

**A REVIEW OF THE LEGAL FRAMEWORK AND MECHANISMS
FOR BENEFITS-SHARING FROM WILDLIFE: THE CASE STUDY
OF MAASAI MARA NATIONAL RESERVE**

DANIEL KITIPA NAIKUMI

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Daniel Kitipa Naikumi


.....

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.....

Z51/89378/2016

Signature

Date

Declaration by supervisors

This thesis has been submitted with our approval as University Supervisors

Supervisors

Dr. Kariuki Muigua



.....

17/11/2020.....

Signature

Prof Stephen O. Anyango

Centre for Advanced Studies in Environmental Law and Policy (CASELAP), University of Nairobi



.....

17/11/2020

.....

Signature

Date

DEDICATION

This thesis is dedicated to my dear parents: Dad Mr. Tenkes Ole Naikumi who took me to school when it was not fashionable to do so and My Mother for securing food for us in the most unimaginable circumstance leading to her building the first granary in the my village.

You are my true heroes.

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LIST OF ABBREVIATIONS

| | |
|----------|--|
| EMCA | Environmental Management and Coordination Act |
| COK 2010 | Constitution of Kenya |
| WMCA | Wildlife Management and Conservation Act |
| CBO | Community Based Organization |
| CBD | Convention on Biological Biodiversity |
| IED | Institute of Environmental Development |
| GDP | Gross Domestic Product |
| CITES | Convention on International Trade in Endangered Species of Wild Fauna and Flora |
| REDD+ | Reducing Emission from Deforestation and Degradation |
| CBNRM | Community Based Natural resources Management |
| ICESCR | International Convention on Economic, Social and Civil rights |

ABSTRACT

The initial exclusion of local communities in benefit sharing from the wildlife industry has resulted to heightened tension and exacerbated prevailing human wildlife conflict. A situation which gave impetus to the concept of Wildlife benefits sharing with the community. The community because of the sacrifices it has made over the use of its land for animal production have begun to question the need to coexist with Wildlife within its land due to dismissal benefits they receive. The laws and policies that were used during and even after independence regarding conservation have less regards to the local community and has led to resentment and a perception real or imaginary of exploitation of the local community. Consequently, managing wildlife coexistent with host community continues as a challenge leading to rampant poaching in the recent past. The study aimed at assessing the arrangement within the law that gives community adjacent to the Maasai Mara National Reserve entitlement to benefit from Wildlife, examining the available benefits and the mechanisms to access benefits to communities adjacent to the Reserve. The study data was obtained from both primary and secondary sources. The primary data was collected from key informer interviews and focused group discussions. The key informers were reached through questionnaires and targeted County Government officials and investor in the industry, while the Focus group was carried on community members. Additional primary data came from the Kenya Constitution and statutes touching on Wildlife. Secondary data were obtained from written literature in books, which were analyzed to deduce information relevance on the law and mechanisms for benefits sharing from wildlife to community which host wildlife. The Data collected showed that community perceives the term benefits differently from what is stipulated in law. For them, they think that benefits refer to compensation for losses they suffer as a result of wildlife attacks. They are not aware that the law entitles them to benefit sharing from wildlife. Despite this kind of perception, implementation of payment of compensation is a challenge as well as it takes a long time for the government to compensate them or they are never compensated at all, thus they revert to killing of the wildlife that has attacked their livestock. The available benefits are channeled through the Governor office which makes benefits distribution inaccessible and highly control by the Governor Office and prone to political interference. The Overreaching recommendation is that County laws should be amended to provide for County and others stakeholders to provide benefits to communities as well as developing mechanisms that allow communities to participate in benefits sharing arrangement.

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CHAPTER ONE: INTRODUCTION

1.0. Background Information

Throughout Eastern Africa, wildlife numbers and diversity are declining. This is attributed to amongst others; an increasing human population that needs new settlement, poaching, harsh climatic conditions and a rapidly rising human needs for land, food and income for the increasing population.¹ Human activities are the major cause for the drastic decline in wildlife populations. These activities include; intensification of cultivation, climate change that causes prolonged droughts, poaching and human settlement expansion.² Moreover, the shift in land tenure systems have added to the uncertainty of coming up with a sustainable model for both livestock production and wildlife conservation.³ These changes are dominant in Narok County within which the Maasai Mara National Reserve is situated. It is notable that wildlife populations since changes in land tenure have declined by up to 75% in the last several decades.⁴

On the other hand, nomadism, as a way of life, has been affected by these land changes as well. Additionally, it has been threatened as competition for land intensifies, leading to diminishing resilience of livestock production. Because of these, pastoralist communities are now shifting from cattle to small stock (goats and sheep) herding. Consequently, livestock per capita has declined, resulting in both economic hardship and food security issues. These changes in land facing the community, compounded by wildlife that scavenge on their domestic animals, have stirred the conversation on whether wildlife in its totality is beneficial to the host community.

Change in land use and ownership has had effects on wildlife populations because their natural habitat is threatened resulting to loss of it and thereafter, declining pasture and

¹ Robin R, et al Evolution of models to support community and policy action with science: Balancing pastoral livelihoods and wildlife conservation in savannas of East Africa; Proceedings of the National Academy of Sciences [2009]

² Ibid.

³Hazzah L et al (2014) Efficacy of two lion conservation programs in Maasailand, Kenya. Conservation Biology [2014]

⁴Fynn RWS et al (2010) Functional conservation areas and the future of Africa's wildlife. African Journal of Ecology

conflict with humans. Due these factors, conservationists and local communities are often pitted against one another on opposite ends of the spectrum. It is hard to find a balance between human needs and wildlife survival in an environment that is becoming hard to balance the need of a community that is increasing in numbers and the need for wildlife to flourish in an undisturbed ecosystem. There is absolute need, therefore, to make efforts that make it possible for animals and human to coexist.⁵ Sustainable Wildlife conservation requires a balance between stakeholders needs and the local people needs been a key issue and in balancing those needs lies in the management of the inevitable tensions between them and addressing issues before irreparable damage is done.

The loss of traditional grazing land without compensation by the community around the Mara ecosystems in the past for the purpose of wildlife conservation has kept this conversation alive for so long.⁶ Many members of the Maasai community were displaced for the creation of the National Reserve resulting in a reduction of their communal land.⁷ In the process, their livestock were deprived of land for grazing, thereby, in the long run, shrinking their source of livelihood for a community that depends solely on livestock for survival.⁸ There is need, therefore, for promoting alternative local livelihoods that springs from wildlife benefits-sharing that will help in reducing the tension between wildlife and humans in light of this reality. This can be achieved through instituting a legal basis for the same and a mechanism to make it work. The realization of both legal framework and mechanisms can be achieved through consultation of stakeholders, partnerships, consensus building and pro-active planning to enhance benefits-sharing for wildlife conservation.⁹ The exclusionary policies of colonial conservation management and associated expansion of parks and reserves during and after independence, with less regards to the local

⁵Mwape E, 'Wildlife and Sustainable Development' (Chisamba, Zambia, 2003)

⁶Ogotu Joseph et al Continuing wildlife population declines and range contraction in the Mara region of Kenya during 1977-2009[2011]. *Journal of Zoology*

⁷ibid

⁸ ibid

⁹Omondi, P. *Wildlife-human Conflict in Kenya: Integrating Wildlife Conservation with Human Needs in the Maasai Mara Region*; Michigan 1997.

community has led to resentment and a perception real or imaginary, of exploitation of the local community.¹⁰

The community adjacent to the National Reserve receives very little economic benefit from the lucrative wildlife-based industry. In terms of employment, tourism creates many jobs through the travel, transport, and hotel operations but few local people who live at or near the game reserve benefit from related tourist employment, even relatively menial jobs.¹¹ The concept of benefit sharing has been well coined under the Convention on Biological Diversity as it is one of the key targets of the convention. One of the objectives of the convention is to ensure fair and equitable sharing of the benefits arising out of the utilization of genetic resources this is in terms of access of the resources and appropriate transfer of relevant technologies the end goal being that the rights of these resources are also protected.¹² The motivation behind benefit sharing is to ensure that the following is achieved; balance in resource allocation and exploitation, protection of the cultural identity of communities, the need to conserve bio-diversity, shared interest in food security and the need for a balance between the protection of the ecosystem and public interest.¹³ The concept of benefit sharing in wildlife is important because of the fact that first there are communities that live around the wildlife and therefore entitled to benefit from the ecosystem around them. Most developing countries take into account the fact that the wildlife ecosystem services are important for their local and national development in terms of human-well-being, water, flood regulation, food, water and the larger part involves international trade.

