

Towards Meaningful Public Participation in Natural Resource Management in Kenya

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Abstract

This paper examines the efficacy of public participation in natural resource management in Kenya as enshrined in the international legal instruments on environment and natural resources and the Constitution of Kenya 2010, as a tool for enhancing equitable sharing of accruing benefits and promoting sustainable development agenda in the country. The author traces the links between meaningful public participation, sound natural resource governance, equitable sharing of accruing benefits and the sustainable development agenda. The paper analyses the importance of the elements of meaningful public participation in promoting equitable sharing of accruing benefits and the sustainable development agenda as provided for in the Constitution of Kenya 2010.

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1.0 Introduction

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One of the most outstanding aspects of the current trend in natural resource management around the world is the element of public participation in the people-centered or community-based natural resource management which is evidently absent in the Top-down or command and control approach. It has been observed that there has been a paradigm shift in conservation and natural resource management away from the state-centered control, which is deemed costly, towards approaches in which local people play a much more active role with the aim to increase resource user participation in natural resource management decisions and benefits by restructuring the power relations between central state and communities through the transfer of management authority to local-level organisations.¹ This is because they have an effect on the economy, wealth and institutions of a country and its people's wellbeing. Thus, the traditional 'top-down' model of centralised natural resource management that relies on governments for planning and implementation has been replaced with processes that rely on participation by citizens in their own regions and the emerging paradigm has been referred to as *civic*

¹ Shackleton, S., et al., "Devolution and community-based natural resource management: creating space for local people to participate and benefit?" ODI, *Natural Resource Perspectives*, No. 76. March 2002. Available at <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/3646/76-devolution-community-based-natural-resource-management.pdf> [Accessed on 18/06/2014].

regionalism.² It has been argued that civic regionalism is often promoted as being more effective because local citizens and their communities are closer to environmental problems and solutions than a remote government and its policies and regulations which bring greater understanding and more effective solutions.³

It has been asserted that the way society controls natural resources is the foundation of both economic development and environmental conservation.⁴ It has also been noted that the primary motive for natural resource management has been the development and production of marketable commodities, and institutional structures have been shaped accordingly.⁵ Sound natural resource management requires a strong and efficient link among the multiple governance levels to facilitate maximum realisation of benefits accruing from the natural resources while at the same time ensuring their conservation. There is need to ensure that the policy decisions formulated at the local, national and international levels tally and are appreciated and supported by the general public who are basically the local resource users.⁶

The contention herein is that the current provisions on public participation in the natural resource management laws in Kenya are inadequate in content and efficiency in facilitating the same. The author argues that these two will not be fully realised in the absence of meaningful public participation guaranteed in the legal and institutional framework.

2.0 Public Participation

Public/Citizen participation has been generally defined as either consultative participation or as empowered participation.⁷ In consultative participation, a government provides citizens and their representatives with a chance to be heard, with no guarantee that participation will be heeded since the decision makers have the freedom to agree with citizens or not, though there is

² Lane M, 'Critical issues in regional natural resource management', paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra, 2006. Page 1. Available at < <http://www.deh.gov.au/soe/2006/integrative/nrmissues/index.html>>. [Accessed on 18/06/2014].

³ Ibid, page 3.

⁴ Jin Sato (ed.), 'Governance of Natural Resources: Uncovering the Social Purpose of Materials in Nature' (Overview), *United Nations University Press*, August 2013.

⁵ Ibid.

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⁷ Sefton Darby, 'Natural resource governance: New frontiers in transparency and accountability', *Transparency & Accountability Initiative*, London, 2011, page 9. Available at http://www.transparency-initiative.org/wp-content/uploads/2011/05/natural_resources_final1.pdf [Accessed on 18/06/2014].

normally an obligation to give the reasons for why they agree or disagree.⁸ In the case of empowered participation, the participants are invested with decision-making power and influence, such as having citizen representatives on boards that oversee local public service delivery and the citizens may participate through local associations, social movements and campaigns, formal participatory governance spaces and multiple approaches which employ several of these strategies.⁹

It has been proffered that traditional knowledge is vital for sustainability of natural resources including forests, water, and agro-ecosystems across landscape continuum spanning from households through farms, village, commons and wilderness.¹⁰ Arguably, such knowledge can only be useful in natural resource management through meaningful participation of the concerned communities in the natural resource governance matters. It is contended that religious beliefs, traditional beliefs, cultural mores and practices play a crucial role for the successful conservation of the environment and specific organisms especially in the developing countries.¹¹ That these are often aligned with today's conservation ethics, and it is imperative that they are upheld as they are critical in the wise conservation and management of natural resources. Further, that among the rural communities of the world, the preservation of the environment has an inextricable link to the culture of the people.¹²

⁸ Ibid; See also generally Susan Hazen (1998, *Environmental Democracy*, available at <http://www.ourplanet.com> [accessed on 25/06/2014] (Susan Hazen is a Director of the Environmental Assistance Divisions, Environmental Protection Agency, Washington DC.); See also *The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, UN Doc. ECE/CEP/43. Adopted at the 4th UNECE Ministerial Conference, Aarhus, 25 June, 1998.

⁹ Ibid; See also generally Csaba Kiss et. al., 'Environmental Democracy: An Assessment of Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters in Selected European Countries', *The Access Initiative Europe*, European Regional Report, available at http://www.emla.hu/img_upload/0aa155da39c21509c55c587879f86484/TAI_1.pdf [Accessed on 25/06/2014].

¹⁰ Deep Narayan Pandey, *Traditional Knowledge Systems for Biodiversity Conservation*, World Conservation Union. (1994) Available at http://www.infinityfoundation.com/mandala/t_es/t_es_pande_conserve.htm [Accessed on 18/06/2014].

