

Entrenching the Role of Communities in Achieving Sustainable Development

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Abstract

This paper makes a case for the need to entrench the role of local communities in the pursuit of sustainable development agenda. This is informed by the fact that these communities greatly rely on the natural resources as the main source of their livelihoods. In addition, they interact with these resources on a daily basis and thus, with the right information and knowledge, they can easily identify risks, opportunities and threats to the environment around them. The author argues that meaningful involvement of these communities in natural resources and environmental management can go a long way in moving the country towards achieving its Sustainable Development targets.

1. Introduction

The actions of many players, including states as well as business, Non-Governmental Organisations (NGOs), and the public, are increasingly included in environmental governance, which was initially the purview of local and thereafter national governments.¹ Historically, states and/or governments have governed the environment in a largely top-down manner through regulation and the legal system. However, in the last two decades, non-state actors, such as businesses and communities, have become much more directly involved in governance, necessitating the use of alternative strategies that rely on market forces and/or networks of local actors.² Globalization has made it easier than ever to close the gap between societies and the condition of their environs. Therefore, it has become imperative that more effective environmental

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¹ Benson, D. and Jordan, A., "Environmental Governance." In *The International Encyclopedia of Geography*. Wiley, 2017.

² Ibid.

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laws and legal frameworks be adopted globally in order to shift economic development and advancement along a path towards environmental sustainability.³

Although the Constitution of Kenya calls for communities and the State to work together, decision-making still appears to be mostly top-down, and communities are only given an opportunity to apply for resource user rights, with little to no consultations addressing management and governance issues.⁴

This paper discusses what sustainability means to those closest to the natural resources and most affected by how they are managed; the communities.

2. Sustainable Development Goals through the Eyes of Communities: Adoption of Integrated Approaches to Environmental Governance

It has been observed that strong evidence exists for the unsettling relationship between environmental injustice, conflict, and transformation, which is most obviously evident in the numerous instances of environmental conflict detailed in the Environmental Justice Atlas⁵. These stories therefore offer persuasive evidence that environmental protection mobilisation is most usually started by local communities and indigenous peoples and frequently takes the shape of opposition to resource extraction methods that are viewed as being both unfair and unsustainable.⁶

It has been proposed that excellent governance is the key to achieving sustainable development on a global scale in a just and efficient way.⁷ Environmental legislation forms the

³ Anshu Singh, “Principles and Development of International Environmental Law”, Pen Acclaims, Volume 10, May 2020, ISSN 2581-5504, pp.1-2. < <http://www.penacclaims.com/wp-content/uploads/2020/06/Anshu-Singh.pdf>> accessed 6 January 2023.

⁴ Sec. 29 & 47 Water Act, No. 43 of 2016, Laws of Kenya; Forest Conservation and Management Act, 2016 (No. 34 of 2016), sec. 48-52; See also Rouillé-Kielo G, ‘Natural Resources Management in Kenya (Water and Forest): Centralised Policies, Between Exclusion and Participation of the Local Population’ in Marie-Aude Fouéré, Christian Thibon and Marie-Emmanuelle Pommerolle (eds), *Kenya in Motion 2000-2020* (Africae 2021) <<http://books.openedition.org/africae/2515>> accessed 8 January 2023:

“The water and forest users’ associations “participate” in the management activities primarily as auxiliaries to the central government, in order to help achieve the objectives set on a national level, in particular that of a 10% tree cover up to 2022.”

⁵ EJOLT, ‘EJAtlas | Mapping Environmental Justice’ (*Environmental Justice Atlas*) <<https://ejatlas.org/>> accessed 31 March 2023.

⁶ Martin, A., Armijos, M.T., Coolsaet, B., Dawson, N., AS Edwards, G., Few, R., Gross-Camp, N., Rodriguez, I., Schroeder, H., GL Tebboth, M. and White, C.S., ‘Environmental Justice and Transformations to Sustainability’ (2020) 62 *Environment: Science and Policy for Sustainable Development* 19.