In the last decade, a widespread movement voicing concern towards sharing of wildlife benefits with local people in wildlife conservation and natural resource management has emerged with the goal for community and wildlife achieving a win-win arrangement.¹⁴

¹⁰Bedelian, C. 2014. Conservation, tourism and pastoral livelihoods: wildlife conservancies in the Maasai Mara, Kenya. PhD Thesis, University College of London, UK

¹¹ Ibid

¹² Convention on Biological Diversity (United Nation), article 1

¹³De Jonge, Bram. "What is fair and equitable benefit-sharing?." *Journal of agricultural and environmental ethics* 24.2 (2011): 127-146.

¹⁴Cirreli, M and Morgella E; Wildlife law and the legal empowerment of the poor in sub-Saharan Africa. FAO legal paper [2009]

The legislative and institutional frameworks are facilitative to achieve this win-win arrangement. Traditionally, legislation as mentioned before was strongly exclusionary and had a strong ideological bias towards the politically powerful actors in the Industry namely private investors and County and National governments. This meant that laws were meant to help the big business owners and the government both at the local and national government, whilst either specifically excluding rural communities from its operation or providing them with negligible benefits.

1.1. Inhabitants of the Maasai Mara National Reserve

The Maasai Mara National reserve is located within the southern part of Kenya, specifically, within Narok County. The reserve is often referred to as the jewel of wildlife with viewers from overseas and even local individuals finding their way yearly to watch the spectacular Wildebeest Migration.¹⁵ It covers an area of 1,500sq km and attracts a big chunk of tourist who visits the County. The Maasai Mara wildlife is mainly concentrated around the western escarpment of the Mara, either within the protected areas or the adjacent land occupied by the local community.¹⁶ Although faced by many challenges, especially in maintaining the wildlife populations and enhancing an ecosystem that is favorable for wildlife, the Maasai Mara still remain the leading destination in Kenya and, indeed the world for tourists as well as having the best lodges and camps with a growing balloon safaris.¹⁷ The wildlife run over the whole Mara ecosystem that is restricted and that which is not restricted. This ecosystem covers both what is referred to as the protected areas and the land owned by the individuals of the Maasai community within the Mara region. The areas around the reserve have, in the recent past, also witnessed the coming up of small camps and lodges for both local and international tourists.

A proud and prominent community of the 18th and the early part of the 19th century occupy the Mara named the Maasai. The Maasai community occupies both the Maasai Mara Game Reserve and the Serengeti, on the other side on the Tanzanian border.¹⁸ They roam all over

¹⁵<http://www.wanderingwarrior.co.ke/destinations-kenya-masaimara.html>[accessed on 7th March 2018]

¹⁶<http://www.wanderingwarrior.co.ke/destinations-kenya-masaimara.html>[accessed 7th March 2018]

¹⁷ Ibid

¹⁸Lotte Hughes; Moving the Maasai, A colonial Misadventure. A Phd thesis for the University of Oxford [2002]

except within the Reserve, in both the Mara and the Serengeti, with Kenya hosting a larger population of the Maasai people compared to Tanzania. It is estimated that the population of the Maasai in both countries is 2 million. The Maasai people are Nilotic who traces their origin to Sudan. They moved south during the 15th and 16th Centuries, following the Great Rift Valley, looking for water and pasture for their livestock. They settled at the greater south of the Rift Valley in the 18th century and the early 19th century. However, the signing of the Anglo-Maasai agreements of 1904 and 1912, which were highly disputed, moved the Maasai, especially the Purko clan, from the Northern savannah of Laikipia and Nyandarua. This was to create space for the White settlers who were moving into Kenya following the scarcity of land in South Africa, where they had settled in the 18th Century.¹⁹ Over the years and even before the gazettement of the Game Reserve, the Maasai people have lived peacefully with wildlife. Wildlife occupied a special place within the Maasai culture, especially the ritual of killing the lion before age-set graduates into adulthood to signify the courage of the Morans. The loss of the Northern rangelands was not the only catastrophe that hit the Maasai as they moved to the South. Their move was even made more difficult by the Tsetse fly attack on their cattle during the migration. They were also not spared by the occasional drought and famine throughout the Century, which seems to be increasing with the advent of climate change.

The Maasai are predominantly nomadic pastoralists who rear cattle, sheep and goats. The tribe keeps moving from one place to another in search of grazing pastures. The cattle sit at the heart of the Maasai people and pride and recognition is attached to a family that owns as many cows as possible.²⁰ The cattle serve many purposes for the community. These include the fact that people used blood and milk from the cows as the sole source of food in the past; the skin is used for the purpose of serving as mattresses in beds and making of shoes; their dung helps in the smearing of Maasai homes/kraal commonly, referred as Manyattas while their urine is used to clean wounds because of their medicinal value and cleansing qualities. In addition to that, since the number of cattle signifies wealth, during negotiation of dowry, they are offered in order to secure a daughter's hand in marriage.

¹⁹ Ibid

²⁰ Joseph Thomson, Through MasaiLand, Sampson Low, Marston & Co [1885]

Furthermore, cows are offered by young people to appease the elders in case they wrong them or when a strong disagreement happens and the young people need the blessings of the elders. Traditionally, the Maasai did not cultivate land or grow crops however there is an upsurge in land cultivation in the recent past. Their pastoralist way of life is credited for the existence of the wildlife in the Mara ecosystem, as they do not feed on wildlife.²¹

1.2. Statement of the Research Problem

Land use in the recent past for the community adjacent to the Game Reserve has changed and community is looking at the value of their land compared to opportunities available in agriculture as opposed to wildlife benefits. There has been little benefits compared to the community contribution in conservation of biodiversity hence community resentment in Wildlife conservation.²²

The whole question of benefits and incentive sharing has not been given adequate attention within the wildlife conservation circles. This void has not only made the Community resentful but also attached less significance to wildlife conservation. Consequently, wildlife population all over the world has started to decline, including that within the Maasai Mara National reserve.²³ The road networks within the Mara ecosystem are poor while there is an almost daily occurrence of one form or another of human–wildlife conflict that, unfortunately, sometimes results in the death of people. In the last five years, people have succumbed to death from injuries inflicted by wildlife in the Mara. Social amenities are under-developed, despite the fact that the people host one of the Seven Wonders of the World in the name of the Maasai Mara National Reserve.

Due to the dismal benefits of wildlife, there is an emerging trend of fencing of land portions owned by individuals outside the protected area, especially after change of land ownership regime from communal to individual, thereby disrupting wildlife migration corridors and access to watering points. In the recent past, there have been piecemeal efforts in trying to share in the wealth of the tourism industry from the then Narok County Council sharing a

²¹Omondi, P. *Wildlife-human Conflict in Kenya: Integrating Wildlife Conservation with Human Needs in the Maasai ra Region*; Michigan [1997].

²² Wildlife damage compensation: Economic incentives can bite too Daniel Rondeau¹, Erwin H. Bulte²,
¹University of Victoria, Victoria, BC, Canada; ²Tilburg University, Tilburg, The Netherlands

²³Ibid.

fraction of the total revenue with the host community. After the enactment of the new Constitution, the County and National government have put in place little efforts in terms of law, and mechanisms to advance access of wildlife benefits to the host communities. The Wildlife Management and Conservation Act 2013 provides for not less than 5% revenue from wildlife to the local communities²⁴ while requiring investors from the industry, though not capping any percentage, to contribute back to the community through social amenities.

The County legislation also provides that 19% of the total financial revenue from Wildlife be allocated back to the host community.²⁵ It is agreed that the benefits from the Industry takes various forms ranging from jobs, although at the moment, it is estimated that less than 20% of the labor force comes from the local community²⁶.

However, the Maasai Mara Community Support Fund Act of 2014, only provides for the ploughing back of financial revenue collected back to the community without imposing any responsibility to investors to give back to the host community other associated benefits from wildlife. These include employment, social amenities and even joint ventures, despite the provision of the national laws providing for both monetary and non-monetary benefits. The Fund is purely a county agency for distributing financial benefits and the mechanism for benefits-sharing is purely run by the County Government with little community participation. Government-implemented benefit-sharing mechanisms are prone to corruption and exclusion and a move towards private-public partnership is desirable.

In order to make wildlife resources meaningful to the local community and enhance sharing of the benefits the industry provides, there is need for the County legislation to provide a broad base of legal benefits as well as obligating by law investors to give back to host community negotiated with the participation of all stakeholders; enhance mechanisms for implementing benefits-sharing that put the people at the centre and bringing broad network of stakeholders from the public and private sector as well as the local community. The

²⁴ Wildlife Management and conservation Act 2013

²⁵Maasai Mara community support fund Act 2014

²⁶Suich, H. (2013). The effectiveness of economic incentives for sustaining community based natural resource management. Land Use Policy

sharing of benefits, both the financial and non-financial, by the County Government and the private investors to the community around the Maasai Mara National reserve can help to change community attitude on conservation, hence, protecting and conserving biodiversity. Retaliatory attacks by the local community due to significant loss to rural people by wildlife attacks on their livestock and poaching will be reduced. The Community will come to find that wildlife is equally valuable like crops or cattle and, they will, eventually, start protecting it themselves.