¹¹ Renias Ngara and Remigios V. Mangizvo, 'Indigenous Knowledge Systems and the Conservation of Natural Resources in the Shangwe Community in Gokwe District, Zimbabwe', *International Journal of Asian Social Science*, 2013, 3(1):20-28, page 20. Available at <http://www.aessweb.com/pdf-files/20-28.pdf> [Accessed on 18/06/2014].

¹² Ibid.

2.1 Need for Public Participation

Public Participation which is also referred to as citizen participation is seen as a necessity in public decision making. However, it has been observed that many agencies or individuals choose to exclude or minimize public participation in planning efforts claiming citizen participation is too expensive and time consuming, while in reality, many citizen participation programs are initiated in response to public reaction to a proposed project or action.¹³ Effective citizen involvement programs have been associated with several benefits to the planning process which include: Information and ideas on public issues; Public Support for planning decisions; Avoidance of protracted conflicts and costly delays; Reservoir of good will which can carry over to future decisions; and Spirit of cooperation and trust between the agency and the public.¹⁴

All of these benefits are important to the natural resource management debate and especially social acceptance of any plans on use or exploitation of these resources in a country. Lack of social acceptance of such management decisions may and have indeed resulted in court battles and a general lack of trust among many people with regard to natural resource governance in Kenya.

For instance, in the case of *Erick Okeyo v County Government of Kisumu & 2 others*¹⁵ the petitioner filed a petition to challenge award of contract for solid waste management in Kisumu after he allegedly tried, in vain, to obtain from the respondents evidence that the evidence had been floated. The grounds were *inter alia* that the tender was questioned because the question of refuse removal, refuse dump and solid waste management was an environmentally sensitive one that required, not only the involvement of the National Environmental Management Authority (under the *Environmental Management and Coordination Act* No. 8 of 1999) but also public participation as envisaged under Article 201, now that public resources were involved. A policy needed to be developed following public participation before any tender could be floated. The petitioner pleaded that the 3rd respondent was going to levy charges from the public from whom such garbage or waste was collected. He found a problem with that levy in view of lack of legislation (Article 210) to allow such imposition. He complained about the respondent's refusal

¹³ Bob Parker, 'Planning Analysis: The Theory of Citizen Participation', available at <http://pages.uoregon.edu/rgp/PPPM613/class10theory.htm> [Accessed on 20/06/2014].

¹⁴ Ibid.

¹⁵ Petition No. 1 'A' OF 2014; [2014] eKLR.

to provide information regarding the tender. His case was that that was public information to which he was entitled, and which he had been denied, under Article 35. Thus, the petitioner sought declarations *inter alia*: that the contracting of the 1st respondent's obligations as set out in Schedule 4¹⁶ of the Constitution was a major policy decision requiring public participation as provided for in the Constitution more so in Articles 201 and 232.

The Court observed *inter alia* that the Constitution and the *County Governments Act* (No 17 of 2012) provide for citizen participation in elections and appointments; legislation; policy formulation, planning and development; effective resources mobilization and use for sustainable development; project identification, prioritisation, planning and implementation; and the alignment of county financial and institutional resources to agreed policy objectives and programmes. Further, the Act requires each County to provide continual and systematic civic education to its residents. This is out of the realization that it is only when citizens are enlightened that they can effectively participate in governance matters affecting them. There was no evidence that the project was as a result of any policy decision and objective in which the residents of the County were engaged. The conclusion was therefore that the project was therefore constitutionally and legally indefensible. The Court therefore held that allowing the respondents to proceed with the project in the illegal manner would lead to imprudent and irresponsible use of a precious resource without assuring the public that there is value for money. It declared that the decision to enter into a public private partnership in relation to solid waste management was a major policy decision that required public participation.

Public participation is important because it not only helps the public appreciate what the authorities are doing but it is also useful in facilitating social acceptance of projects by communities thus promoting peace and development. Well-developed strategies for public participation build trust, promote accountability, strengthen commitment of all stakeholders towards improved governance, and directly limit the potential for corruption.¹⁷ The views of the citizens must be heard and reflected in development decisions, thus making governments responsive and accountable to the community.¹⁸

¹⁶ Distribution of functions between National and the county governments.

¹⁷ United Nations Human Settlements Programme, 'Public Participation Tools', available at http://ww2.unhabitat.org/cdrom/TRANSPARENCY/html/2b_8.html [[Accessed on 18/06/2014].

¹⁸ Ibid.

2.2 Public participation in Natural Resource Management

Although there are various definitions for Natural Resource Management, it has been defined to mean *inter alia* the sustainable utilization of major natural resources, such as land, water, air, minerals, forests, fisheries, and wild flora and fauna.¹⁹ Since Natural resources play a very important role in providing fundamental life support, in the form of both consumptive and public-good services, as well as ecological processes that maintain soil productivity, nutrient recycling, the cleansing of air and water, and climatic cycles.²⁰

Sustainable management of natural resources is said to have assumed significant importance due to increased demand on these resources brought on mostly by population pressure coupled with climate change, pollution and economic development needs leading to dwindling availability of natural resources.²¹ While writing in the context of the near East and North Africa region, the Food and Agricultural Organization of the United Nations (FAO) states that the direct effect of the population pressure is observable on the decreasing availability and quality of water and land, in addition to fisheries, forestry, and range resources which are shrinking both in quantitative and qualitative terms due to over-exploitation and encroachment.²² They state that it is thus an urgent priority of the Region to develop and implement policies for effective and sustainable land and water management as well as improved management of fisheries, rangeland and forestry.²³ They posit that it is necessary to promote the engagement and participation of all stakeholders in planning and managing water, land and genetic resources in addition to promoting regional cooperation on trans-boundary water management.²⁴ Indeed, it has been observed that natural resources are not just valuable economic resources; they are also political and social resources. And as such, at all levels: local, national and international, actors compete to gain access, control and benefits from natural resources.²⁵ Natural resource

¹⁹ The World Bank Group, *Natural Resources Management*, April 2000. Page 1.

