

COMMUNITY PARTICIPATION AS A RIGHT IN LAW

By

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THESIS

Submitted to

KDI School of Public Policy and Management

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For the Degree of

MASTER OF DEVELOPMENT POLICY

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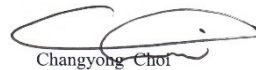
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ABSTRACT

Effective community participation provides a platform for all concerned stakeholders to present different opinions, concerns and priorities (environment, social or economic) with respect to a particular development project and work together to find a common sustainable ground. In such cases not only can potential problems be identified and resolved but ideas, knowledge, options, solutions can be exchanged and exhausted in an effort of finding human to human and human to ecosystem equilibrium. There is no doubt that community participation plays a significant if not the main role in maintaining a balance between economic development, environmental protection and social development that leads us to the end point of sustainable growth.

This paper will not attempt to analyze the effects of community participation or its benefits and add to the pile of studies that have already done this. Instead, it will examine the status of participation under Kenyan law to establish whether effective community participation is secured by the law. Further, an attempt will be made to determine whether effective community participation is being implemented by examining various cases of development projects. The study is limited to water and dam projects in Kenya.

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ACRONYMS

ICCPR	International Covenant on Civil and Political rights.
ICESCR	International Covenant on Economic, Social and Cultural Rights.
UNRIP	United Nations Declaration on the Right of Indigenous People.
CEDAW	Convention on the Elimination of Discrimination against Women.
CRPD	Convention on the Right of Persons with Disability
FPIC	Free, Prior and Informed Consent
HGF	High Grand Falls
NCT	Northern Collector Tunnel
EIA	Environmental Impact Assessment
UNHRC	United Nations Human Rights Council
EWC	Endorois Welfare Council
FLTT	Friends of Lake Turkana Trust
MCG	Murang’a County Government

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1. INTRODUCTION

The collaboration of nations for human progress could only be attained on the brink of destruction of humanity. This was made possible after World War II, when the world shifted its focus to reconstruction and development. In the 1950's, as an alternative to communism, policy makers in the US leaned towards participatory development; that led to more than \$50 million allocated specifically to fund community development projects in just 30 developing countries. However, by early 1960's, this approach was almost completely abandoned for a 'top-down' approach due to its misapplication and the urgency needed to curb the famine in Asia.

Nevertheless, the spark had already been set and scholars continued to explore and exploit what can now be termed as community participation.

It was only when it emerged that top down approach development programs had poor results, that participatory development was reconsidered. In contrast, community driven projects such as the Orangi Slum improvement Project in Pakistan and the Tanzanian Iringa nutrition program were showing immense success. (Mansuri & Rao, 2013) Critiques of the top-down approach voiced their arguments louder asserting that the approach failed to encompass the needs of the intended beneficiaries and instead disempowered them. For a sustainable outcome local knowledge, preference and support are a necessity, for this, a deeper connection with the community is needed.

The current interest in participation as an effective tool in development reflects the above views and has been absorbed not only into past but recent development policies. The World Bank, for example, Environmental and Social Framework (2016) emphasizes the importance of consultation and consent of communities to be affected. Such weight has been given to free prior and informed consent that the framework explicitly proscribes projects that are dissented.

Consultation and consent are just a few aspects of community participation which “reflect a grassroots or bottom up approach to problem solving”. (Mathbor, 2008)

Gambel and Weil (1995) define community participation as the “active voluntary engagement of individuals and groups to change problematic conditions and to influence policies and programs that affect the quality of their lives or the lives of others” (Gamble & Weil, 2010) . It is only right, for the sake of human dignity that people most affected by a project be given a chance to identify (their) problems, make decisions and offer solutions concerning them. In acknowledging this, and posing that no government is capable of solving all public problems adequately, rendering it is necessary to involve citizens in matters that affect them; Charles Abraham defined community participation as “the theory that the local community should be given an active role in programs and improvements directly affecting it.” (Abraham, 1971)

“Projects are more effective and sustainable when beneficiaries play a role in deciding what type of project should be implemented as they know what they do and do not need better than any outsider” Narayan as cited in (World Bank 1994).

Participation on the outset would appear costly and time consuming but once resources are focused only on projects that beneficiaries need and desire, not only will this result in sustainability but also in efficiency and cost effectiveness. As such “..participation saves time and

money in the long run by harnessing local and specific knowledge, avoiding disputes and allowing for alterations in the program's early stages. People will more likely accept a decision if they understand the reasons behind it, even if they are not in full agreement". (Frye & Deshotel 2014)

Furthermore, participation channels a sense of ownership of the project amongst participants which generates support, empowerment and prevents marginalisation. "Empowerment has several components; it has been suggested that participation by project beneficiaries can lead to greater self-reliance in the form of strengthened local organizations, a greater sense of pride in the village, and the successful undertaking of new projects". (Prokopy, 2004)

In all too many cases of development, marginalised group such as women and the disabled are often prevented from benefiting by not being included in the decision making and implementation process. Encouraging participation of such groups within the society, gives them the opportunity to express their views and concerns which can be included in the project for a more sustainable outcome. Such participation seeks to redistribute power and control of resources, in such a way that those who had been previously excluded from such now be deliberately included in the future. Stevens, Bur and Young describe participation as "the organised effort to increase control over resources and regulative institutions . . . by those hitherto excluded." (Steiel & Wolfe, 1994)

2. PURPOSE

The study will inform ongoing policy debate on the need of recognizing community involvement as a right; acknowledging its positive effect on the pace of the development process. An evaluation will first be made on Kenyan law to see whether it is sufficient in ensuring effective community participation. Secondly, by examining various cases, whether the law is sufficient or not, it will attempt to assess whether community participation is being implemented on ground level.

The study will be useful in establishing the status of community participation in Kenya. In the hopes of identifying the gaps and holes that impinge effective community participation, policy makers will be able to know the way forward when considering development and participation in Kenya.

3. Statement of the Problem.

Every community yearns for visible economic transformation characterized by improved standards of living and access to social systems such as education and health. In situations of dire need, and limited resources, prioritization of intervention activities is key. The decision to intervene cannot be made unilaterally. Consulting beneficiary community is recognized as key to designing a sustainable intervention activity. In as much as consultation is important, experience shows that community members are rarely sensitized of their unalienable right to be consulted. In addition, an uncountable amount of literature exists to address various issues on community participation, however there still lacks a common understanding on the very nature of community participation and even more critical, a prescription to ensure it. Through review of previous

reported cases of community involvement, claim for compensations, a detailed analysis will be made of its effect on pace of development.