1.3. Research Questions

This study Sought to answer the following questions;

- i. How does the legal framework guides in the sharing of benefits from Wildlife to the community adjacent to the Maasai Mara National Reserve?
- ii. What is the nature of benefits from Wildlife shared with the community adjacent to the Maasai Mara National Reserve?
- iii. Which mechanisms are available and are being utilize for sharing of benefits to adjacent community?

1.4. Research Objectives

The objectives of this study are;

- i. To review the existing legal framework for wildlife benefit-sharing for the community adjacent to the Maasai Mara Game Reserve.
- ii. To examine the available benefits derive by the community adjacent to the Maasai Mara National Reserve.
- iii. To analyze the mechanisms for sharing of benefits to the adjacent community for sustainable wildlife conservation.

1.5. Justification of the Study

There has been an overwhelming decline of wildlife population in Kenya and particularly amongst the Maasai Mara big five; Elephant, Lion, Rhino, Leopards and the Buffalo. This decline is attributed to the conflicts between wildlife and humans, in places where human activities and wildlife have previously coexisted peacefully. There has been unequal

sharing of resources from wildlife between stakeholders in the wildlife industry, leading to resentment towards wildlife by the host communities.

Currently an increasing vibrant movement has advanced the sharing of wildlife benefits as a key ingredient for sustainable wildlife conservation. In the past, coupled with exclusionary policies of the colonialist, the local people have perceived that wildlife resources have benefited only the government and private businesses, with business owners receiving a big chunk of the benefits. Occasionally, governments have given back financial resources through development of basic amenities to the local communities as well as bursaries to needy children, and this has become standard and construed to mean that the community has also reaped from the vast wealth available through wildlife. The majority view, however, is that long term goals of enhancing the conservation of animals should be an intentional effort of both the legal framework and mechanisms to enhance benefits to the community around wildlife protected areas and even in private lands.

This research, therefore, is aimed at seeking to understand, appreciate and locate the legal framework and mechanisms that provide for a basis for sharing wildlife benefits between the government agencies, stakeholders and local communities in resolving human wildlife conflicts and reviving the decline animal population, thus making conservation a reality.

1.6. Theoretical Framework

1.6.1. Social Exchange Theory

The existence of wildlife and people within the same ecosystem will be more sustainable if there are a give-and-take-from both ends. The lenses through which this relationship will be seen, has to be that which both units will derive a value. In the social exchange theory, as discussed and expounded by Peter Blau and George Homans state that human relationship are in some way transactional in nature and the human person preserve and safeguard that which rewards the most and discard that which bring suffering and punishment..²⁷ This theory helps in the analysis of the microeconomics perspective of business ventures, communities or government entity undertakes. Under this theory, everyone in the environment thrives to achieve maximum benefits from an exchange venture, especially in market relations. The element of dependency exists because both

²⁷ Chadwick-jones, J K [1976]. social exchange theory; its structural and influence in social psychology. New York.Academic press incl.

parties rely on the trust of the other to enable the success of the commodity in the social exchange sphere. Rewards, as a motivating factor in the social exchange theory, can be exhibited in various forms, including monetary, friendship, security and even companionship.²⁸

In the sphere of wildlife conservation, communities put into perspective the benefits that they accrue financially in their engagement on the protection of wildlife outside the protected areas. It is expected that communities will endeavor to protect wildlife just like they protect domestic animals for their own if they benefit from it. This theory in part operates on a scale where wildlife benefits are weighed against other options for land use. Individuals at the household level canvass and value what they receive from either land use for agriculture, leasing or Wildlife.²⁹ The theory elaborates and point that an individual enters into relationships within their social, economic or political sphere with an aim of gaining as much as possible from them. The main argument revolves around the economic rationale of people's actions. Wallace further suggests that when people interact just in the context of people and Wildlife and other available land use spheres, they do so with the expectations that they will get at least as much out of the interaction as they put into it thus the whole theory of Social exchange.

The wildlife conservation initiatives within the land occupied and under the free title deed can only succeeded in the translational nature where real benefits from wildlife are exchange for land use alternatives. The reward is both financial and non-financial in nature as spelt out on the existing national legal framework. The effectiveness of this theory is already working as shown by the success of conservation initiatives within the Mara area since the emergence of private conservancies.³⁰ Based on the theory, it is expected that as long as the landowners value the monetary benefits and non-monetary they receive for wildlife stewardship on their land, they will desist to engage in any anti-wildlife activities. The reward they derive from wildlife will help to put in place the norm of reciprocity.

²⁸Majiros, C [2013]. Beyond social exchange theory; A theoretical shift for mentoring Relationships in the federal workplace. Advance in social work

²⁹ Ibid

³⁰Bix Brian Jurisprudence Theory and Context 6thed Sweet & Maxwell 2012

1.7. Limitations and Delimitations of the Study

This study is limited to the examination of benefits the community that lives within the Maasai Mara region is entitled to receive from the wildlife industry. The geographical coverage area is limited to the communities adjacent to the Game Reserve. The study will not cover the scope of the benefits that are enjoyed by the community within the County, who, in one way or the other, suffer from the damages and inconveniences brought about by wildlife. The study will not equally look at the benefits that accrue from to the country at large.

1.8. Study Methodology

1.8.1. Conceptual Framework

A conceptual framework is a research tool intended to assist a researcher to develop awareness and understanding of the situation under scrutiny and to communicate this. For achievement of sustainable wildlife conservation, it is important to reconcile conservation goals and human needs. This can be achieved through putting in place proper mechanisms that provides for benefit sharing with the host communities.

Kenya, as well as the majority of the developing world, has continued to experience decline in wildlife populations and increasing forms of human-wildlife conflicts. The reduction in wildlife population is attributed to the increasing human population that requires new settlements spaces as well as poaching.³¹ These factors are escalated by the resentment of the host communities towards wildlife, since it has provided minimal or negligible incentives and benefits, to meet their economic needs.³²

In order to secure the future of wildlife in developing countries, there is need to provide real economic benefits to households and public goods to the hosts communities so that mitigation of these factors can take place.³³ These benefits, which shall be secured through the legal framework, will eventually need distribution mechanisms for efficiency and

³¹ Okello, M.M., Wishitemi, B.E. & Mwinzi, A.M.: 'Relative Importance Of Conservation Areas In Kenya Based On Diverse Tourist Attractions' *The Journal of Tourism Studies* (2001) 12(1): 39-49.

³² Sindiga, I., 'Wildlife-based tourism in Kenya: Land use conflicts and government compensation policies over protected areas' *The Journal of Tourism Studies* 6(2) (2005) 45-55.

³³ DeJanvry, A. and E. Sadoulet. 2001. Income Strategies among Rural Households in Mexico: The Role of Off-farm Activities. *World Development* 29.3: 467-80.

equity. The mechanisms shall ensure that it reaches to a broad number of the populations and decentralization of resources management, to the community's possible lowest level.

The conceptual framework is the understanding of how variables like benefits and mechanisms interact such that sustainable wildlife conservation is achieved. This is compounded by inadequate benefits from wildlife which cause resentment and thus increase human-wildlife conflict, making sustainable conservation unachievable. However, when mechanisms are put in place to ensure that the community benefits both in monetary and non-monetary, they become incentivized to conserve wildlife thus leading to sustainable conservation.