Available at <http://info.worldbank.org/etools/docs/library/110135/nrm.pdf> [Accessed on 18/06/2014].

²⁰ Ibid.

²¹ Food and Agricultural Organization of the United Nations, *Sustainable Management of Natural Resources*, available at <http://neareast.fao.org/Pages/PageCreator.aspx?lang=EN&I=0&DI=0&CI=0&CMSID=678> [Accessed on 18/06/2014].

²² Ibid.

²³ Ibid; See also United Nations Conference on Sustainable Development (UNCSD, or Rio+20) Report, A/RES/66/288 - *The Future We Want*. Resolution adopted by the General Assembly on 27 July 2012.

²⁴ Ibid.

²⁵ FRR, *Natural Resource Governance*,

governance determines how these competitions are played out and resolved, and who ultimately benefits from them.

It has also been argued that in situations of weak governance, people have limited incentives to manage their resources for the long term and face significant barriers to building a sustainable livelihood for themselves. It has been noted that ineffective management of common property resources can often lead to competition, over-exploitation and eventually the degradation of the resource itself.²⁶

3.0 International Environmental Law and Public Participation

The international conventions and treaties on environmental and natural resource governance provides for the participation of the public in natural resource governance processes. Any treaties, bilateral agreements and conventions ratified by Kenya form part of the law under the Constitution of Kenya.²⁷ This section highlights some of the major international instruments touching on public participation in decision-making processes, state policies and programmes on environment and natural resources governance, setting the background for the analysis on the principle of public participation in the natural resource management sector in Kenya.

Article 1.1 of the *Declaration on the Right to Development*²⁸ is to the effect that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. Further, clause (2) thereof is to the effect that the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. If the citizens are to enjoy this right, then they must participate fully in the management and governance of these resources to ensure that the accruing benefits trickle down to them. Article 2 and 3 of the

available at <http://www.theidlgroup.com/FRR/NaturalResourceGovernance.htm> [Accessed on 18/06/2014].

²⁶ Ibid.

²⁷ Article 2(5) (6). It is however important to note the provisions of the *Treaty Making and Ratification Act, 2012* (No. 45 of 2012), which is an Act of Parliament to give effect to the provisions of Article 2(6) of the Constitution and to provide the procedure for the making and ratification of treaties and connected purposes.

²⁸ General Assembly resolution A/RES/41/128, 4 December 1986, *Declaration on the Right to Development*

Declaration also tasks the member States with formulating appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, based on their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

The *African [Banjul] Charter on Human and Peoples' Rights*²⁹ is a regional Convention that enshrines and promotes the right of peoples to self-determination³⁰ and to freely dispose of their natural wealth and resources.³¹ Further, Article 13 is to the effect that every citizen has the right to participate freely in the government of their country, either directly or through freely chosen representatives in accordance with the provisions of the law.

*The Agenda 21*³² under chapter 23 calls for full public participation by all social groups, including women, youth, indigenous people and local communities in policy-making and decision-making.³³ It states that one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, it provides that in the more specific context of environment and development, the need for new forms of participation has emerged. This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work. Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures.³⁴

²⁹ *African [Banjul] Charter on Human and Peoples' Rights*, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

³⁰ Article 20.

³¹ Article 21.

³² United Nations Conference on Environment & Development, Rio de Janeiro, Brazil, 3 to 14 June 1992, AGENDA 21. Agenda 21 is an international framework agreement for pushing for global sustainable development that was endorsed by national governments, including the Kenyan Government, at the 1992 Rio Earth Summit.

³³ *Ibid*, clause 23.1. 'Critical to the effective implementation of the objectives, policies and mechanisms agreed to by Governments in all programme areas of Agenda 21 will be the commitment and genuine involvement of all social groups.'

³⁴ *Ibid*, Clause 23.2.

*The International Covenant on Civil and Political Rights*³⁵ provides under Article 25 that every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions to *inter alia* take part in the conduct of public affairs, directly or through freely chosen representatives.

*The Draft Principles on Human Rights and the Environment*³⁶ under Principle 18 proclaims that all persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

The *United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*³⁷ was adopted on 25 June 1998 in the Danish city of Aarhus) at the Fourth Ministerial Conference as part of the "Environment for Europe" process, and it entered into force on 30 October 2001.³⁸ Although it is a regional treaty it serves as a benchmark in the content of public participation and information dissemination in environmental matters.

The Aarhus Convention provides for a number of rights of the public (individuals and their associations) with regard to the environment. It provides for: the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"); the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it ("public participation in environmental decision-making"); and the right to review procedures to

³⁵ *The International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976

³⁶ E/CN.4/Sub.2/1994/9, Annex I (1994)

³⁷ *The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, UN Doc. ECE/CEP/43. Adopted at the 4th UNECE Ministerial Conference, Aarhus, 25 June, 1998. UN Doc. ECE/CEP/43. Adopted at the 4th UNECE Ministerial Conference, Aarhus, 25 June, 1998.