⁷ United Nations, *Introduction to Environmental Governance*, 2017. Available at

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platform for better environmental governance by fusing environmental requirements with the fundamental components of the rule of law. By relating it to basic rights and duties, it draws attention to environmental sustainability. It is a reflection of ethical standards of conduct and universal moral ideals, and it serves as the basis for environmental rights and duties.⁸

Furthermore, it is argued that natural resources may serve as both an engine for Sustainable Development and a foundation for peace and justice if they are managed in a way that is fair, open, and consistent with the law.⁹ The realisation of social justice for Kenyans should, in theory, be the goal of environmental governance systems. When individuals have concerns outside their narrowly defined economic prosperity, legitimate environmental choices must take both distributive and procedural justice considerations into account.¹⁰

When decisions must be made at the expense of someone else's interests or ideals, procedural fairness can help explain such actions. Additionally, it can help the participating actors learn and change their values and motives. Therefore, governance solutions go beyond only defining entitlements; they also encourage involvement and make available dispute resolution to all parties concerned.¹¹

Poverty and rising social inequality are caused by environmental factors such as climate change, biodiversity loss, water shortages, air and water pollution, and soil degradation, among others.¹² Environmental governance must explicitly include a wider range of environmental actors, organisations, and institutions and become more adaptable, responsive, and inventive in order to deal with stresses like climate change, economic instability, and sociopolitical or ideological upheavals.¹³ In the processes of environmental decision-making and enforcement, there is a need for more cooperation between governmental and private-sector players.

<https://globalpact.informea.org/sites/default/files/documents/International%20Environmental%20Governance.pdf>
[Accessed on 6/1/2023].

⁸ United Nations, "Environmental Rule of Law", available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0> [Accessed on 6/1/2023].

⁹ Environment UN, 'Environmental Rule of Law' (*UNEP - UN Environment Programme*, 5 October 2017) <<http://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>> accessed 8 January 2023.

¹⁰ Paavola, J., "Institutions and environmental governance: A reconceptualization," *Ecological economics*, vol.63, no. 1 (2007): 93-103 at p.98.

¹¹ *Ibid.*, p. 97.

¹² United Nations, "Environmental Rule of Law", *op. cit.*

¹³ DeCaro, D. A., Chaffin, B. C., Schlager, E., Garmestani, A. S., & Ruhl, J. B., "Legal and Institutional Foundations of Adaptive Environmental Governance," *Ecology and Society: A Journal of Integrative Science For Resilience And Sustainability*, 22, no. 1 (2017): 1.

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The Kenyan Constitution offers a chance for communities to be empowered by transferring authority from the state to local institutions of decision-making as a means of enabling local communities to manage natural resources and environmental issues.¹⁴ Additionally, a structure that outlines the functions of different stakeholders must be put in place.

The formulation of laws and institutions must be based on the national values and principles of governance.¹⁵ The active engagement of the people and the people-centered approach to governance issues are the common threads throughout the majority of these values and principles. They serve as a reflection of the goals that should be pursued in the development, application, and interpretation of the law. Any outcome of such legislation that does not represent these ideals should be reconsidered, and the law itself should be examined to ensure that it is consistent with the Constitution.

A system of incentives as well as a framework of rights and information are also necessary for citizens acting as an additional resource for environmental policy.¹⁶ The rights to knowledge, participation, and access to justice for individuals and environmental groups are all included in this.¹⁷ Transparency regarding the environmental certifications of products in the market is also included. The desire to engage also assumes that environmental reporting in the media is at least somewhat truthful and problem-focused. Once again, there is an extensive demand for capacity building.¹⁸

Environmental customary laws and cultural norms should be incorporated into environmental governance issues in Kenya. A bottom-up approach to lawmaking is also desirable. A significant component of ensuring that these laws benefit communities in their interactions with environmental resources and that their human rights are protected from any possible violations as a result of such laws is to guarantee that those communities have meaningful participation in those laws.

¹⁴ See Chapter 11 of the Constitution on Devolved Government.