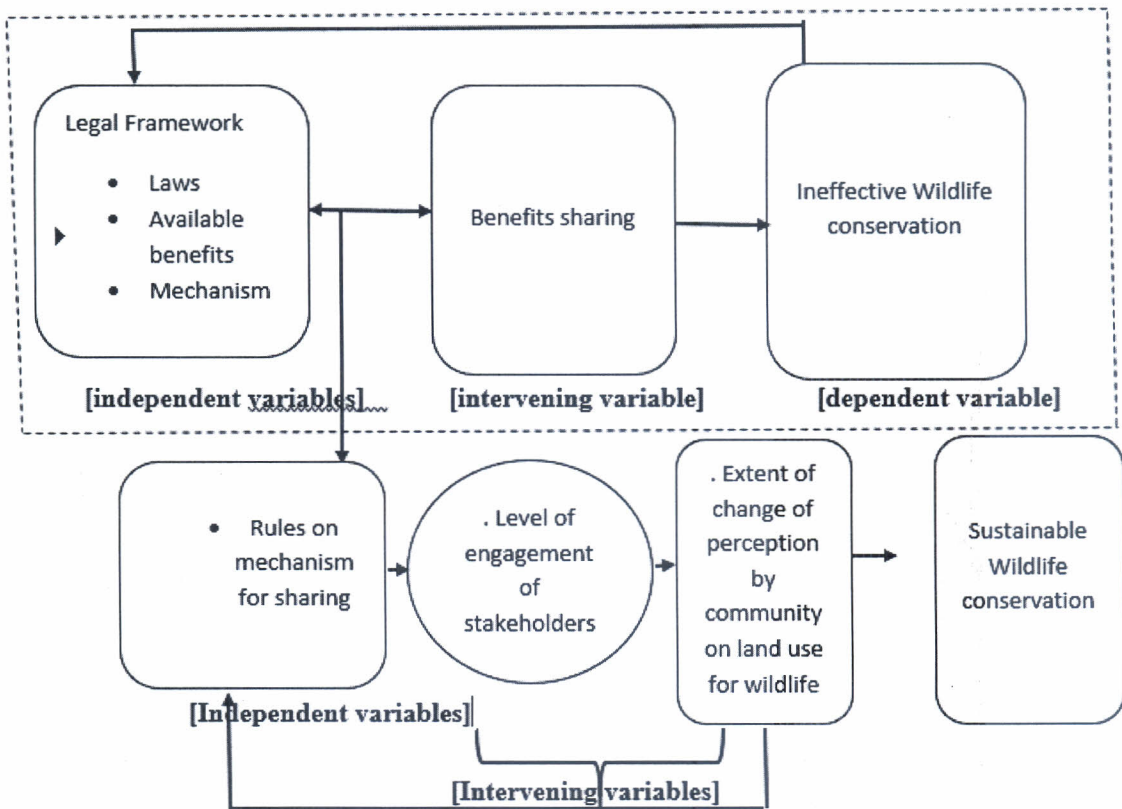


Figure 1: conceptual framework

Source of the Conceptual framework: Thesis Author

1.9 Methodology

1.9.1 Introduction

The research methodology is the process of gathering data for purposes of answering the research questions and exploring the problem statement. Data for this thesis was collected and gathered from primary documents as well as secondary. A field research was also undertaken in order to get community insight on how mechanisms for benefits-sharing are structured for easy access of benefits, within the Maasai Mara National Game Reserve.

1.9.2 Study site

The study will be carried out within two locations of the Mara division of Narok County, which are situated outside the protected area of the Maasai Mara National Reserve but adjacent to it namely Koiyaki and Olkinyei locations. These two locations were chosen randomly since all the locations within the Mara division host wildlife and are adjacent to the Maasai Mara National Reserve. The whole division share the same climatic conditions, its inhabitants are all pastoralists and have over time reported human-wildlife conflicts. The choice is also informed by the wildlife nature of roaming the whole ecosystem of the Mara division and not necessary inhabit a particular location.

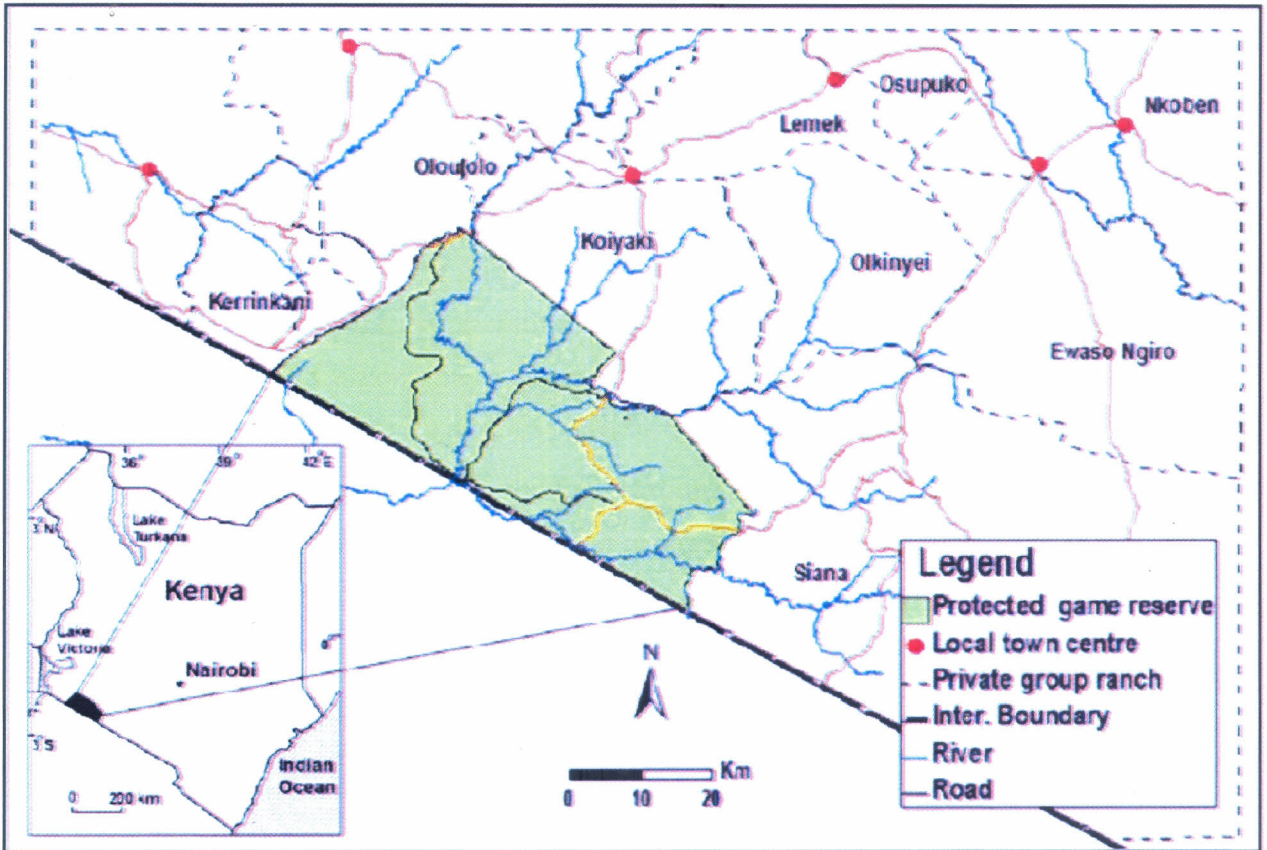


Figure 2: study site

Source: Maasai Mara Wildlife Conservation Association, 2012

1.9.3 Data needs, types and sources

This study will rely on both primary and secondary data. The sources of primary data will be from the questionnaires as well as from primary documents like the Constitution, international treaties and statutes. The secondary sources of data will be collected from desktop study which includes books, journals, articles, internet and newspapers.

1.9.4 Sampling procedure and size

The method of study that was used for this research was random purposeful sampling method. This method is cost-effective and provides an opportunity for everyone within the community to have a chance of being interviewed by the researcher during the Focus Group Discussion, through a questionnaire that shall have both open-ended questions and structured closed questions. The individuals will be reached randomly through a focus

group discussion and key informant interviews (KII). After the collection, the data will be analyzed to find out the relationship between the variables. The responses from the FGD and Key informants will form the data to be analyzed.

A random purposive sampling method was used to identify the people who formed the Focused Group Discussion. The Researcher conducted three (3) focused group discussion of 12-15 persons in each discussion within the two (2) locations as follows; mixed youth (male and female) and a combine men and women discussion. The random sampling ensured that every person has the opportunity to be interviewed by the researcher. The random picking of the participants in the focus group discussion will be able to eliminate any biasness from the study and purposeful to capture data from women who tend to shy away from groups that men are participating due to cultural systems. The method allows the researcher to get insights and the required information regarding the study, with respect to the objectives. The study also reached key individuals through Key informant interview (KII) because of the unique information they hold.

1.9.5 Data Collection

The data for this study was qualitative and its sources were both primary and secondary sources.

The primary data was collected from key informer interviews and focused group discussions. The key informer interviews were reached through questionnaires and targeted current County Government officials at the County Department of Wildlife and Tourism, the General Managers, Hotel owners and tourist camps and lodges owners inside both the protected area and the land adjacent to the Reserve. The data from the FGDs was collected from the community members adjacent to the ecosystem of the Maasai Mara National Reserve. Additional primary data came from the Kenya Constitution and statutes touching on Wildlife.