³⁸ European Commission Environment. Available at <http://ec.europa.eu/environment/aarhus/> [Accessed on 18/06/2014].

challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").³⁹

The *East Africa Community Protocol on Environment and Natural Resources Management*⁴⁰ (EAC Protocol) is a regional instrument that was passed with the overall objective of governing the Partner States in their cooperation in the management of environment and natural resources over areas within their jurisdiction including transboundary environment and natural resources in areas such as: transboundary natural resources; biological diversity and genetic resources; forest and tree resources, wildlife, water, wetlands, coastal and marine, fisheries, minerals, energy, mountainous ecosystems, land, rangelands, public participation, access to information and justice and tourism.⁴¹

The guiding principles in the application of the Protocol are *inter alia*: the principle of poverty eradication and food security; the principle of co-operation in the management of environment and natural resources including those of transboundary in nature; the principle of sustainable development; the principle of public participation in the development of policies, plans, processes and activities; the principle of prior informed consent or notification in cases of activities with transboundary impacts; the principle of information sharing; the principles of strategic environmental assessment and environmental impact assessment of projects, policies and activities; the principle of environmental audit and monitoring of projects, policies and activities; the principle of the unity and coherence of shared ecosystems; the principle of *subsidiarity*⁴² *in the management of the environment and natural resources* (Emphasis ours); the principle of gender equality; and the principle of state responsibility.⁴³ Of major importance is Article 34 which provides for public participation, access to justice and information. The protocol requires that the Partner States shall adopt common policies, laws and programmes relating to access to information, justice and the participation of the public in environmental and natural resource management.⁴⁴ It also calls upon the Partner States to create an environment

³⁹ Articles 3-9.

⁴⁰ April 2006.

⁴¹ Articles 2-3.

⁴² Although surrounded by controversy, subsidiarity has been treated as a strictly devolutionary principle compelling the reallocation of social functions from higher to lower government bodies, or from government to non-government entities. Available at Robert K. Vischer, 'Subsidiarity as a Principle of Governance: Beyond Devolution', *Indiana Law Review* [Vol. 35:103, 2001], available at <http://mckinneylaw.iu.edu/ilr/pdf/vol35p103.pdf> [Accessed on 25/06/2014].

⁴³ Article 4.

⁴⁴ Article 34.1.

conducive for the participation of civil society and non- governmental organisations, the public, local communities and private sector on environment and natural resource management.

It cannot therefore be overemphasized that public participation must be part of natural resources management and governance at all levels. It is important to note that the possession of plentiful natural resources can result in the resource curse phenomenon. It has been rightly pointed out that many developing countries rely on the revenues generated by the trade in such resources, but oil, minerals, forests and land have also been the cause of poverty and conflict.⁴⁵ The main issue to grapple with is therefore the level, quality and instances of public participation.

3.1 Emerging Issues in Public Participation

There are some key issues that must be addressed so as to come up with a good framework to enable public participation in environmental governance. Going by its place in the international and national legal and institutional frameworks on environmental governance, it is a matter of debate as to whether public participation should be treated as a right rather than a privilege. Article 1 emphasizes that all sovereign power belongs to the people while Article 10 of the Constitution of Kenya, 2010 sets out democracy and participation of the people and inclusiveness as some of the national values and principles of governance in Kenya.

Articles 54, 55, 56 and 57 provides for the participation of the persons with disabilities, minorities and marginalized groups, youth and older members of society respectively, in governance and all other spheres of life. To this extent, it is possible to argue that participation in governance matters is a constitutional right. Article 69 sets out the obligations of the State in respect of the environment. Amongst these is the obligation to encourage public participation in the management, protection and conservation of the environment.⁴⁶ Further, Article 119 provides for the right to petition Parliament. This includes the right to petition Parliament on matters within its authority, including enacting, amending or repealing any legislation touching on natural resources governance. In fact, Article 69(2) places a legal duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. For the general public

⁴⁵ Transparency and Accountability Initiative, Policy Innovations: *Natural resource governance*, available at <http://www.transparency-initiative.org/workstream/policy-innovations/natural-resource-governance> [Accessed on 18/06/2014].

⁴⁶ Article 69(1) (d).

to be able to fulfill this duty, it therefore follows that they cannot sit back and look as degradation of the environment and misuse of natural resources goes on.

Public participation is said to be a two-way communication and collaborative problem solving with the goal of achieving better and more acceptable decisions, based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.⁴⁷

Article 174 (c) states some of the objects of devolution are “to ... enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them” and “to recognise the right of communities to manage their own affairs and to further their development”. Community engagement is believed to be a dimension of Public Participation and a process that requires power sharing, maintenance of equity, and flexibility in pursuing goals, methods, and time frames to fit the priorities, needs, and capacities within the cultural context of communities.⁴⁸ On the one part, it can be argued that people need to be included in such governance to ensure that their genuine needs and reasonable expectations are met and to that extent, their participation can be viewed as a right.

Principle 10 of the 1992 *Rio Declaration* provides that ‘environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual is to have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States are to facilitate and encourage public awareness and participation by making information widely available. Further, effective access to judicial and administrative proceedings, including redress and remedy, are to be provided.’

On the other hand, the quality and extent of participation matters so that it is not enough for people to participate but there is need for them to be able to appreciate the real implications of any decision being made. Otherwise, it is reduced to a matter of formality without any real benefit or achieving the desired end.

There is also the need to define the minimum level of engagement in public participation. In both consultative and empowered participation, there is need to determine the minimum acceptable standards of participation.

⁴⁷ Transparency and Accountability Initiative, Policy Innovations: *Natural resource governance*, op.cit.

⁴⁸ Ibid.

Article 118(1)(a) of the Constitution of Kenya requires Parliament to conduct its business in an open manner, and its sittings and those of its committees to be open to the public; and (b) to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. In this regard, there is need for determining and spelling out clearly the activities that must include public participation. This is in appreciation of the fact that not all activities may really require public participation. The *1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*⁴⁹ provides under Article 7 that ‘to the *extent appropriate* (emphasis added), each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.’ It is not therefore very clear as to whether the public should be included in decision making as a matter of right or as a privilege at the states’ pleasure on the ground that at times governments will need to make decisions balancing of social, environmental and economic objectives.

Defining the public is also equally important in deciding the level of participation. The public may include *inter alia* interested persons, concerned persons, stakeholders, civil society or the diaspora. This will also be useful in determining the appropriate entry point for public participation based on the level of knowledge and understanding involved, as well as the interests and needs involved.