5. OBJECTIVE OF THE STUDY

To give a clear-understanding of the nature and scope of community participation.

To examine and analyze the different avenues which community participation can be ensured and protected including in legislative periphery; and under what levels of community participation this can be realised.

6. SIGNIFICANCE OF THE STUDY

This study hopes to contribute to the pool of knowledge and society by enhancing the effectiveness of community participation in development projects. It will clarify and shed light on grey areas pertaining to community developments. The study will seek to inform readers on the ongoing policy debate and uncertainties on the relationship of Law and Development; particularly the standing that community participation has on International Law.

The study findings and policy implication, will be of great significance to the Kenyan Government, in addressing key components that can drive significant economic and social development.

7. HYPOTHESIS

Community involvement is integral to the success of development projects as such it is ensured under Kenyan Law.

8. PLAN TO PROVE HYPOTHESIS

A qualitative research methodology will be followed. This will involve use of descriptive analysis supported by empirical evidence from previous related studies in developing countries.

9. METHODOLOGY

The research undertaken will be highly qualitative. Intensive library research and desk-top literature based review would be employed. This would entail gathering and analyzing available literature from library and the internet.

The approach will be both descriptive, analytical and prescriptive. The description will be made by gathering information on what is and is not community participation, Analysis will be made on Kenyan law and various development cases to determine whether community participations is properly secured by the law and whether there is proper implementation. Lastly it will be prescriptive in prescribing policy recommendation based on the findings.

CHAPTER II

Literature Review.

In this chapter books, journals, thesis (published, unpublished) websites which are related to the problem area are reviewed.

1. Definition and Terminology

There is no clear cut definition of community participation. Not only does this make it vulnerable to misuse and abuse but also negates it, making it impossible to measure and re-applied. A clear understanding of what community participation is, begins with acknowledging that the term is no simple locution, but two distinct words whose meaning must by themselves be grasped.

The Oxford dictionary defines a community as simply “a group of people living in the same place or having a particular characteristic in common”. (Community, 2016) According to Osborne and Neumeyer a community is “a group of people living in a contiguous geographic

area, having common centres of interests and activities, and functioning together in the chief concerns of life.”(Osborn & Neumeyer, 1933)

However a community is much more than a group of people living in one locality functioning together. It is a living organism that existed before the people that are part of it were born and continues thereafter their death to include those not yet in existence. In this sense sustainability is integral to a community. Viewing a community as a living organism also helps us to appreciate that just like all living organism, although similar they are all intrinsically different. Not one community can be the same as another. These dissimilarities may be found in their demographic structure, culture, geography, power dynamics, needs and resources. To put it simply, a development model can not be adopted in a community, in the same way as originally applied in another community.

Yet even a group of people living in the same locality and sharing similar interests may lack a ‘sense of community’. Communities “.. can be scene of conflict and exclusion as well as togetherness, and many of the stresses of modern life work against a community spirit" (Warburton, 1997). A community does not guarantee cohesiveness and togetherness.

Nabeel Hamdi proposes that for community participatory projects, it is not necessary to have a well organized and cohesive community from the very beginning, “ but the sense of community can be achieved during the course of the project, which can also be one of the objectives of including community participation in development projects.” Nabeel Hamdi as cited in (Turner, Bank & Wates 2000)

Nevertheless, Diane Warburton poses that “in many participatory initiatives, the debate has gone beyond the 'what is community' issue, concluding that defining 'community' is less important than identifying who are the people affected by the decisions under debate: stakeholders is often the preferred term, signifying a practical personal interest”(Warburton, 1997). This paper in line with above statement shall refer to communities as stakeholders; as in, those who are affected or have interests in development projects.

“Participation is a rich concept that means different things to different people in different settings. For some, it is a matter of principle: for others, a practice: and for still others, an end in itself. All these interpretations have merit.”(World Bank,1996)

Participation has been the most popular term in development dialogues for the last past five decades. Even so, like many other popular terms, there still lacks a consensus on its definition and interpretation in both practice and theory.

It typically entails the involvement of people affected by a decision in the creation, implementation and monitoring of that decision. For the sake of this paper, it is crucial to have a common understanding of the term in order to progress deeper into the discussion.

For the World Bank, "Participation is a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them." (World Bank, 1996)

The concept of control is very important to community participation. It is through participation that the stakeholders are able to collectively increase and exercise control, power or influence over their resources and development.

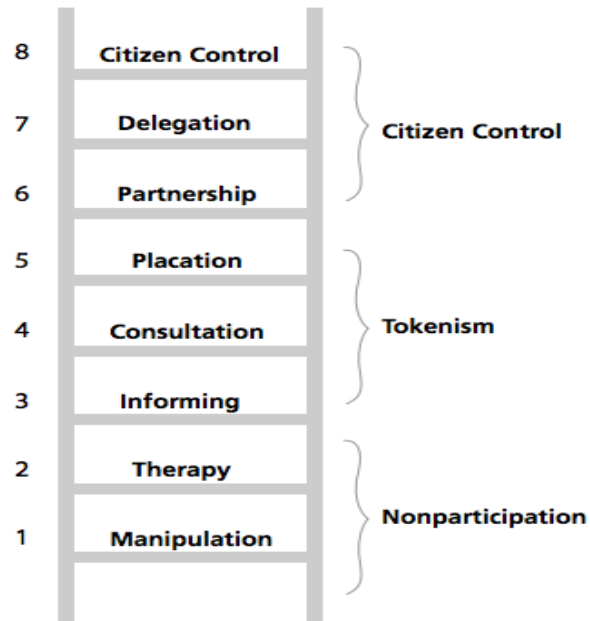
In line with this, Oakley precludes that "Participation is concerned with human development and increases people's sense of control over issues which affect their lives, helps them to learn how to plan and implement and, on a broader front, prepares them for participation at regional or even national level. In essence, participation is a 'good thing' because it breaks people's isolation and lays the groundwork for them to have not only a more substantial influence on development, but also a greater independence and control over their lives" (Oakley, 1991)