Secondary data was obtained from written books, journals, written articles, reports, periodicals, internet, published academic works and libraries which were analyzed to deduce information relevance on the law and mechanisms for benefits sharing from wildlife to community which host wildlife.



conflict that seems to be souring every day. The next important step after CBD was the conceptualization of benefits-sharing in 2005 where a massive shift in discussion and policy on actualization of benefits-sharing as a way of sustaining the ecosystem and utilizing its services, took root. Since then, the global natural resource policy began to take into context the role and the value of biodiversity and the whole ecosystem in enhancing and meeting people needs, as a tool for conservation.³⁵ However, the approach towards benefits-sharing of natural resources in general have remain to be contentious and challenging in the developing world where the socio-economic realities are so dynamic and complex, making approaches sometimes imperfect and temporary. It remains contentious on whether benefits from protected areas should be targeting households as opposed to public goods bearing, in mind the successes in communities' conservancies that channel benefits to individual/households.

The scope and meaning of benefits, which most people comprehend as amongst other things, percentages of wildlife revenue from protected areas going back to the communities in the form of public goods is been reviewed. There are gaps not explored by the existing literature on the need for efficient and effective mechanisms to ensure that benefits reach community members equitably and to all.

1.11.1 The need to channel economic benefits to household level rather than public goods

In order to make benefits and incentives effective in the conservation of wildlife, there is need to harness benefits from the industry to the household level where family needs are met. The household target helps in relieving families from the pressures of everyday needs. The provision for social amenities and other public goods are not incentive enough since, that is not the level where opportunity cost is felt. De Georges and Rilley states that the impact of human-wildlife conflict is felt most at the household level since that is the specific level where a cow is killed or crops are destroyed by wildlife.³⁶ The degree of

³⁵Lucy Emerton, 'The Nature of Benefits and the Benefits of Nature: Why Wildlife Conservation Has Not Economically Benefitted Communities in Africa,' *Community Conservation Research in Africa: Principles and Comparative Practice*, Paper No. 5.

³⁶DeGeorges A& Reilly B, 'Politicization of land reform in Zimbabwe; impacts on Wildlife, food production and the economy,' *International Journal of Environmental studies*, 2007.

economic loss is experienced at that level rather than at communal level, hence, the need to channel the benefit to household level in order to help salvage the nature of losses incurred. Provision of social amenities in such an instance may not really help the families affected heal from the losses, thus, they may fail to see the essence of conservation of wildlife.³⁷ In Zimbabwe for example, most benefits are distributed as projects to the local community to enable them appreciate wildlife. However, when an elephant attacks a family farm the family may be forced to consider killing the animal for bush meat as a source of food. It is argued that change of attitude towards wildlife would be effective if the solution is to channel benefits or use the family level approach.

The existing legal framework in Kenya and Zimbabwe is that, benefits-sharing target the community in terms of supplying public goods to the local community.³⁸ In the Mara for example, Waithaka observes that families are selling and fencing off their land outside the protected areas because they do not find wildlife viable, therefore, in the long run disrupts the migratory corridors and watering points for Wildlife.³⁹ The use of incentives to encourage participation in wildlife management in Kenya will work if private landowners and communities benefit directly from the wildlife on their land. Consequently, they will embrace wildlife as an economic good and end up protecting the wildlife the same way they safeguard their private property. In most African countries, except in Botswana, that channel some benefits to the household level, wildlife benefits remain public goods which may not realize intended benefits since like all other public goods, they may suffer from the tragedy of the commons.⁴⁰

1.11.2 Existing legal framework

Kariuki Muigua, Wamukoya and Francis Kariuki, analyse environmental justice and examine the need for benefits-sharing as a tool to alleviate poverty from the lenses of human rights, sustainable conservation as well as environmental justice. The Kenyan Constitution, 2010 recognizes the role played by local communities in Kenya in the

³⁷ Ibid.

³⁸ Wildlife Management and conservation act 2013 section....

³⁹ Waithaka, J., 'Maasai Mara; an ecosystem under siege: An African case study on the societal dimension of rangeland conservation' African Journal of Range and Forage Science, 2004.

⁴⁰ See provisions relating to incentives and benefit-sharing in the National Wildlife Conservation and Management Policy, 2012 & Wildlife Conservation and Management Act, 2013.

attainment of sustainable utilization and management of natural resources. Specifically, this can be seen under Article 63, which gives the local communities the obligation to manage community land with assistance from the government. Article 69(1)(d) of the Constitution of Kenya further obligates the State to encourage public participation in the management, protection and conservation of the environment.⁴¹ Furthermore, it is tasked with the obligation of ensuring that utilization of the environment and natural resources benefit the Kenyan people.⁴² This is especially the case when it comes to wildlife conservation areas, where benefits derived from wildlife revenues through ecotourism activities are minimal. They argue that ecotourism ventures should only be considered successful if local communities have some measure of control over them and also whether they share equitably the benefits.

Kariuki Muigua acknowledges the challenges relating to the legal, policies and institutional framework on natural resource management which have hampered its utilization in Kenya.⁴³ These challenges include; overlaps and conflict in natural resources management regimes, weak enforcement mechanisms, inadequate sectoral laws and lack of political goodwill to implement natural resource management.⁴⁴ The role of the law as an indispensable tool is to come up with a framework for fair and equitable sharing of the Benefits from the wildlife industry as well a package of ethical tools especially when getting into partnership with investors.

In international law, the United Nations Convention on Biological Diversity (CBD), provides that treaty will determine the rights regarding access and benefits-sharing to national governments.⁴⁵ The treaty is a front runner as far as codification of benefit-sharing at the international level is concerned. From the Nagaya protocol to the CBD, parties are obliged by the CBD to undertake legislative, administrative and policy measures to ensure that benefits from utilizations of resources from host communities are shared in a fair and

⁴¹Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (1st edn, Glenwood Publishers Limited 2015), 14

⁴²Constitution of Kenya 2010, Article 69 (1)(h).

⁴³Kariuki Muigua et al, *Natural Resources and Environmental Justice in Kenya* [1st edn, Glenwood Publishers Limited 2015]

⁴⁴ *Ibid*

⁴⁵Convention on Biological Diversity 1992, Article 8.

equitable way based on mutually agreed terms, be they monetary or non-monetary.⁴⁶ In addition, parties to the convention came up with more detailed guidelines for the voluntary adoption, known as the Bonn guidelines which will local communities in drafting and development of access and benefit sharing agreements.⁴⁷ The rationale of the guidelines is to help countries and local communities which do not have any legal framework on benefits-sharing to borrow from these international drafted guidelines. The local indigenous communities with little experience and inadequate expertise in drafting and negotiating agreements for benefits-sharing with big companies who have expertise in negotiating agreements will particularly find this guidelines helpful.

African States have utilized the CBD provisions through promulgation of constitutions that codify the need for legal framework for benefits-sharing. In Namibia, for instance, one of the countries in Africa with immense wildlife resources, Article 95 of the Namibian constitution⁴⁸ provides that natural resources including wildlife found within Namibia shall be utilized sustainably for the benefit of present and future generations. Murombedzi analyzes the provisions of the Constitutions of Namibia and Kenya on benefit-sharing. Article 144 of the Constitution of Namibia for example reflects international treaties and conventions ratified by Namibia as part of their laws. Article 2(5) & (6) of the Constitution of Kenya enshrines a similar provision.⁴⁹ The implication of these provisions is that key principles of international law, as well as the provisions of covenants ratified by both Kenya and Namibia are directly enforceable under their laws respectively. Both countries are, for instance, signatories to multilateral agreement that relate to access to benefits-sharing, which include the United Nations Convention on Biological Diversity (UNCBD) and The Nagaya Protocol, Convention on International Trade in Endangered Species of Wild Fauna and Flora and World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights. Another country, which is endowed with wildlife resource and has made effort to legislate on benefit-sharing, is Zimbabwe. Ntuli and Muchopondwa,

⁴⁶Nagaya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their utilization to the Convention on Biological Diversity, Article 5

⁴⁷

⁴⁸ Ibid

⁴⁹Murombedzi, J. C., 'Devolution and stewardship in Zimbabwe CAMPFIRE programme' Journal of International Development, 1999

assess legislation and policy frameworks that have been put in place to promote the right of the local community to participate in the protection and preservation of wildlife as well as the reaping of benefits that come with hosting wildlife in their midst.⁵⁰ The Constitution of Zimbabwe provides for the involvement of the local communities in sustainable development processes by recognizing their right to benefit from the exploitation of the natural resources within their locality.⁵¹ Due to extended colonial period in Zimbabwe as compared with Kenya, the former made provisions that promote local ownership of companies exploiting natural resources, by passing the Indigenization and Economic Empowerment(General Amendment) Regulations 2010 (Statutory Instrument 116 of 2010,) which safeguards the protection of community interests through the creation of trusts.⁵²

From the above literature, there is a consistent commitment in all countries to abide by the objects of the international conventions that advocate for sharing of benefits.⁵³ From the aforementioned provisions of the constitutions analysed and the international agreements, the communities are no longer mere stakeholders in the conservation process. To realize this, the government of Kenya has enacted legislation both at the national and county level to give effect to benefit-sharing requirement. However, the county government legislation on benefits-sharing does not respond fully to the international and national regime on benefit-sharing. The legal framework will be examined in Chapter Two below to expound on the gaps that have been singled out by various scholars.