A good framework on public participation should be efficient in informing the public of the opportunity for participation. For instance, the current legal framework on environmental impact assessment (EIA) in Kenya requires that upon receipt of an environmental impact assessment study report from any proponent under section 58(2), the National Environment Management Authority shall cause to be published in each of two successive weeks in the Gazette and newspaper circulating in the area or proposed area of the project once at least in each of two successive weeks in some one and the same a notice which shall state: a summary description of the project; the place where the project is to be carried out; the place where the environmental impact assessment study, evaluation or review report may be inspected; and a time limit of not exceeding ninety days for the submission of oral or written comments by any

⁴⁹ The *1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, UN Doc. ECE/CEP/43. Adopted at the 4th UNECE Ministerial Conference, Aarhus, 25 June, 1998. UN Doc. ECE/CEP/43. Aarhus Convention is essentially European but provides useful lessons in the public participation discourse.

member of the public on the environmental impact assessment study, evaluation or review report.⁵⁰ The effectiveness of this is debatable due to a number of factors. Firstly, it must be appreciated that not all persons may be well versed with the technical details of the report and may therefore miss out on important details. Secondly, the law on EIA does not expressly require active public participation in order to validate the report. Thus, the concerned persons may not bother to organise public forums to break down details especially where the project might have significant adverse effect on the public. Thirdly, not all persons are able to afford or even be able to read the papers and might never get to know about the EIA report or even the project until it becomes too late to challenge it.

In connection to the foregoing, effective public participation requires providing the information needed for public participation. This is to facilitate objective evaluation of the use or exploitation of natural resources. The stakeholders are therefore required to determine the suitable media/ forums/methods for public participation. There is also need for reasonable timeframes for public participation. Currently, the environmental law provides for ninety days for feedback from the public on EIA reports.⁵¹

There is also need for considering the resource implications of facilitating public participation. Currently EIA studies are carried at the expense of the proponent of a project.⁵² There must be an effective mechanism of ensuring that there is feedback to the public on impact of their participation since the consequences of lack of public participation include negative impact on growth and failure to embrace development projects relying on exploitation of such natural resources.

4.0 Public Participation and Natural Resources: Kenya's Legal Framework

It is noteworthy that Kenyan laws on natural resource management cut across the various areas of agriculture, livestock, fisheries, environment and natural resources, water management, regional development, land use, management and tenure, energy and electricity, mining and tourism among others. However, this analysis is limited largely to the environment and natural

⁵⁰ Sec. 59, No. 8 of 1999; See also Legal Notice No. 101, the Environmental (Impact Assessment and Audit) Regulations, 2003.

⁵¹ Ibid.

⁵² Ibid, sec. 58(2).

resources laws and policies with a general overview of the major procedural laws on governance of all natural resources management processes.

4.1 The Environment Management and Coordination Act, 1999 (EMCA)

EMCA⁵³ is the main framework law on environment in Kenya, enacted as an Act of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for the matters connected therewith and incidental thereto.

One of the general principles of environmental management provided under EMCA is sustainable development. The specific principles of sustainable development include *inter alia* the principle of public participation. Section 3(5)(a) of EMCA provides that in exercising the jurisdiction conferred upon it under subsection (3)⁵⁴, the High Court shall be guided by the principles of sustainable development which include the principle of public participation in the development of policies, plans and processes for the management of the environment. As a tool of facilitating public participation, EMCA provides for Environmental Impact Assessment study (EIA).⁵⁵ Section 2 thereof defines “environmental impact assessment” to mean a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment.

The Act requires that the proponent of a project undertake or cause to be undertaken at his own expense an EIA study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the intended project may or is likely to have or will have a significant impact on the environment, so directs.⁵⁶ The EIA studies and reports required under this Act are to be conducted or prepared respectively by individual experts or a firm of experts authorised in that behalf by the Authority.

⁵³ No 8 of 1999.

⁵⁴ Application to High Court for redress on alleged violation of the entitlement to clean and healthy environment.

⁵⁵ Part IV (SS. 58-67).

⁵⁶ Sec. 58(2).

4.2 Environmental Management and Coordination (Amendment) Bill, 2012

The Environmental Management and Coordination (Amendment) Bill, 2012 (the Bill)⁵⁷ if enacted, seeks to amend EMCA. Section 3(d) of this Bill seeks to amend section 3 of the Principal Act (EMCA) by adding a new Section 3(7) to read to the effect that in interpreting and implementing the Act, all persons shall be guided by *inter alia* the principles of voluntary environmental management, rule of law, social justice, subsidiarity, public participation, integrity, non-discrimination, transparency, equitable sharing of resources, accountability and the principles of public service. Section 6 of the Bill seeks to amend section 9(2) of EMCA, in sub paragraph (m) by the deleting the words occurring after public awareness and substituting therefor with the words public participation.⁵⁸

Section 28 of the Amendment Bill seeks to amend the title of Part VI of the Principal Act (EMCA) to read “Integrated Impact Assessments” (IIA) instead of Environmental Impact Assessment. It is noteworthy that IIA is wider and would probably be more effective than EIA considering that it is expanded in scope since it covers: Strategic Environmental Assessments; Environmental Impact Assessments; Health Impact Assessments; Social Impact Assessments; and Cultural Impact Assessments.⁵⁹ It is therefore likely to impact positively by widening instances of public participation in environmental and natural resources management.

Section 30 of the Bill seeks to amend EMCA by the inclusion of a new section 58 B (1) (a) to read as follows: ‘All Policies, Plans and Programmes for implementation shall be subject to Strategic Environmental Assessment. In relation to this, section 2(h) thereof seeks to add the definition of strategic environmental assessment to mean the systematic process of subjecting policies, programmes and plans to a range of analytical and participatory approaches that aims to mainstream and upstream environmental considerations into such policies, plans and programmes and evaluate the inter linkages with economic, social and cultural considerations.

⁵⁷ Government Printer, Nairobi.

