*The reviewer holds LLB (Hons) from Kenyatta University and Diploma (HRM) from University of Nairobi. She has completed her Advocacy Training Programme from the Kenya School of Law and is scheduled to commence her Masters Program. Her areas of interest include but are not limited to; environmental law and international law, ADR and Access to Justice, mooting, legal Research, women, governance and development,. She has participated in several fora that touch on pertinent developmental issues affecting West Pokot County and Kenya at large