¹⁵ Art. 10(2), Constitution of Kenya 2010.

¹⁶ Wehn U and Almomani A, 'Incentives and Barriers for Participation in Community-Based Environmental Monitoring and Information Systems: A Critical Analysis and Integration of the Literature' (2019) 101 *Environmental Science & Policy* 341.

¹⁷ Ibid.

¹⁸ Jänicke, M., & Jörgens, H., "New approaches to environmental governance," *Environmental Governance in Global Perspective. New Approaches to Ecological and Political Modernisation*, Berlin: Freie Universität Berlin (2006): 167-209, at p.192.

3. Entrenching the Place of Communities in Achieving Sustainable Development

The command-and-control approach to environmental governance focuses primarily on achieving conservation objectives and addressing environmental degradation issues at the expense of also trying to ensure that these resources help achieve social justice for the people with regard to the use of environmental resources.¹⁹ The standards established by numerous legislation for institutional accountability, public participation, and consultations are sometimes taken for granted as mere formality. Social justice-related objectives seem to be put on the back bench.²⁰

Where EMCA provides for consultations, the same are mainly meant to be between the state agencies charged with environmental governance as lead agencies with minimal or no input from affected communities.²¹ Thus, it is possible to have a scenario where the protectionist approaches adopted in most of these sectoral laws end up undermining efforts towards achieving Sustainable Development instead of boosting the same.

The command and control mechanism therefore involves the ‘command’ of the law and the legal authority of the State. Typically, it entails regulatory law, backed by criminal sanctions.²² It is based on potential coercion rather than voluntary goodwill and on penalties rather than positive incentives.²³ The command and control mechanism is what has predominantly informed the development of Kenya’s natural resources protection regime.²⁴ Its fundamental component is the concentration of power for managing natural resources in the hands of the public authorities, with minimal responsibility being delegated to other authorities or communities and little involvement from local communities.²⁵

¹⁹ Muigua, K., "Revisiting the Role of Law in Environmental Governance in Kenya." (2019) < <http://kmco.co.ke/wp-content/uploads/2019/06/Revisiting-the-Role-of-Law-in-Environmental-Governance-in-Kenya-Kariuki-Muigua-June-2019.pdf> > accessed 6 January 2023.

²⁰ Ibid; Tyler, T.R., "Social justice: Outcome and procedure." *International journal of psychology* 35, no. 2 (2000): 117-125; Abebe, B.A. and Jones, K., "Social Equity Outcomes in Ethiopia."

²¹ See also the *Environmental (Impact Assessment and Audit) Regulations, 2003*, Legal Notice 101 of 2003, Regulation 17 which provides for public participation albeit inadequately.

²² Hutter, B.M., 'Socio-Legal Perspectives on Environmental Law: An Overview,' *op. cit.*, pp.3 & 5.

²³ Davies J.C. & Mazurek, J., *Pollution Control in the United States: Evaluating the System*, *op. cit.*, p.15.

²⁴ Ochieng', B.O., 'Institutional Arrangements for Environmental Management in Kenya,' in Okidi C.O., et al, *Environmental Governance in Kenya: Implementing the Framework Law*, (East African Educational Publishers Ltd, 2008), p.200.

²⁵ Ochieng, B.O., 'Institutional Arrangements for Environmental Management in Kenya,' *op. cit.*, p.200; cf. Ribot, J.C., 'Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation,' *World Resources Institute*, 2002.

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Some economists and legal academics contend that excessive bureaucratic centralization and rigidity cause delays and time wasting thus impairing the effectiveness of command and control systems.²⁶ With little to no responsibility being delegated to local communities, a command and control strategy places the power for environmental management in the hands of public institutions²⁷ This leaves little room for participation of local communities.²⁸ In this way, a command and control approach may ignore local and other traditional knowledge relevant in natural resources management, which could be more cost effective and less time consuming.²⁹

EMCA requires all entities, including corporations, to undertake preparations for Strategic Impact Assessments (SEAs) at their own expense and submit them to NEMA for approval.³⁰ The object of SEA is to enhance environmental protection and promote sustainable development through contributing to the integration of environmental considerations into the preparation and adoption of specified policies, plans and programmes.³¹ These exercises should just not only be a question of paperwork and formality.³² The impacted communities should be given a chance to

²⁶ Mintz, J.A., 'Economic Reform of Environmental Protection: A Brief Commend on a Recent Debate' in Michael C. Blumm (ed), *Environmental Law* (Dartmouth Publishing Company Limited, 1992) 343, p. 345.