Reflecting back on our understanding of a community as a living organism, Bertalanffy system theory points out that living organisms are open systems in character. (Bertalanffy, 1950). They are open systems as they are dependent on outside matters and forces for their own survival. For this reason, a contrast must be placed between stakeholder participation and popular participation. Popular participation is general participation of all members of a community with an emphasis given to the disadvantaged in the community. However it fails to recognize the complexities of communities, their power dynamics and external relations with other institutions such as the government and private organisations. On the other hand stakeholder participation as its name may imply, acknowledges the importance of all groups inside and outside the community. It calls for the participation of all stakeholders who are directly or indirectly affected by a development project. (World Bank, 1996)

Defining participation can be a highly subjective exercise. The ambiguity of the concept has helped those who invoke it manipulate it to fit their criteria and verify their legitimacy. Andrea Cornwall wrote that as an “infinitely malleable concept, ‘participation’ can be used to evoke – and to signify – almost anything that involves people. As such, it can easily be reframed to meet almost any demand made of it” (Cornwall, 2008). Having said that, defining participation is not enough as it limits us. Instead it is important for us to bisect the word in order to clarify what participation means and what it doesn’t mean. To help us do so this paper will examine different classification of participation.

2. Typology of Participation

The best way to initiate this discussion is by understanding Arnstein’s ‘Ladder of citizen participation’ which has maintained its relevance to today since 1969 when she first introduced it in an article published in the Journal of American Planning Association. (Arnstein, 1969) The classification of participation on high to low levels is considered one of the best known explanation of the distribution of power in participation.



Arnstein's Ladder (1969)
Degrees of Citizen Participation

The ladder is made up of eight rungs classified into 3 categories from top to bottom respectively citizen control, participation and non-participation. Non participation includes manipulation and therapy which have been genuinely recognized by some as participation but are by fact levels of non participation. She describes these levels as propaganda fields where the aim of the power holders is to 'educate' participants in order to gain their support rather than involve them. The next levels of 'tokenism' are classified as the first real step to participation. The initial and stage of informing is critical but typically involves one way form of communication. (Arnstein, 1969) The participants are given general information through various means such as posters, newspapers and radio but no channel for feedback is given. The next rung is consultation, which takes a step further from just informing the participants but seeking their views and opinions; survey are taken and public meetings are held. Nevertheless, Arnstein felt that this was just a means by which the power holders could legitimize their plans as in most cases the inputs of the participants were just passive and rarely taken into account. Placation the highest level of tokenism, allows for the participants go give advice through committees and boards but the final decision still lies with the power holders who are not bound to 'unfavourable' advice.

Partnership sits of the 6th rung of the third and final stage which is citizen power. In this stage two way communication is realised in form negotiation as both the participants and power holders are involved in decision making and planning process through joint committees held. In the 7th rung, delegation, participants are delegated power and hold the dominant role in the decision making process ensuring accountability. (Arnstein, 1969) Citizen control on the 8th rung is the highest form of participation where full managerial control or power is given to the participants.

This level of participation is important in understanding the power play associated with the involvement of all relevant actors in the participation process. Sarah White took a different dynamic in her approach to participation by not only addressing the level of participation but its form and function as well as the interest of the parties. She suggested this dimension as the best way to encapsulate 'the politics of participation'. She attempted to explain 'how and why participation is used at different levels of participation' (White, 1996) in term of the interest of the power holders and participants. White distinguished four major types of participation each with its own characteristics (White, 1996):

Nominal participation

This is the most basic type of participation where a group of participant are formed purposely for the function of displaying participation. The power holders interest in involving participants is only for legitimizing their projects and for the participants inclusion and therefore not to be excluded is their main interest.

Instrumental participation

Participation is an instrument to realise the goals of the implementers (power holders). The participant are needed as human resource they ensure that the projects are cost effective in limited funding scenarios. However, the money and labour that the participants put in the project is seen by them as a cost, but have no other option if they want to benefit from the project (school, water or hospital).

Representative participation

The local participants are given a 'voice in the character' of the project. By involving the participants, the power holders believe that this would counter a highly dependent or unsuitable projects and instead lead to sustainability. Through representative participation people could express their own interests and thus ensure leverage.

Transformative participation

In this sense participation is seen as means to empowerment and an end in itself. Participation empowers people to enable them to take actions and make their own decision. As much as empowerment involves action 'from below' it can also be 'from above' when power holders collaborate with the participants. The power structure change in that those who were once excluded are now included.

The above information is simplified in the table below. Top-Down refers to the interests of the power holders whilst Bottom-Up refers to the interests of the participants.

Table 1: Interests in participation

Form	Top-Down	Bottom-Up	Function
Nominal	Legitimation	Inclusion	Display
Instrumental	Efficiency	Cost	Means
Representative	Sustainability	Leverage	Voice
Transformative	Empowerment	Empowerment	Means/End

Pretty's typology of participation can be much likened to that of Arnstein and to some extent also to White typology. The point of departure from the two would be the emphasis placed on the process of learning. Sharing of information, consultation, contribution of resources and minor decision making do not provide for adequate participation as they fail to empower and educate

the participant on how to build and maintain structures and control resources. According to Pretty, 'Participation should be seen as a right and not just as means to achieve project goals' Pretty's Study (as cited in White, 1996)

Table 4.: Typology of Participation

Typology	Characteristics of each type
Manipulative participation:	Participation is a pretence with people's representatives on official boards but who are unelected and have no power.
Passive participation:	People participate by being told what has been decided and has already happened. It involves unilateral announcements by an administration or project management who do not listen to people's responses. The information offered belongs only to external professionals.
Participation by Consultation:	People participate by being consulted or by answering questions. External agents define problems and information gathering processes and so control analysis. This process does not concede any share in decision making and professionals are under no obligation to adopt people's views.
Participation for Material incentives:	People participate by contributing resources, e.g. labour, in return for food , cash or other material incentives.
Functional Participation:	People's participation is seen by external agents as a means of achieving project goals, especially reductions in costs. People may form groups to meet pre-determined objectives. This participation may be inter-active and may involve shared decision making, but tends to arise only after major decisions have been made by external agents. Local people may only be co-opted to serve external goals.
Interactive participation:	People participate in joint analysis, development of action plans and the formation, or strengthening, of local institutions. Participation is seen as a right, not just as a means of achieving project goals. The process involves inter-disciplinary methodologies that seek multiple perspectives and make use of structured and systematic learning processes. As groups take control over local decisions and determine how local resources are used, so they have a stake in maintaining structures and practices.
Self Mobilization:	People participate by taking initiatives, independently of external institutions, to change systems. They develop contacts with external institutions for the resources and technical advice that they need, but retain control over how the resources are used.