1.11.3 Sharing of Wildlife benefits from the protected areas

In sub-Saharan Africa, the idea of community-based natural resource management (CBNRM) has been widely applauded as an initiative response to the reality that many cases of rural resources degradation, including wildlife, occurs due to centralized management regimes in Africa and, therefore, vesting local users the right to manage

⁵⁰Ntuli, H., & Muchapondwa, E. 'The role of institutions in community wildlife conservation in Zimbabwe. In *Environment for Development*' (EFD) Discussion Paper (2015).

⁵¹ibid

⁵² ibid

⁵³Thomson et al, (2013). Balancing livestock production and wildlife conservation in and around Southern Africa's trans-frontier conservation areas. *Tran boundary and Emerging Diseases*

resources is a corrective measure.⁵⁴ There are reasons that made it necessary for wide adoption of the decentralization of natural resource management, including wildlife; political decision maker's interests in reducing expenditures and attracting community support.⁵⁵

The need for sharing wildlife benefits reception majorly took the form of allowing communities adjacent to the protected areas to undertake wildlife conservation for private benefit. However, there is little legal framework on the flow of benefits from the protected areas. Wildlife protection in government control parks need community voices. Unless community feels appreciated through benefits they will not share in the government and conservationist goal of wildlife conservation. The legal framework in Zimbabwe and Namibia strive to enhance benefits-sharing from the areas around National Parks.⁵⁶ The legal framework on natural resources management gives rights to community to utilize Wildlife resources adjacent to national parks. The Communal Areas Management Programme for Indigenous Resources [CAMPFIRE] in Zimbabwe, for examples, gives the community rights to engage in eco-tourism within their communal land while animals within the protected areas remains with the government as well as the benefits proceeds from their exploitation. In Kenya, the wildlife law has evolved to recognize and allow the communities around wildlife protected areas to come together and form community conservancies in order to reap the benefits of the wildlife industry.⁵⁷ The Conservation Agreement negotiation process is highly collaborative and inclusive. During the establishment phase, communities identify priority areas for investment. These priority areas are cemented into the eventual Conservation Agreement, including calculation of funds for benefits. In case communities achieve Wildlife conservation performance standards, they will receive benefit packages such as: investment in social services, health, education, water sanitation, small-scale tourism, hospitality ventures, training, equipment,

⁵⁴Fred Nelson and Arun Agrawal, 'Patronage or Participation? Community-Based Natural Resource Management Reform in Sub-Saharan Africa' (2008) 39 *Journal of Development and Change* <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/65395/j.14677660.2008.00496.x.pdf?sequence=1&isAllowed=y>. accessed 21 June 2017.

⁵⁵ Ibid.

⁵⁶Dzingirai, V. and C. Breen, eds, *Confronting the crisis in community conservation: Case studies from southern Africa* Centre for Environment, Agriculture and Development, University of KwaZulu-Natal, South Africa, Pietermaritzburg 2005.

⁵⁷ Wildlife management and conservation Act 2003 section....

stipends for the community efforts made to protect natural resources, school fees, educational materials and investments to improve agriculture or other livelihoods. Conservation jobs involving awareness, monitoring assistance, eco-assistants for compliance monitoring; patrol and collecting data; finally hunting and fuel wood collection.⁵⁸ In the area under study, benefits from the protected areas, that is the national reserve, still go to the county government while business opportunities are in the hand of investors and the benefits that it entails with little regards for the local community.

1.11.4 Essentials requirements for benefit-sharing mechanisms

Until communities are organized and formally recognized through the setting up of their own community-based organizations, they cannot effectively engage government and the private sector as equal partners. As legal entities that are recognized by the law, local communities would be involved in the formulation of wildlife laws and decision-making. In Zimbabwe, for instance, legislation has empowered the community to organize themselves around Community-Based Organizations (CBOs) that have been registered as legal entities.⁵⁹ These CBOs carry out advocacy campaigns as a way of affirming and demanding their rights. These campaigns target important stakeholders like investors in the sector especially foreign investors.

In Namibia, the place of CBO is the community council. However, they have inadequate coherent policies that guide the formation of the wildlife councils, which incapacitate their ability to pursue wildlife benefits. Compared to Zimbabwe, the council in Namibia needs more legislative power.

A study undertaken by Edwin Muchapondwa on wildlife resource and the involvement of the local community and their negotiation with non-state actors, arrived at the conclusion that the involvement of various sectors in wildlife management is crucial in most countries. The participation of the several sectors in decision-making ensures that the vulnerable members of the community are adequately catered for.⁶⁰

⁵⁸See <https://www.idhsustainabletrade.com/uploaded/2017/08/IDH-Case-studies-on-Community-Benefit-Sharing-in-Liberian-communities-...pdf>.

⁵⁹Fischer et al; (2011). A Bio economic Model of Community Incentives for Wildlife Management under CAMPFIRE. Environmental and Resource Economics

⁶⁰Edwwin Muchopondwa, Supr.

It is noted that government and communities who are navigating the concept of benefits-sharing are doing so in complex dynamics. Once there is, a legal framework that entails benefits-sharing, there is need for mechanisms that shall enhance efficient ways that benefits reach the communities equitably. It is a thematic gap in the whole question of benefits-sharing that is necessary since most mechanisms are run by government bureaucrats. There is need for mechanisms that encourage stakeholders' involvement to enhance transparency, accountability for equitable distribution of benefits.⁶¹ This is in cognisance of the fact that achieving sustainable allocation of benefits of communities, especially the rural poor, has challenges that include differentials in economic power, corruption, gatekeepers and access to information in developing countries by rural folks.⁶²

For benefits to work for wildlife conservation there is need to develop mechanisms that shall ensure that benefits reach to the intended beneficiaries.⁶³ In Namibia, for example, approaches for benefits-sharing that work in the European context have been explored without looking at power dynamics within traditional societies of the host communities. This has resulted in some communities getting less of their shares leading to benefits that yield unjust results. This is attributed to the prevailing environment in Africa of capture by the elites of resources leading to unfair distribution of benefits which are either prone to corruption or nepotisms.⁶⁴ Industry benefits like employment opportunities become accessible to the elite relatives while public goods like watering points and roads could be concentrated where the influential individuals inhabit. This was also observed in a research carried by the International Institute for Environment Development [IED]⁶⁵ that found out that gorilla tourism in Rwanda benefits were not reaching the community next to the park because of the influence of those who wield power, taking benefits to communities who lives far from the park.

The concept of community-based natural resource management envisages a situation where local communities are able to manage and derive benefits from natural resources.

⁶¹Lucy Emerton, *supra*.

⁶²Ibid.

⁶³www.benelexblog.law.ed.ac.uk [accessed on 2nd February 2018]

⁶⁴Ibid.

⁶⁵ Ibid

Modern attempts to help revive traditional mechanisms for the conservation of natural resources gives the local communities the right to manage, use or own resources, create incentives for them to collectively invest in natural resource management.⁶⁶

Patricia Kameri-Mbote, in a working paper on “Sustainable Management of Wildlife Resources in East Africa”, writes about wildlife laws and policies in the East African countries which offer few or no incentives to local communities.⁶⁷ However, there are noticeable countries that have registered some improvement in as far as the issue of incentives is concerned.⁶⁸ The critical issue that needs to be addressed is whether countries have put in place mechanisms for ensuring communities living near wildlife refuge have access to wildlife resources or benefit from the resources⁶⁹.

Ernest Mwape, in his scholarly work on wildlife and sustainable development, addresses the question of natural resource conservation and management for sustainable development in Zambia.⁷⁰ The author advocates for the involvement of local communities, especially on the issue of natural resources management, and continues on to write that this can be a very crucial strategy for poverty reduction in rural areas where people live with the natural resources.

He urges international community to not only focus on the protection of endangered species, but also champions for the equitable sharing of benefits that arise from use of genetic resources that a particular community has helped in protecting, conserving, preserving as well as managing for a long time, by raising issues on how the benefits from the exploitation of such natural resources should be shared.⁷¹ One of the ways is the use of the proportionality test whereby stakeholder community benefits should be proportional to the cost borne when performing the assigned responsibilities. The mechanisms should

⁶⁶Fred Nelson and Arun Agrawal, ‘Patronage or Participation? Community-Based Natural Resource Management Reform in Sub-Saharan Africa’ (2008) 39 *Journal of Development and Change* <<https://deepblue.lib.umich.edu/bitstream/handle/2027.42/65395/j.1467-7660.2008.00496.x.pdf?sequence=1&isAllowed=y>> accessed 21 June 2017.