⁵⁸ Sec. 9(2) (m) currently reads that one of the objects and functions of National Environment Management Authority shall be to undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education and public awareness about the need for sound environmental management as well as for enlisting public support and encouraging the effort made by other entities in that regard.

⁵⁹ Sec. 29, Environmental Management and Coordination (Amendment) Bill, 2012.

Again, this is a tool that is likely to impact positively on public participation in environmental and natural resource management in Kenya.

It is noteworthy that the EMCA (Amendment) Bill proposed amendments to the principal Act are meant to reflect the devolution structure under the Constitution of Kenya, 2010 which essentially seeks to foster greater participation of the citizenry in governance matters.

4.3 The Wildlife Conservation and Management Act, 2013

The Wildlife Conservation and Management Act, 2013⁶⁰ is an Act of Parliament to provide for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes. This Act applies to all wildlife resources on public, community and private land, and Kenya territorial waters and thus has potential to result in many decisions that require public participation.⁶¹ The Act defines public participation to mean active involvement by the citizenry in decision making processes through, *inter alia*, use of the national media, relevant consultative mechanisms and public hearings.⁶²

The implementation of the Act is to be guided by general principles which include *inter alia*: Wildlife conservation and management to be devolved, wherever possible and appropriate to those owners and managers of land where wildlife occurs; and conservation and management of wildlife to entail effective public participation.⁶³

The Act empowers the Cabinet Secretary to formulate and publish in the Gazette a national wildlife conservation and management strategy at least once every five years, in accordance with which wildlife resources shall be protected, conserved, managed and regulated.⁶⁴ The strategy must prescribe the principles, objectives, standards, indicators, procedures and incentives for the protection, conservation, management sustainable utilization and control of wildlife resources and must, in particular prescribe *inter alia*: measures facilitating community-based natural resources management practices in wildlife conservation and management; national wildlife research and monitoring priorities and information systems, including- research priorities; the collection and management of data and information regarding the status of wildlife resources; procedures for gathering wildlife data and the analysis and

⁶⁰ No. 47 of 2013, Laws of Kenya.

⁶¹ Ibid, Sec. 2.

⁶² Ibid, sec. 3.

⁶³ Ibid, Sec. 4.

⁶⁴ Ibid, Sec. 5(1).

dissemination of wildlife information, wildlife management information system; measures necessary to ensure equitable sharing of benefits; guidelines for granting and monitoring wildlife user rights; and innovative measures for mitigating human wildlife conflict.⁶⁵ However, the Cabinet Secretary must, when formulating a national wildlife conservation and management strategy under subsection (1), consult the public in accordance with the Fourth Schedule.⁶⁶

Regarding declaration of protected areas, the Act empowers the Cabinet Secretary, in consultation with the competent authority, by notice in the Gazette: declare an area to be a national park; a marine protected area; or a wetland, except *inter alia* where no public participation has occurred.⁶⁷

The Act provides for communities, landowners, groups of landowners and existing representative organizations to establish a community wildlife association and register under the appropriate law or in the case of an individual owner, be registered as a recognized wildlife manager by the County Wildlife Conservation and Compensation Committee, with the object and purpose of facilitating conflict resolution and cooperative management of wildlife within a specified geographic region or sub-region.⁶⁸ Such an association or wildlife manager approved by the Cabinet Secretary on the recommendation of the service in consultation with the county wildlife conservation committees is to *inter alia* do any other act that is necessary to enhance community participation in wildlife protection, conservation and management.⁶⁹

Regarding management of national parks, marine protected area, wildlife conservancy and sanctuaries, the Act requires that in preparing and adopting a management plan, the Kenya Wildlife Service (KWS) is to consult with the county wildlife conservation committee; in the case of protected areas, the formulation and implementation of management plans are involve the participation of neighbouring communities.⁷⁰

⁶⁵ Ibid, sec. 5(2).

⁶⁶ Ibid, sec. 5(5). Schedule four to the Act deals with provisions as to public consultation (Requirement for public consultation)

⁶⁷ Ibid, sec. 31.

⁶⁸ Ibid, Sec. 40.

⁶⁹ Ibid, sec. 41.

⁷⁰ Ibid, sec. 44. The Management Plans must conform to the standards set out under the Fifth Schedule to the Act. It is noteworthy that the Act requires as a minimum in the contents of the Plan *inter alia*: A report detailing the participation of neighbouring communities in the preparation of the plan; and a description of the anticipated benefits and beneficiaries. This is definitely a positive step towards enhancing public participation in management of wildlife resources.

Management Plans

The Act further provides that the Cabinet Secretary may, on recommendation of the Service, make rules and regulations for *inter alia*: granting of wildlife user rights; prescribing measures that enhance community participation in the conservation and management of wildlife; and prescribing the manner of nomination of representatives of communities and other stakeholders to the Board, Trustees and the regional wildlife conservation area committees.⁷¹ The *Proposed National Water Policy 2012*⁷² provides that one of the guiding principles in provision of water services is community participation and empowerment in management of point source and very small piped systems.⁷³

Further, it notes that the *National Water Policy 1999*⁷⁴ and the *Water Act, 2002*⁷⁵ provided for a new institutional set-up for water resources management and water services provision at national and basin level.⁷⁶ Further, it states that for participation of users/consumers and their empowerment, the Water Resource User Associations (WRUAs) and Water Consumer Groups (WCGs) were established. Effective stakeholder participation ensured that water conflicts are resolved in a more amicable manner and awareness increased.⁷⁷

The Policy nevertheless sought to enhance public participation through a number of ways. Clause 5.1.3 thereof on Policy Objective and Policy Statements provides for change in the institutional framework on water governance. This includes *inter alia*: Making use of civil society organizations and ensure their alignment to the principles of the sector reform and the constitutional rights; and Coordination and Communication for Development Effectiveness, to be guided by such guiding principles such as stakeholder participation, joint planning, joint evidence supported monitoring and evaluation, and public reporting.⁷⁸

Clause 5.4 of the Policy states that the ongoing reforms in the sector have seen enhancement of public participation in all areas of water affairs. It states that with the new constitutional order such participation in development and implementation of sector projects will have to increase, as the right to be informed on progress is to be institutionalized. According to the Policy, this will also help to defuse water conflicts timely without violence and create new

⁷¹ Ibid, SEC. 166.