(Source: Pretty, 1995. Adapted for this paper)

3. Participation as a Human Right

Participation is a key driver of economic and social progression, something that is realised and mostly visible in successful project outcomes; but apart from this, it is also deeply rooted in human right principles and international law. (Frye & Deshotel, 2014)

The United Nations Declaration on the Right to Development under Article 1 proclaims that, ‘Every human being has an inalienable human right to development’ and in so doing are ‘entitled to participate in, contribute to’ the said development. (Declaration on the Right to Development, 1986)

The declaration stands as a fundamental linkage between Law and Development, evincing and realising the principles of human rights approach to development. The preamble states that ‘development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.’ Participation is further emphasized in article 8 which precludes that popular participation is an ‘important factor in development and in the full realisation of all human rights. (Declaration on the Right to Development, 1986)

Queremi summarised the right of development to include these indispensable features:

“The full realisation of all human rights and fundamental freedoms. Self determination. Full sovereignty over natural wealth and resources. Popular participation in development (or individual and collective active, free and meaningful participation) in development. Equality for All.” (Qerimi, 2012) The underlying fact, one acknowledged by UN practitioners, is that meaningful participation is a means on which to realise not only basic human rights but also to ensure that all persons are given a chance to determine themselves, their lives and resources. The rights of freedom of expression, information, association and assembly are well established as basic element of meaningful participation. All of which are entrenched in international

conventions such as International convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Apart from this, participation of special and vulnerable groups such as women, disabled, minorities and indigenous people are explicitly set out in various international convention. In addition other conventions outline the right to participation for sensitive areas such as the environment and public health.

Below is an overview of the various International and Domestic Laws that secure the right to participation.

A. International Covenant on Civil and Political rights.

Article 1 provides that every person has the right to self-determination which includes the ‘freedom to freely pursue their economic social and cultural development’. (ICCPR, 1966) The covenant ensures the right to freedom of expression, the right to peaceful assembly and the right to freedom of association. (ICCPR, 1966)

B. International Covenant on Economic, Social and Cultural Rights.

The right to self-determination is likewise ensured under article 1 of the covenant. However this covenant goes further than the ICCPR by ensuring that there is effective community participation (‘setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health’) on matters of health, holding out that participation of citizens is crucial to effective provision of health services. (ICESCR, 1976)

C. Alma-Ata Declaration

Participation in terms of health care is not simply provided as just a right but a duty or persons either individually or collectively. Accordingly Article 7 provides that, “ Primary health care...requires and promotes maximum community and individual self-reliance and participation in the planning, organization, operation and control of primary health care.” (Alta Ama Declaration, 1978)

D. Rio Declaration on Environment and Development

For environmental issues to be effectively dealt with they require the collective or individual participation of all people at relevant stages. Principle 10 states that, “At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.” (Rio Declaration, 1972)

E. United Nations Declaration on the Right of Indigenous People.

Free, prior and informed consent is at the heart of this declaration with Article 32 providing that ‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.’ (UNRIP, 2007)

F. Declaration on the Right of Persons Belonging to a National or Ethnic, Religious and Linguistic Minority.

The right to participate in cultural, religious, economic and social life and the right participate in decisions affecting them thereof is ensured for minority groups under these declaration. (Minority Rights, 1992)

G. Convention on the Elimination of Discrimination against Women.

This convention recognizes participation as a means of ensuring that there is no discrimination against women in all spheres of life and an end to empowering them. In particular, Article 14 (2) states that, “ States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they

participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) To participate in the elaboration and implementation of development planning at all levels.” (CEDAW, 1979)

H. Convention on the Right of Persons with Disability

Persons with disability should be given, ‘full and effective participation and inclusion in society’(CRPD, 2007) Such participation invokes support upon state to take effective and appropriate measures to ensure such.

CHAPTER III

Is the Law sufficient enough to ensure participation?

1. The Constitution of Kenya

Among the national values and principles of governance upheld by the Republic of Kenya are “patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people”(Kenyan Const. art 10) The constitution of Kenya was enacted in 2012 and apart from repealing the old constitution it gave birth to the system of devolution of power. At the heart of this principle of devolution is that people should be given power to make decisions that affect them in conformity with self governance and the respect of human dignity. To elaborate on the objectives of devolution article 174 (c) states that such objects are to “give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. (d) to recognise the right of communities to manage their own affairs and to further their development.”(Kenyan Const. art 174) The enacting of such provision on the supreme law of the land goes very far to show the attitude the Kenyan people have towards community participation.

Furthermore, the constitution also ensures the right to freedom of expression, association, conscience and right to access information. Other articles that are ancillary to participation are article 69(d) which obliges the state to encourage public participation in management, protection and conservation of the environment.

Despite the existence of such provisions in the supreme law of the land, community participation is not highly regarded under other Kenyan legislation as it is in the constitution. To start with there is no definition of participation under any Kenyan Law. This infers that there is uncertainty as to what may be referred to as participation, whenever it is prescribed under law. However, the Environmental Impacts Assessment guidelines do provide a list of activities that fall under the scope of consultation and participation. In the next few pages a critical analysis of the various legislation advocating for community participation will be made in order to ascertain whether Kenyan law is sufficient enough to ensure participation in dam and water projects.

2. Land Acquisition Act

The question of Land in most dam and water projects is the central subject of concern for most stakeholders. Issues of resettlement and compensation require full participation of all affected persons in order to ensure fairness, justice and the respect of the rule of law. Compulsory acquisition of land in Kenya is governed by the Land Acquisition Act of 2010.

The Act provides that land may be compulsory acquired if necessary for public benefit and lists such public benefit to be only “in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit”(Land Acquisition, 2010) . The construction of dams and other water projects falls within the range of public benefit.

The commissioner of lands is required under the Act to make a full inquiry to determine the persons interested in the land upon meaningful notification of such inquiry (must publish notice of inquiry in the national gazette and a copy thereof to all persons he/she believes are interested in the land). The notice of inquiry calls upon persons interested in the land to deliver to the commissioner a written claim of compensation.