²⁷ Ochieng', B.O., 'Institutional Arrangements for Environmental Management in Kenya,' *op. cit.*, p. 200.

²⁸ *Ibid.*

²⁹ See generally, Berkes, F., 'Alternatives to Conventional Management: Lessons from Small-Scale Fisheries,' *Environments*, Vol. 31, No.1, 2003.

³⁰ EMCA, s. 57 A (3).

³¹ Environmental protection Agency, 'Strategic Environmental Assessment,' Available at <http://www.epa.ie/monitoringassessment/assessment/sea/#.Vi5tmGuJ2CA> [Accessed on 5/1/2023]; See also Muigua. K, 'Legal Aspects of Strategic Environmental Assessment (SEA) and Environmental Management, available at <http://kmco.co.ke/wp-content/uploads/2018/08/Legal-Aspects-of-SEA-and-Environmental-Management-3RD-December-2016.pdf> [Accessed on 5/1/2023].

³² See generally, United Nations, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach*, (UNEP, 2004). Available at <http://www.unep.ch/etu/publications/textONUbr.pdf> [Accessed on 6/1/2023]; See also The World Bank, 'Strategic Environmental Assessment,' September 10, 2013. Available at <http://www.worldbank.org/en/topic/environment/brief/strategic-environmental-assessment> [Accessed on 6/1/2023]. The World Bank argues that policy makers in are subject to a number of political pressures that originate in vested interests. The weaker the institutional and governance framework in which sector reform is formulated and implemented, the greater the risk of regulatory capture. The World Bank observes that in situations such as these, the recommendations of environmental assessment are often of little relevance unless there are constituencies that support them, and with sufficient political power to make their voices heard in the policy process. While strong constituencies are important during the design of sector reform, they are even more important during implementation. It follows that effective environmental assessment in sector reform requires strong constituencies backing up recommendations, a system to hold policy makers accountable for their decisions, and institutions that can balance competing and, sometimes, conflicting interests. The World Bank thus affirms its recognition of the strategic environmental assessment (SEA) as a key means of integrating environmental and social considerations into policies, plans and programs, particularly in sector decision-making and reform.

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actively engage and provide input on the expected implications on the community's social, economic, and environmental elements.

We must take action in the face of environmental crises and rising inequality, which includes creating laws governing supply chains and extended producer responsibility, ensuring green public procurement, encouraging technical innovation to improve resource circularity, and implementing inclusive and respectful decision-making processes for both the general public and local communities.³³

Some academics have argued that it is necessary to investigate the normative and institutional responses in international law to such environmental change by concentrating on two key issues: first, whether law can foresee, prevent, and adapt to environmental transformations; and second, whether international legal responses to social, economic, and technological innovation can adequately reflect the evolving needs of contemporary societies at national and international scales.³⁴ These topics require ongoing debate because they have an impact on both the implementation of the sustainable development agenda and the management of related environmental conflicts.

It is, therefore, important for EMCA and other environmental laws to respond to this approach through creating channels for participation of people through local solutions.³⁵ There is a need to adopt environmental governance approaches that ensure that EMCA and other instruments effectively respond to and address Political, Economic, Social, Technological, Legal and Environmental factors that affect natural resources and environmental management. This thus calls for an integrated approach to governance geared towards achieving sustainable development agenda.

³³ Bansard, J. and Schroder, M., 'The Sustainable Use of Natural Resources: The Governance Challenge' (*International Institute for Sustainable Development*) < <https://www.iisd.org/system/files/2021-04/still-one-earth-natural-resources.pdf> > accessed 6 January 2023.