⁷² Government Printer, Nairobi.

⁷³ Clause 3.2.

⁷⁴ Government Printer, Nairobi.

⁷⁵ Government Printer, Nairobi.

⁷⁶ Clause 5.1.1.

⁷⁷ Ibid.

⁷⁸ Clause 5.2.2.

opportunities for better services to meet the right to water. It suggests that public participation can be improved on all levels such as in the representation of boards of water services, in decision making processes, dialogue platforms and information sharing among others.

4.4 Legal Notice No. 101, the Environmental (Impact Assessment and Audit) Regulations, 2003

The Regulations require that during the process of conducting an environmental impact assessment study under these Regulations, the proponent shall in consultation with the Authority, seek the views of persons who may be affected by the project.⁷⁹ It also specifies the procedure for the same, by stating that in seeking the views of the public, after the approval of the project report by the Authority, the proponent shall: publicize the project and its anticipated effects and benefits by - posting posters in strategic public places in the vicinity of the site of the proposed project informing the affected parties and communities of the proposed project; publishing a notice on the proposed project for two successive weeks in a newspaper that has a nation-wide circulation; and making an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week for two consecutive weeks; hold at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments; ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient for the affected communities and the other concerned parties; and ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for onward transmission to the Authority.⁸⁰ Regulation 22 of these Regulations states that upon receipt of both oral and written comments as specified Public hearing by section 59 and section 60 of the Act, the Authority may hold a public hearing.⁸¹

⁷⁹ Regulation 17(1).

⁸⁰ Regulation 17(2).

⁸¹ Regulation 22(3) The date and venue of the public hearing should be publicized at least one week prior to the meeting - (a) by notice in at least one daily newspaper of national circulation and one newspaper of local circulation; (b) by at least two announcements in the local language of the community and the national language through radio with a nationwide coverage. (4) The public hearing should also be conducted at a venue convenient and accessible to people who are likely to be affected by the project. (5) Further, a proponent should be given an opportunity to make a presentation and to respond to presentations made at the public hearing.

Further, Regulation 35(1) provides that an environmental audit⁸² shall be carried out through environmental questionnaires, an environmental site visits and test analysis and in the manner specified in this regulation. However, it requires that in conducting an initial environmental audit an environmental auditor shall *inter alia*: study all relevant environmental law and regulatory frameworks on health and safety, sustainable use of natural resources and on acceptable national and international standards; and examine and seek views on health and safety issues from the project employees, the local and other potentially affected communities.⁸³

Regulation 42(1) of the Regulations is to the effect that lead agencies are, in consultation with the Authority, to subject all proposals for public policy, plans and programmes for environmental implementation to a strategic environmental assessment to determine which ones are the most environmentally friendly and cost effective when implemented individually or in combination with others. Such assessment reports are to consider *inter alia*: the use of natural resources; the protection and conservation of biodiversity; human settlement and cultural issues; socio-economic factors; and the protection, conservation of natural physical surroundings of scenic beauty as well as protection and conservation of built environment of historic or cultural significance.

It is important to note that although these Regulations have provisions to promote public participation, there has been laxity in implementing the same in that the reports are mostly prepared without proper engagement of the public. Even where the public is engaged, there is usually minimal engagement in terms of quality.

5.0 Towards Meaningful Public Participation

The poor governance of natural resources has often resulted in violent conflicts in many countries in Africa (for instance Sierra Leone) and even beyond.⁸⁴ It has been observed that improving natural resource governance and addressing land ownership and control are vital

⁸² Regulation 2 defines "environmental audit study" to mean a systematic evaluation of activities and processes of an ongoing project to determine how far these activities and programmes conform with the approved environmental management plan of that specific project and sound environmental management practices;

⁸³ Regulation 35(2).

⁸⁴ See generally, Sylvester Bongani Maphosa, 'Natural Resources and Conflict: Unlocking the economic dimension of peace-building in Africa', Africa Institute of South Africa, AISA Policy Brief, Number 74 – March 2012, available at <http://www.ai.org.za/wp-content/uploads/downloads/2012/04/No.-74.-Natural-Resources-and-Conflict.-Unlocking-the-economic-dimension-of-peace-building-in-Africa.pdf> [Accessed on 18/06/2014].

components of successful peace consolidation strategies, and that while tackling them is likely to be complex in an environment affected by conflict, they are essential for sustainable peace and development in the longer term.⁸⁵ Further, it has been posited that certain general principles are useful in mobilising natural resources as a tool to promote peace building. These include: The importance of transparency and accountability with regard to government management of natural wealth and the revenues it generates; The need to involve civil society, in particular local communities (including indigenous and marginalised groups) in the definition and implementation of road maps towards better natural resource governance and management; the important role that responsible resource extraction and processing companies can play in improving wider governance conditions within the sector; and The potential of international standards and initiatives (e.g. the Extractive Industries Transparency Initiative – EITI – and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Companies) to provide guidance and set benchmarks for various public and private actors.⁸⁶ Examples of such international standards are sustainable development and green growth. One of the principles of sustainable development is public participation.