For the purpose of conducting the inquiry, section 5 of the Act gives the commissioner power to call witnesses, administer oaths and affirmations and compel the production and delivery of documents of title to the land. In turn, all persons interested in the land, including the public body for whose purpose the land is being acquired, are “entitled to be heard, produce evidence and to call and to question witnesses at an inquiry.”(Land Acquisition Act, sec 6)

Once the inquiry is made and concluded upon, the award of compensation is promptly handed out and no later than sixty days after such award is made, the commission can take full possession of the land and the title to the land will henceforth vest in the Government.

Be as it may be, not all Land in Kenya is registered. The process of Land Registration, a concept introduced to Kenya by its colonizers in the 20th century, has been marred by historical injustice and corruption. Even after the country underwent numerous Land registration reforms, the process is now lengthy, expensive and highly arduous. Yet a title/deed to land remains a prerequisite for an award of compensation when land is compulsory acquired. With regards to unregistered Land in Kenya, the Land Acquisition Act is unclear on how such land is to be dealt with.

One may say that cases of compulsory acquisition of land only require limited participation of stakeholders. This type of limited participation takes the form of ‘informing’ all affected persons of the intention to acquire the land and award them reasonable compensation for doing so before legally acquiring the land. According to Pretty, this is only ‘passive participation’ because the stakeholders have no decision making authority, as decisions over the use of the land are made prior to them being informed. Pretty’s Study (as cited in White, 1996)

Nevertheless, they do still have a right to be informed and the right to be compensated for their loss. The reasoning behind all of this is that the necessity of such acquisition is justified for causing any hardship on the affected persons. The necessity component attached to compulsory acquisition of land takes precedence over the participation of stakeholders.

Land, however, is as essential as bread and water for indigenous communities in Kenya. These communities are married to their land in ways that the globalised age cannot even begin to fathom. They depend on their land for economic and social survival. An eviction from a Land they have known since time immemorial could have tremendous negative effects on their human rights.

Recognizing this, the U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People noted that:

“[w]herever [large-scale projects] occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. [] The

principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence...free, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects.” Report of Special Rapporteur as cited in (Endorois case, 2010)

Although Kenya abstained from vote on the adoption of the UN Declaration on the Rights of Indigenous People (UNDRIP) in 2007, it is nonetheless the duty of the state to obtain free, prior and informed consent of an indigenous community with regard to a proposed development project on their ancestral land.(OHCHR, 2016)

The government of Kenya was tried and found wanting in the landmark case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council vs Kenya*. In the 1970s the Kenyan government evicted the Endorois community, an indigenous group from their ancestral land in Lake victoria to create a game reserve for tourism development. The eviction was made without prior consultation and provided inadequate compensation inevitably resulting in the loss of the well being of the community members. EWC acted as the representative body of the community but the Kenyan government had refused them registration thus proper participation of the community was frustrated and gave leeway for illegitimate participation. The claim was brought before the African Commission on Human Rights after domestic legal actions had failed. (Endorois case, 2010)

The African Commission upheld the claims of the Endorois and held that, the Kenyan government had failed to obtain free, prior and informed consent from the Endorois and in doing so violated their right to religious practice, property, culture, free disposition of natural resources and development. Further the inadequate involvement of the community in the development process denied them a share of the benefits of the development. On the ruling this statement was made: “The African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.” (Endorois case, 2010)

Domestic judicial recourse for indigenous communities in Kenya is hampered by the lack of adequate legal framework recognizing and protecting their culture, land and their right to participate in development projects that directly affect them. The right to free, prior and informed consent is clearly not recognized in the Land Acquisition Act of Kenya.

3. The Water Act

In order to abstract water for dams or have other such use of water from a water resource, you must obtain a permit in accordance with section 25 of the Water Act; unless the relevant authority declares in a notice published in the national *Gazette* that a water channel does not constitute a watercourse. Such a permit is subject to public consultation and where applicable an environmental impact assessment. (Water Act, sec 25)

The description given in section 107 of the Act as to what would constitutes public consultation is twofold in that it requires information to be shared and consultation to be undertaken.

Information on the proposed project is to be shared through a notice that the ‘designated person’ is required to publish in the *Gazette*, a national newspaper and radio station. In addition to this, copies of documents relating to the application of proposed project must be made available to the public at a reasonable cost. (Water Act, sec 25)

Further, after consultation, they must make available in writing a copy of the final decision and reasons thereof for public inspection and announce to the public in a notice through the same media as the first notice. The Water Resource and Management rules that facilitate and implement the provisions of the Water Act, also requires the water authorities to take more bold steps of involving affected people who may not have access to the information relating to the proposed project. (Water Rules, 2010)

With regards to consultation, the public notice shall invite written comments or objections from the public and when the rules require, cause a public meeting to be held in relation to the proposed projects upon which the ‘designated person’ must take such written or oral (public meeting) comments into consideration. The public is also invited to inspect the details of the application on certain premises that are given by the designated person. (Water Rules, 2010) Similar to the Land acquisition Act, the Water Act places a special importance on information sharing. Certain stipulations are made specifically in order to ensure that all the relevant

stakeholders have access to information on the proposed project. The purpose of this is to essentially make everyone aware of the proposition so as to identify any objections that may have adverse effects on the project rather than to genuinely and actively involve the affected persons. It is no surprise that when feedback is given during consultation, it is rarely taken into account especially when it is of no threat or importance to the implementors of the project. In line with this, other than requiring that public comments be made in writing, the Act does not provide any checks of ensuring that the public comments, especially oral comments, are taken into consideration. Reflecting back on Arnstein ladder of participation, although informing and consulting are recognized as the initial steps to realising participation, there are in most cases made only as a means for power holders to legitimize their projects. (Arnstein, 1969)

4. Environmental Impact Assessment Guidelines

The EIA guidelines core purpose is to integrate environmental concerns into development planning at all levels in order to facilitate not just development but sustainable development. The Environmental Management and Coordination Act makes it mandatory for dams and other water projects to undergo an EIA; while the Physical Planning Act and the Water Act only request an EIA to be conducted when deemed necessary. An EIA purpose is to guide project proponents and the public at large on effective planning that takes into account negative impacts of the project and alternative plans for the purpose of making prudent decisions. The EIA guideline list the following as principles that need to be taken into account (EIA, 2012):