⁶⁷Patricia Kameri-Mbote, ‘Sustainable Management of Wildlife Resources in East Africa: A Critical Analysis of the Legal, Policy and Institutional Frameworks’ (2005) 5 *International Environmental Law Research Centre* <http://www.ielrc.org/content/w0505.pdf> accessed 22 June 2017.

⁶⁸Ibid.

⁶⁹Ibid

⁷⁰Ernest Mwape, ‘Wildlife and Sustainable Development’ Chisamba, Zambia, 2003

⁷¹ Ibid.

provide for open and transparent procedures of remitting such revenues shares to the respective local communities and making sure the distribution are at the household level. This helps in increasing appreciation of the link between wildlife and improved livelihoods thus gravitating towards Wildlife production as an alternative land-use form that is equally profitable.⁷²

He notes that local communities have been sidelined for a long time by governments from the conversation relating to conservation and sustainable management of natural resources, though potentials exist for governments to also partner with local communities as it does with the private sector in the wildlife sector.⁷³ In fact, the other main justification for the involvement of local communities is that the natural resources are located within these communities.

He highlights reasons why community involvement is considered as a sustainable way of managing wildlife to include first, government does not have much money to put into management of wildlife based on other prioritized expenditure. Thus, it is more cost-effective to utilize the local communities to police wildlife management as opposed to employing wildlife scouts. Second, application of indigenous knowledge has proved successful in the conservation process as opposed to the dynamic and complex ecosystems that mainly relies on hard science which may not sometime yield the best results. Third, most local communities feel that they should be given a share of the wildlife revenues since they bear the greatest damage relating to wildlife-human conflict.⁷⁴

A growing global movement advocates for involvement of people in wildlife conservation and management,⁷⁵ by focusing on promotion of the participation of people at the local level in wildlife conservation and enhancing the benefit-sharing of revenues from the wildlife sector, however little it may be.⁷⁶ Although revenue collected from wildlife may be irrelevant from the national level of government as a contribution to the national Gross

⁷²*Ibid*, 5; See also Wangui Maina, 'Narok Ends Equity Bank Contract to Collect Maasai Mara Fees' *Business Daily* (2013) <<http://www.businessdailyafrica.com/corporate/Narok-ends-Equity-Bank-contract-to-collect-Maasai-Mara-fees-/539550-1894666-jn7glhz/index.html>> accessed 22 June 2017.

⁷³*Supra n* 72.

⁷⁴*Ibid*

⁷⁵Sorlie, E. B. 2008. The establishment of wildlife conservancies in the Mara: the case of OlareOrok Conservancy, MA. University of Oslo

⁷⁶Muchapondwa, E., Carlsson, F., & Köhlin, G. (2008). Can local communities in Zimbabwe be trusted with wildlife management? Evidence from contingent valuation of elephants. *South African Journal of Economics*

Domestic Product [GDP], it has significance at the local level if the said revenue can be channeled back to wildlife management and local communities affected by wildlife management. Any establishment of benefit-sharing scheme from wildlife use must be allocated to the people with a clear set of conditions and modalities for their utilization depending on the quantity of funds allocated. Legislation in this respect needs to spell out clear responsibilities and transparent frameworks for the collection and allocation of these benefits. Subsequently, subsidiary legislation should provide mechanisms and/or procedures for actualization of benefit-sharing.⁷⁷

In conclusion, various scholars have written about the need for involvement of community hosting wildlife in benefit-sharing so as to encourage its conservation and management. Some have alluded to community-based organization as one of the mechanisms but have failed to elaborately discuss on the clear parameters of its applicability. Existing literature reviewed in this study, does come across a written piece of work that expounds on different mechanisms that may be explored so as to realize their aspirations of community involvement in benefit-sharing. This study therefore, proposes different mechanisms that may be adopted in the Maasai Mara ecosystem in realization of communal participation and efficient and effective benefit-sharing

⁷⁷ibid

CHAPTER 2.0: THE LEGAL FRAMEWORK FOR BENEFIT-SHARING OF WILDLIFE RESOURCES IN KENYA

2.1. Introduction

The concept of wildlife benefit-sharing is not a new concept in Kenya. Several legislations have been enacted to govern this subject both at the national and county level. Moreover, Kenya has ratified international conventions that provide for benefit-sharing. This chapter looks into the various legal provisions while identifying the gaps that exist, thus, giving relevance to this study. It does so with aim of promoting sustainable development in wildlife conservation.

2.2. The Emergence of the concept of sharing wildlife benefits for sustainable wildlife conservation

Sustainable development has attained significance within the arena of environment protection and conservation, both for biocentrism reasons and anthropogenic purposes. The concept of sustainable development has become a guide towards the utilization of the resources of the environment, since the environment is economically viable and can spur development within a very short span of time.⁷⁸ However, development, if not guarded, can have adverse effect both to the present and the future generations, making them vulnerable to meet the needs of the present as well as the future respectively.⁷⁹ At the core of sustainable development is the need to alleviate poverty and attain country development goals, bearing in mind inter/intra generational equity in both environment protection and economic advancement.

The question of sustainable development and wildlife conservation is particularly relevant; since the decline in animal population is threatening the rights of the future populations, to not only enjoy the aesthetic nature of wildlife but also its economic value. The present generation as well, is not getting equitable share from the vast and lucrative wildlife industry.

⁷⁸<https://www.acciona.com/sustainable-development/> [Accessed on 22nd March 2018]

⁷⁹Hinsley A & Roberts, 'Assessing the extend of access and benefits in the Wildlife trade; Lessons from Horticultural orchids in Southern East Asia Environment conservation,' 2017.

According to the Oxford English Dictionary (OED),⁸⁰ benefit delineates a profit gain from something. The benefit could be gain from engaging in a social exercise or getting a portion of something from another, either by right or association. The clear definition of benefit-sharing is thus the act of giving away profits from the wildlife industry to others. Borrowing from the Wildlife Conservation and Management Act 2013⁸¹ the issue of benefits of the industry are both monetary and non-monetary in nature. The County Government of Narok County, running the national reserve in trust for the community, has adopted in their legislation to pursue benefits-sharing as monetary and solely so, by-passing legislation that requires that 19% of revenues of the National Reserve goes back to the local community from which the effects of wildlife are felt.⁸² This deviation from the Act implies the meaning of benefits-sharing to include social amenities, infrastructure and educational facilities. The study, therefore, raises the debate geared towards a common understanding of what benefits entail and which benefits are at stake for conversation either by restricting its revenues or expanding it to include joint ventures, social amenities, corporate social responsibility and employment among others.

The question of sustainable development for wildlife has been pushed forward and energized by international practice, judicial decisions and focus research. Bato Ngilangwa, who researches on elephants at the Serengeti, argues that there is need for sustainable approach to maintain the population of elephants in the Serengeti, for the benefit of the present and the future generation and this postulation is better undertaken if communities around the protected areas receive incentive to conserve wildlife.⁸³ He concludes, in his study, that government and policy-makers need to accelerate opportunities for incentives to help conserve the Elephants.

International law and States initiatives have begun to make incentive for wildlife conservation a reality. The questions of incentives have been advanced as both an entitlement by right and as a key for wildlife conservation. The first implied appearance of this right can be traced back to the 1948 Universal Declaration of Human Rights

⁸⁰ Oxford English Dictionary 3rd Ed

⁸¹ Wildlife Conservation and Management Act 2013

⁸² Maasai Mara Community Support Fund Act 2014

⁸³ Lamprey et al [2004] Expansion of human settlement in Kenya's Maasai Mara: what future for pastoralism and wildlife. *Journal of Biogeography*

Declaration⁸⁴ which provides that there should be fair and equitable benefit-sharing from all scientific advancement. In 1992, at Rio de Janeiro, the community of nations came up with the Convention for Biological Diversity, that is expressive on the need for benefit-sharing. Subsequently, the Nagaya Protocol which came into effect in 2010 after ratification elaborates further on the same in Article 15.