Sustainable development is said to have been the main goal of the international community since the UN Conference on Environment and Development (UNCED) in 1992.⁸⁷ Inclusive green growth is believed to be the pathway to sustainable development and the only way to reconcile the rapid growth required to bring developing countries to the level of prosperity to which they aspire, meet the needs of the more than 1 billion people still living in poverty, and fulfill the global imperative of a better environment.⁸⁸

During the United Nations Conference on Sustainable Development (UNCSD, or Rio+20) held in 2012, green economy was considered as one of the important tools, guided by

⁸⁵ Holger Grundel, 'Practice note 6: Natural Resource Governance in Conflict-Affected Contexts', *Strengthening the Economic Dimensions of Peace building Practice Note Series*, International Alert. Page 2. Available at <http://www.international-alert.org/sites/default/files/publications/201010PracticeNote6NatResourceGovernance.pdf> [Accessed on 22/06/2014].

⁸⁶ Ibid.

⁸⁷ United Nations Department of Economic and Social Affairs, Division for Sustainable Development, *Green economy in the context of sustainable development and poverty eradication*, available at <http://sustainabledevelopment.un.org/index.php?menu=1224> [Accessed on 22/06/2014].

⁸⁸ The World Bank, *Sustainable Development: Getting to Inclusive Green Growth*, available at <http://www.worldbank.org/en/news/feature/2012/05/09/growth-to-inclusive-green-growth-economics-sustainable-development> [Accessed on 22/06/2014].

the Rio Principles, Agenda 21, the JPOI⁸⁹ and contributing to the MDGs, useful in achieving sustainable development.⁹⁰ Paragraph 58 of the United Nations Conference on Sustainable Development (UNCSD, or Rio+20) Resolution on green economy policies addresses, *inter alia*: national sovereignty over natural resources; participation by all relevant stakeholders; sustained and inclusive growth; international cooperation on finance, among other matters; indigenous peoples and non-market approaches; poverty eradication; and overcoming poverty and inequality.⁹¹

Public participation is believed to be important in bridging the gap between the government, civil society, private sector and the general public, building a common understanding about the local situation, priorities and programmes as it encourages openness, accountability and transparency, and is thus at the heart of inclusive decision-making.⁹² The level and the nature of public participation in local governance issues are often used as indicators of a healthy civic culture.⁹³

From the foregoing discussion on Kenya's legal framework which includes ratified international treaties, conventions and agreements⁹⁴, it is apparent Kenya's most laws provide for public participation in environmental governance as well as natural resource governance. What is therefore mainly required is the political goodwill to implement the same. To make such participation more effective, there is however need to empower the citizenry through a number of ways. One of these ways is through provision of formal and continuous education.

5.1 Education

It is noteworthy that if any meaningful and quality participation by the public in governance of natural resources is to be realised, then there is need to empower the citizenry with the relevant knowledge. They need to be empowered through education to ensure that they appreciate the language(s) and content of the available information. Article 35 of the Constitution on right to information cannot be effectively realised in an illiterate society.

⁸⁹ Johannesburg Plan of Implementation, Plan of Implementation of the World Summit on Sustainable Development.

⁹⁰ Earth Negotiations Bulletin, *Summary Of The United Nations Conference On Sustainable Development*, 13-22 June 2012, available at <http://www.iisd.ca/vol27/enb2751e.html> [Accessed on 22/06/2014].

⁹¹ Ibid.

⁹² United Nations Human Settlements Programme, 'Public Participation Tools' op.cit.

⁹³ Ibid.

⁹⁴ Article 2(5) (6), Constitution of Kenya 2010.

The 1966 *UN Covenant on Civil and Political Rights and Economic, Social and Cultural Rights*⁹⁵ provides that the States Parties to the Covenant recognize the right of everyone to education. It further states that they agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. Education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.⁹⁶

Further, the EAC Protocol, to which Kenya is a party, provides that in order to contribute to the protection of the rights of the present and future generations to live in an environment adequate for their health and well-being, the Partner State should: ensure that officials and public authorities assist the public to gain access to information and facilitate their participation in environmental management; promote environmental education and environmental awareness among the public; ensure that persons exercising their rights in conformity with the provisions of this Protocol are not impeded without discrimination; not carry out any activity that may have significant transboundary environmental impact or harm without prior consultations, timely notification and provisions of technical information and data; and grant due process and equal treatment in administrative and judicial proceedings to all persons who may be affected by environmentally harmful activities in the territory of any of the Partner States.⁹⁷

There is a need to put in place the relevant frameworks to ensure that the general public is furnished with the relevant knowledge to facilitate quality public participation.

Although the general wording of Article 69 of the Constitution of Kenya 2010 is to the effect that the State is to encourage public participation in management, protection and conservation of the environment natural resources without really recognising it as a right, it is possible to use other constitutional provisions to argue for the same as a right in Kenya and one that cannot be dispensed with. Public participation is one of the values and principles of national governance that must be upheld in interpretation or application of any law *including laws on*

⁹⁵The 1966 *UN Covenant on Civil and Political Rights* United Nations, Treaty Series, vol. 993, p. 3. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.

⁹⁶ Article 13.1

⁹⁷ Article 34.4.

environment and natural resources (Emphasis ours).⁹⁸ Further, Article 35(1) thereof provides that every citizen has the right of access to: information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. The State is also obligated to publish and publicize any important information affecting the nation.⁹⁹ Such information includes information on utilisation of natural resources. Article 69(1) (a) requires that the State ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.

The Chief Justice of Kenya, Dr. Willy Mutunga recently stated that there is need for the Judiciary to undertake more proactive engagement with partners and stakeholders in environment field to promote public participation in establishing environmental rule of law.¹⁰⁰

Conclusion

The current legislation in Kenya on environment and natural resource management includes a sufficient legal framework providing for the rights of the citizenry to participate in environmental decision-making, both on the policy and the project level. The Constitution of Kenya 2010 requires facilitation through legislation of wide and quality and meaningful public participation rights and the right to access information. It has provisions that can foster environmental democracy. If comprehensively implemented, the foregoing proposals will go a long way in enhancing quality public participation in the natural resource management sectors in Kenya.

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