- Environmental concerns must be accounted for in all development activities
- Public participation in the development of projects, policies, plans and programmes important
- Recognition of social and cultural principles traditionally used in the management of the environment and natural resources
- International cooperation in the use and wise management of shared resources
- Intra-generational and inter-generational equity
- Polluter-pays principle
- The precautionary principle

Although the EIA guidelines main concern is the environment, they present the most comprehensive discussion on community participation in all written law in Kenya. Giving thought to the EIA principles, we find that community participation on a large scale addresses all the concerns presented by these principles. Effective community participation provides a platform for all concerned stakeholders to present different opinions, concerns and priorities (environment, social or economic) with respect to a particular development project and work together to find a common sustainable ground. In such cases not only can potential problems be identified and resolved but ideas, knowledge, options, solutions can be exchanged and exhausted in an effort of finding human to human and human to ecosystem equilibrium. There is no doubt that community participation plays a significant if not the main role in maintaining a balance between economic development, environmental protection and social development that leads us to the end point of sustainable growth.

The EIA guidelines in acknowledging this, state that ‘effective consultation and public participation provide a cornerstone for project planning and effective implementation.’ Guided by such thoughts, they further advise that consultation and public participation be conducted in all major stages of the development project. This would entail the collective consultation and involvement between numerous stakeholders, including the affected people, authorities private sectors and the proponents. The methods prescribed for the consultation and public participation are to include:

“meetings and technical workshops with affected communities; interpersonal contacts; Dialogue with user groups and local leaders; Questionnaire/survey/interview; and participatory rural appraisal or rapid rural appraisal (PRA/RRA) techniques.” (EIA, 2012)

Although on the face of it the guidelines may seem to provide a more comprehensive form of participation than the aforementioned legislation, upon closer examination they do not. Affected persons, the most vulnerable and weakest party in such cases are given no decision making authority, their role is limited to voicing out their concerns and advising. The only measure taken to secure their right is a stipulation that the proponents of the project spell out how they involved the affected community in the project.

5. Conclusion

For participation to be effective, the participant should not merely be given information and asked for their opinion. They need to be involved in all stages of the project; planning, implementing and monitoring. Power needs to be distributed, it should not vest only with the proponents of the projects but should trickle down to those who will mostly be affected.

This paper concludes that 'effective' community participation is not secured under Kenyan Legislation. The various legislations examined under this paper as a matter of fact do prescribe community participation for and in acknowledgment of its benefits. These benefits are however not reaped as the participation prescribed is limited to two way communication rather than proper involvement.

CHAPTER IV

1. Is effective community participation being implemented?

This chapter will analyse participation that has been undertaken in major as well as minor dam projects in Kenya. Four distinctive cases have been selected for analysis. The purpose of this will be to investigate whether effective community participation is being implemented despite there being inadequate Law per the findings in chapter III.

2. High Grand Falls Multi-Purpose Dam Project

The ambitious Dam project bordering Tana River, the longest river in Kenya was launched in 2012, with the capacity to hold 3 cubic metres of water and generate 500MW - 700MW of electricity. The project is still undergoing with an initial 6 years completion deadline from when it was launched. (Mwangasha, 2014)

The main purpose of participation as established in the High Grand Falls EIA report, was to gain the views of the immediate community as well as interested and affected groups. The process was carried out in three main stages using various methods and means of participation and targeting different groups of interests.

The first stage consisted of in-depth interviews with the local administration. The second stage had a wider spectrum of participants that included direct community, its leaders, business community, local administration, farmers and landowners. At this stage consultation and public participation (CPCs) was carried out through community meetings, focus groups and presentation. The third and final stage stage, involved stakeholder workshops with local administration, government and sub-county line ministers. (EIA, 2002)

It was determined that there was a general acceptance of the project amongst the community members. However, issues of compensation and resettlement were raised. There was a unanimous vote by the community not to be resettled at the initial settlement area but instead be compensated for the displacement. On top of this, the community wished for reasonable representation in the project implementation committee; that 30% of the benefit accrued from the projects be injected back to the area for development; and if possible that 100% unskilled labour and 30% skilled labour be given to the community members. (EIA, 2002)

The outcome of the participation process shows that great heights were reached in order to ensure that the participation was not just simply passive participation. In fact the participation that took place was placation the highest level of tokenism in Arnstein's ladder. The various stakeholders involved were given a chance to express their interests and concerns during the meetings and focus groups. However even though two way communication took place the final decision of whether to agree to the community's wishes lay with the authority. At the the end power and authority over the project rests with the power - holders with the participants being no more than observers.

3. Northern Collector Tunnel

The Northern Collector Tunnel is a project that seeks to meet the growing water needs of Kenya's capital, Nairobi and 13 satellite towns by transferring water from three rivers to Thika Dam. Once in place it will have the capacity to convey 140 million litres of water (140,000 m³ per day). (MCG, 2015) Although the project is of Kenyan government it is also supported by the french development agency and world development bank.

The Environmental Impact Assessment report for the tunnel indicates that the initial consultation was conducted with the purpose of identifying stakeholders and notifying key stakeholders of the proposed project. The outcome of this was the categorization of two stakeholders groups. The first category 'primary stakeholders', included the directly affected people while the second category involved those indirectly affected or those with key interests in the project also known as 'secondary stakeholders'.

The secondary stakeholders were the first to be contacted by the project proponents and later assisted in identifying the secondary stakeholders. Once all stakeholders were identified, stakeholders consultation and interviews were then held followed by six (6) public meetings and five (5) focus groups that involved both secondary and primary stakeholders. Once the ESIA report was ready, stakeholders workshops were held to disclose the findings to the public. (GIBB International, 2014)

4. Outcome of the participation.

The EIA report indicates that 81% of the population were made aware with 94% of those aware supporting the project. (GIBB International, 2014)

During the public community meeting and focus groups the community raised a number of concerns and requested benefits accruing from the project. The table below gives a summary of this.