³⁴ Craik, Neil, Cameron Jefferies, Sara Seck, and Timothy Stephens. "Global Environmental Change and Innovation in International Law." *Articles, Book Chapters, & Popular Press*, January 1, 2018. https://digitalcommons.schulichlaw.dal.ca/scholarly_works/248. Accessed on 3 September 2022.

³⁵ Smith, G. and Bastidas, E.P., *Conflict and Sustainability in a Changing Environment: Through the Eyes of Communities*. Anthem Press, 2017<<https://anthempres.com/conflict-and-sustainability-in-a-changing-environment-hb>> accessed 6 January 2023.

3.1. Inclusion of Communities in Climate Change Impact Reduction and Early Warning Systems

The United Nations describes early warning system as an adaptive measure for climate change, using integrated communication systems to help communities prepare for hazardous climate-related events.³⁶

Such systems are meant to save lives and jobs, land and infrastructures and support long-term sustainability, as well as assisting public officials and administrators in their planning, saving money in the long run and protecting economies.³⁷

The United Nations, working in diverse partnerships, has been putting in place a number of innovative early warning systems initiatives in vulnerable areas around the world, such as the Strengthening Climate Information and Early Warning Systems (SCIEWS) project, which is a comprehensive programme operating across Africa, Asia and the Pacific, meant to ensure preparedness and rapid response to natural disasters, using a model that integrates the components of risk knowledge, monitoring and predicting, dissemination of information and response to warnings.³⁸

Such systems should actively and meaningfully involve local communities, because as it has been observed, indigenous people are good observers of changes in weather and climate and acclimatize through several adaptive and mitigation strategies.³⁹

4. Conclusion

There is a need for government bodies in charge of various but relevant sectors to work closely with the local communities as a way of creating awareness on how their day to day activities are likely to affect the environment and the climatic conditions in general. Dissemination of environmental knowledge as well as creating opportunities for collaborative approaches to combating climate change can go a long way in not only mitigation and adaptation measures but

³⁶ United Nations, 'Early Warning Systems' (*United Nations*) <<https://www.un.org/en/climatechange/climate-solutions/early-warning-systems>> accessed 20 January 2021.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Rinku Singh and GS Singh, 'Traditional Agriculture: A Climate-Smart Approach for Sustainable Food Production' (2017) 2 *Energy, Ecology and Environment* 296.

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also creating resilient economies and livelihoods. Arguably, in many decision-making processes, perceptions matter more than facts because how we feel about a risk (subjective perceptions of risk) influences what we pay attention to in complicated situations and how we approach and solve problems. Failure to acknowledge this may create and widen the gap between what experts perceive as risk and what the public perceives as risk.⁴⁰

Communities can hold those who violate environmental rules accountable once they are given the capacity to do so, whether they be organisations or individuals. Getting the attention of a population that feels affirmative action like it belongs is simpler than getting the attention of one that feels ignored by the state actors.⁴¹ Their traditional legal procedures and expertise on environmental problems may greatly improve Kenya's environmental governance, and they should be included into the country's official laws and other programmes aimed at achieving Sustainable Development.

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⁴⁰Grafakos, S., Pacteau, C., Delgado, M., Landauer, M., Lucon, O., and Driscoll, P. (2018). Integrating mitigation and adaptation: Opportunities and challenges. In Rosenzweig, C., W. Solecki, P. Romero-Lankao, S. Mehrotra, S. Dhakal, and S. Ali Ibrahim (eds.), *Climate Change and Cities: Second Assessment Report of the Urban Climate Change Research Network*. Cambridge University Press. New York. 101–138, 133.

⁴¹ United Nations Department of Economic and Social Affairs. "Creating an Inclusive Society: Practical Strategies to Promote Social Integration." (2008) < <https://www.un.org/esa/socdev/egms/docs/2009/Ghana/inclusive-society.pdf>> accessed 6 January 2023.

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