Concern	Detail	Feedback
Land ownership/ Compensation	Issues of land ownership and compensation bring about family feuds	Each Family would address ownership and compensation issues before receiving the compensation
Grave Sites/ Cultural sites	Concerned that these valued sites would be affected and destroyed. The Tunnel would not affect these sites.	
Waste Management	Concerned over dumping of spoil from cut rocks. Dump areas had been identified.	
Discovery of Minerals	Concern over entitlements upon the discovery of minerals. Not concerned with extraction but construction of the tunnel.	
Relocation	Concerned that there might be forceful relocations	All matters of relocation would be in accordance with the law. A RAP report would be submitted to ensure this.
Mediation Process	Fears over the possibility that mediators might swindle them out of their compensation. The compensation process would be publicly disclosed and the community leaders/ elders would accompany the enumerators.	
Possible Flooding	Concerns over flooding due to excess water added by tunnel	

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Benefits requested Some of the benefits proposed were:

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Improvement on electricity coverage in area, roads, schools.

Assisting completing construction of various buildings and supporting water supply projects.

Other benefits: Employment Opportunities Due to lack of employment the youth requested to be give first priority in all available opportunities.

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The youths inquired into the conditions of employment and insurance policies No direct comment of first priority request.

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Insurance would be provided in accordance with law but terms of work would be determined on contract basis Other benefits : Road Maintenance The community heavily depended on their road for their economic well being they were concerned that they would be destruction of roads due to heavy trucks Contractor would ensure that

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Although this table is not exhaustive in showing all the concerns raised it is sufficient enough to prove that two-way communication took place and that most of the concerns of the participants were directly addressed. It can also be concluded that the community members were supplied with adequate information about the project.

Nevertheless, just as the High Grand- Falls dam, participation beyond consultation and gathering and sharing of information is not realised.

It must be admitted though, that the level of accountability in this project is higher than that of the High Grand falls. In fact there is an overall variation in the two projects' Environmental

Impact Assessment Report. Various factors may have contributed to this including the scale of the project, the publicity attached and the fact that the company carrying out the assessment were different. By all means, variations in the form and manner of the report is permitted and should not be given much concern. But the underlying factor which should alarm us, is that the the level of participation is different. This leaves us to conclude that although community participation is guided and prescribed by the same Laws, some communities could be participating less than others in similar development projects.

5. Gibe III Hydroelectric Dam

This project was initiated by the Ethiopian Electric Power Corporation (EEPCO) with the intention of developing the country's hydroelectric capacity in order to meet the domestic demand and increase export. (MDI International Consulting Engineers, 2009) It is part of a series of dams to be built on the Omo River in Ethiopia and will have the capacity to produce 1,870 megawatts of electricity. (Postel, 2015)

The omo river runs downstream to Lake Turkana in Kenya which is the World's largest desert lake and a World Heritage site supporting a vast ecosystem and rich cultured people barely touched by modernity. The Lake receives up 90% of its inflow from the omo river, leading to conclusions by a pool of scientist that the lake could shrink upon completion of the Gibe III dam that may reduce the water flow by up to 50%. (Postel, 2015) If the lake is to suffer from irregular water supply coupled with climate change, it would significantly retreat leading to the loss of ecosystems, conflict and hunger.

Allibhai, a researcher for the International Rivers watchdog, when interviewing the communities directly dependant on lake, reported that the was little awareness of the dam let alone the threatening impacts among the community members. (The Guardian, 2015)

Notwithstanding this, the government of Kenya seemed to back the project by entering into negotiations to purchase 500 megawatts of electricity to be produced by the Gibe dam, from the government of Ethiopia. (FLTT v AG & 2 other, 2014)

These economic cooperations were threatened when Friends of Lake Turkana Trust filed a suit against the Attorney General acting on behalf of the Kenya government for failing in its obligation as a public trustee to conduct an environmental impact assessment of the potential effects of the Gibe III project before committing itself to purchase the said amount of electricity and infringing on the right to information by not fully disclosing the details of the agreement entered into by the government of Ethiopia.

The petitioner did however admit that the Kenyan government had heeded to reports that the project would have severe impacts on the lake by conducting public consultations. But also claimed that the consultations were ‘mere public relations exercises, there having been no serious engagement undertaken’. (FLTT v AG & 2 other, 2014) Further, they also alleged that that Kenyan government on various occasions declined to disclose details of the 2006 Memorandum of Understanding made with the government of Ethiopia.

Upon hearing both the petitioner and respondent’s case, the environment and land court of Kenya held the government of Kenya had an obligation to ensure that there was public participation in the management, protection and conservation of the environment and thereby granted an order of mandamus compelling the government to disclose all information on agreements it entered into with the government of Ethiopia including the 2006 Memorandum of Understanding. In doing so the court stated :

“Article 69 (1) (d) of the Constitution places an obligation on the State to encourage public participation in the management, protection and conservation of the environment. This court in exercising its jurisdiction under the Environment and Land Court Act section 18 is also obliged to take into account the principle of sustainable development including the principle of public participation in the development of policies, plans and processes for the management of the environment and land. Such public participation can only be possible where the public has access to relevant information, and is facilitated in terms of reception of views. It is the view of this Court that access to environmental information is therefore a prerequisite to effective public participation in decision-making and to monitoring governmental and private sector activities on the environment...In the present petition the Petitioner has established their right to information as provided for under the Constitution, and this Court has found that there is a positive duty on the part of the State to provide the environmental information sought by the Petitioner. This court has also established that the Respondents and Interested Party as custodians of the environment and natural resources are under certain duties and obligations including ensuring that there is public participation in the sustainable management, protection and conservation of the environment.” (FLTT v AG & 2 other, 2014)

The court, however, declined to grant an order of prohibition that sought to stop the government of Kenya from entering into further agreements relating to the Gibe III project with the Ethiopian government, unless an environmental impact assessment had been conducted. In doing so, the court made it clear that such a decision of whether the Kenyan government could enter into agreement with the Ethiopian government was a matter of foreign policy which the court was 'ill equipped' to address. It did however, point out that although the obligation to conduct an environmental impact assessment was with regards to project within Kenya; an EIA was also now a general principle of customary international law obliging states to cooperate in order to mitigate environmental risks. (FLTT v AG & 2 other, 2014)

This case demonstrates the willingness that the Kenyan courts have in ensuring that there is adequate participation in development projects. By taking into account the principle of sustainable development, the courts acknowledge the key role that effective participation plays in development projects.

Information sharing is critical in order for participation to take place. As seen in Arnstein ladder of participation, it is the first real step to participation in 'Tokenism'. The court stressed that participation could only be realised when the relevant information was made accessible. By giving out an order of mandamus requiring for information to be disclosed, it conveys that participation is actually being enforced in law.

It can also be observed from this case, the weight placed upon the obligation of conducting an environmental impact assessment. Although the court did not give the prohibitory order, the court did make a point of indicating the importance of such an EIA report; alluding that if the dam project was within Kenyan boundaries, it would have done its part to ensure that an EIA was conducted as required by the law.

Nevertheless, as much as information sharing is critical for participation it does not ensure that adequate participation takes place. Only sharing information with the public without allowing and acknowledging the importance of two way communication can pass of as passive participation as observed by Pretty in her typology. Pretty's Study (as cited in White, 1996)

Giving the participants a 'voice in the character of the project' or empowering them to take action and make their own decision defines meaningful participation according to White. (White, 1996)

Such participation is seen as right rather than a way of ensuring sustainability of projects. The courts however have kept silence over such meaningful participation.

6. Sand dam projects

Sand dams are concrete walls build on rivers that trap sand when large amounts of water flow in the river in order to harvest and contain rainwater. They are build in semi arid locations and provide clean water supply for communities that would otherwise lack water during drought seasons.

Sand dams are wholly dependant on community participation. From the onset, consultations are carried out, information is shared and gathered in order to determine the overall views of the community. Two way communication is integral to winning the hearts of the community members and ensure their commitment throughout the project. In practical terms, if the community is against the projects, then the project is abandoned.

Upon the approval for the project, the participants are invited by the project proponents (often NGOs) to identify the best site for the dam. The actual construction of the dam is conducted by the community volunteers with specialised advice and guidance by professionals hired by the proponents. Thereafter completion, the community is given charge over maintenance of the project.

The participants are not only involved in the decision making and planning process but are also empowered through the training given on building dams and maintaining them. Because of such delegation of power and training, the community is enabled to take full managerial control over the project. This in turn inspires them to take their own initiative in the future to mobilize themselves and come up with solutions to their problems. This is what Arnstein refers to as 'citizen control' (Arnstein, 1969) , it is 'Transformative participation' to White (White, 1996) and helps realise 'self mobilisation' as Pretty would term it. Pretty's Study (as cited in White, 1996)

Such participation throughout the project process fosters ownership and empowers the community as a whole. This type of participation is the highest form of community participation that is realised in development projects in Kenya. Sand dam projects, are proof that effective community participation can and is being implemented in Kenya.

7. Conclusion

Both the High Grand Falls Dam and the Northern Collector channel show that some form of basic participation takes place through an environmental impact assessment. However, the level of participation in these two cases does not go beyond consultation and information sharing, with a higher level of accountability seen in one.

The Gibe III dam case reveals to us the attitude that the Kenyan courts have towards participation. We see that the courts recognize and highlight the importance of participation in sustainable development. A vivid example of how participation can be enforced in the court of law is illustrated when the courts give an order of mandamus requiring for the disclosure of information. Notwithstanding this, only low levels of participation are enforced, whilst higher levels of participation that require power sharing and result in empowerment are not addressed. Effective participation however, is seen in the sand dam projects, where there is proper delegation of power and empowerment.

Conclusion & Recommendation

Two hands are better than one, one mind cannot be compared to two.

There is a lot of ambiguity as to what participation is, the form of participation that should be prescribed in different scenarios and how this participation is ensured. The consequence is that superfluous discretion is given to the proponents of the project, the power-holders. They are given a leeway to give their own meaning to participation. This supports the argument that community participation is only used as a way to legitimize the power of the proponents of the project rather than empower those who are vulnerable and weak. For example, under the EIA the power holders are given the choice to choose which method of participation to use, in other words, the way to involve the affected people, with regards to the project. Would not giving the community members a say on how best to involve them be more effective and empowering? In this instance, community participation loses its purpose, which is to give people the right to have a say in decisions that affect them. Out of all the legislation and regulation that this paper has addressed, none makes any mention of power sharing. In fact, the power imbalance that exists before community participation is carried out is emphasized after the participation of the affected groups. In a breakdown, those in power not only retain their power but their power is validated; whereas those without power are simply mocked and betrayed by the very system that is meant to distribute this power in denying them such. This denial, touches on the core of human rights as evinced in the Endorois case.

Consultation and giving information through all forms of communication and methods cannot be considered as effective community participation. This bruises the very spirit of devolution and human dignity entrenched in the Constitution of Kenya.

In terms of implementation, the observation made is that in some instances effective community participation is implemented (Sand dams) while in others it is not (Gibe III dam, NCT & HGF). This leads us to the question of what factors influence such a disparity.

To speculate, there are many different factors that may have caused such results. The first would be the discretion permitted by the law for such variations of participation. As already discussed, the mere fact that there is no definition of participation leads to such contradictory tendencies. Another reason would be the cost associated with participation that is linked to the scale of the project. For bigger projects the cost of participation is higher as a larger scale of people are affected and more stakeholders need to be involved. This corresponds with the high level of

participation observed in the sand dam projects as compared to the northern collector channel, a larger scale project.

The interests and involvement of public leaders in such projects could also influence the disparity. When the local leaders and politicians are involved, there is more awareness of the project as they are able to raise publicity. If more people are aware of the project then they are likely to get more involved.

Furthermore, consultation process has a cost implication. The amount involved can be used in other development intervention activities. Therefore, development conscious policy implementers have to consider cost implications, community role and the need for rapid structural transformation for underdeveloped communities.

In summary:

- The Law is not sufficient in prescribing community participation.
- There are variations as to whether effective community participation is being implemented.
- The level of community participation is dependent on the size and form of the development project, i.e cost of government.
- Overall purpose of community participation should be the delegation of power, giving people a say over decisions that affect them and management of their resources. Empowerment is the key.

Limitation of study:

In the cases examined, this paper was not able to find out whether the the concerns of the community members were actually addressed due to lack of information.

Time shortage and finance

Recommendation to the Government of Kenya

Secure 'effective' community participation in Kenyan legislation.

Clarify on the status of unregistered land in Kenya in relation to compulsory land acquisition.

Secure the land rights of indigenous communities in Kenya.

Recognize the right to free, prior and informed consent of the indigenous or minority communities in Kenya.

To the International Community

Come to an accepted and clear definition of community participation

Further study be made on the effect that the cost of a project has on effective community participation.

A cost and benefit analysis be undertaken to see whether in some projects it would be more effective to limit the participation than in others.

Guide on the level of participation required at different stages of the project.

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