Various countries have taken local measures to domesticate and contextualize international law regarding the concept of benefit-sharing, looking at their local realities. Zimbabwe, Namibia and Kenya have taken the route of legislating guidelines that allows communities around the protected areas to come together and utilize their land, either owned communally or privately, for the sake of reaping benefits enjoyed by government and businesses within the protected areas. Kenya, for example, has provided, in the Wildlife Management and Conservation Act, 2016, a legal framework for the establishment and operation of community conservancies, as a way of making wildlife beneficial to the host community.⁸⁵ In addition, other approaches like the compensation for provision of migratory corridors for wildlife within private lands have been adopted. In Kitengela area for example; the Kenya Wildlife Service and other partners have undertaken an approach dubbed compensation for wildlife, where wildlife corridors are paid for as a way of securing the necessary easement for safe wildlife passage⁸⁶.

2.3. Wildlife benefit-sharing in the Kenya legal context

The quest for sharing of wildlife benefits in the country straddles both the constitution and statute laws. The grand norm that is the Constitution in Article 69⁸⁷ provides that the State shall put in mechanism and ensure that the environment and its natural resources should, in their exploitation and utilization, be undertaken in a sustainable way that ensure that the benefits from these resources are shared equitably. The question of equity may mean both between stakeholders and generations.

Looking at the Environment Management and Co-ordination Act which came into existence in 1999, it is evident that Article 42 of the Constitution of 2010 is lifted from the Act. This

⁸⁴Universal declaration of Human Rights 1948

⁸⁵ Wildlife Management and conservation Act 2013 section

⁸⁶ Lamprey et al [2004] Expansion of human settlement in Kenya's Maasai Mara: what future for pastoralism and wildlife. *Journal of Biogeography*

⁸⁷Constitution of Kenya 2010

Act provides for environment protection and the enactment of legislation, so that the present and future generations can benefit from it. The Environment Management and Conservation Act 1999[repealed] provide for sharing directly and indirectly of environment benefits expressly or implied. Section 124[b] of the Act provide that the Cabinet Secretary shall put in places viable mechanism for Kenya to honor its obligation under international law for the treaties and conventions that it has ratified. This Section, therefore, provides that Articles 15 of the Convention for Biological Diversity [CBD] on benefits-sharing and access on genetic resources is observed. The Country has also ratified the Nagaya Protocol that provides the framework to make the CBD effective in its discharge of Article 15.

The prime statute law that governs the wildlife sector in Kenya is the Wildlife Conservation and Management Act 2013. The legislation is comprehensive in matters wildlife responding both to national concern on wildlife protection and management issues, as well as those emerging internationally on wildlife both from Africa and the world over. The question of benefits-sharing has been recognized as one of the founding principles of the Act. The Act outlines, as one of its founding principles, that wildlife benefits shall be enjoyed and equitably distributed to all the people of Kenya.⁸⁸ Borrowing from EMCA 1999, the Act also provides that Kenya obligations emanating from international conventions and protocol that the country has ratified shall be honored.

In Sections 73 and 76⁸⁹ of the Act, provision is made that the Commission of Revenue Allocation, National Land Commission and the Kenya Wildlife Service shall formulate guidelines and regulations for incentives and benefits-sharing between individuals, county and the national governments. It recognizes in Section 75 that human-wildlife conflict can be resolved if a framework for access and benefits-sharing is formulated, bearing in mind the need not to formulate regulation that shall not in any way be prejudicial to the people or communities adjacent to protected or conservation areas. It goes on in Section 76 to provide that the Cabinet Secretary shall provide, within the guidelines, for the appropriate avenues for distribution and subjecting the regulation to people participation and scrutiny, and those benefits shall not be less than five per cent from the National parks.

⁸⁸ Wildlife Management and Conservation Act 2013, Section 4.

⁸⁹ Wildlife Management and Conservation Act 2013.

The Act also provides that the community benefits shall entails proceeds from the private investors in wildlife conservancies as well as investments from the Hotel, Camps, Airlines and even Advertising shall as well be construed to entail a benefits to the local community. These benefits include infrastructure, educational facilities and other social amenities.

At the county level the County Government passed a law in 2014 committing 19 per cent of wildlife revenue to the local community. The 19 per cent⁹⁰ is supposed to cushion the local from the harms that the local community gets, as a result of hosting or being within an ecosystem that interacts with wildlife. The Act also provide for diversification in the fund utilization in that, it provide for the fund to establish a board to oversee investment of funds not required for the immediate use by the local community, although looking at the poverty level of the community around the park and the distribution of social amenities like health centre, road quality and the state of both primary and secondary schools, there shall hardly be any fund to spare for future use unless the County makes an intentional investment or a sovereign fund for the future. This has to encompass the principle of intergenerational equity.

2.4. The East Africa Treaty

East Africa community was founded in 1967 but collapsed in 1977⁹¹. It was revived in the year 2000 after the EAC 1999 treaty came into force⁹². Its main objectives are the establishment of a customs union, common market, monetary union and finally a political federation.⁹³ As a move towards realization of these objectives the Treaty outlines the specific areas of integration.⁹⁴ Of specific reference to this study is the area of environment and, especially wildlife conservation, whereas in Article 16 of the East Africa Treaty, provides that the Partner States shall develop collectively a co-ordinated policy for the conservation and sustainable utilization of wildlife and other tourist sites in the Community, it doesn't expressively speaks to benefits sharing. This sustainable utilization

⁹⁰Maasai Mara Community Support Fund 2014

⁹¹EAC treaty 1999

⁹² Signed by three heads of states from Uganda, Kenya and Tanzania in November 1999, Rwanda and Burundi joined in 2007.

⁹³ Treaty Establishing the East African Community (adopted 30 Nov. 1999, entered into force 7 July 2000), 214

⁹⁴ Ibid, Chapter 11-19

is construed to imply in the wider outlook, amongst other things, the need to make available and share wildlife resources to host communities as a conservation tool.

2.5. Entitlement under International law

International law has helped in securing the rights of people who live with wildlife, to access and share in the vast promises of the wildlife industry. Kenya has ratified various international instruments that touch on the same, thus making them part of our laws by dint of Article 2[6]⁹⁵ of the Constitution and the enabling legislations. International law has become more segmented to reflect the diversity in the human environment since the 1948 Declaration of Universal Rights. Local communities have emerged as key stakeholders in environment conservation, which includes the wildlife industry, that have faced immense challenges in the last four decades.

The Convention on Biological Diversity⁹⁶ and the provisions of the Nagoya Protocol on access and benefit-sharing of genetics resources have expressed the need to put biological resources for the benefit of all, especially rural communities who host these biological resources and whose indigenous knowledge can be utilized to get breakthrough in science, that may be of immense financial benefit to exploiters. In this way the CBD envisions a case where communities shall continue using their traditional knowledge and systems to maintain ecosystems that shall enable the preservation and protection of biodiversity for future utilization.

The International Covenant on Economic Social and Cultural Rights (ICESC)⁹⁷ which has become part of our national laws is also a key international instrument for securing benefits for local communities. The ICESC came into force on January, 1976 and hitherto ratified by Kenya and by dint of Article 2(6) of the 2010 Constitution became part of our law. The treaty provides that each individual be entitled to adequate standard of living where an individual and family can access food, water and shelter. Sustainable utilization can be achieved, amongst others, through benefits-sharing of wildlife resources for both the present and future generation.

⁹⁵Constitution of Kenya 2010

⁹⁶ Convention of Biological Diversity 1997

⁹⁷Convention on Economic, Social and Cultural rights 1973

The Nagoya Protocol, which Kenya has ratified, provides in its third objective the place of community intellectual property rights in maintaining and preserving the ecosystem in which wildlife exists. This is in addition to the need for fair and equitable access to benefits arising from the utilization of genetic resources.⁹⁸ The Protocol recognizes the use and the place of traditional knowledge in the exploitation of genetic resources for commercial purposes. It has been found that traditional knowledge at the repository of local community can be of use to protect and conserve some animal species either by increasing their declining numbers or preventing them from extinction. The protocol has put in place requirements to be met by any entity interested in undertaking research which has components that utilizes indigenous knowledge and skills to ensure that prior to commencing research it has obtain community informed consent to guide against bio piracy. This is geared to make benefits from the industry flow down to the custodian community and prevent exploitation of rural communities.

There had been little efforts in the beginning by the Convention on international Trade in Endangered Species of Wild Fauna and Flora (CITES) on the questions of benefit-sharing to the rural communities. The parties to the Convention instead have built a system of listing species and coming up with controls to either restrict or control their trade by limiting or doing away with trading permits.⁹⁹ However, in the recent past the parties have also recognized the importance of enhancing the livelihood of rural communities when discussing the listing of species in the appendixes. The parties recognize that before listing the communities hosting the species need to have in place mechanism for poverty eradication, appreciating and rewarding cultural knowledge regarding the listed species that may help in the conservation efforts.¹⁰⁰ The parties recognize the need for a payment system to the host rural communities, sustainable tourism, co-tourism or the development of alternative product to sustain the livelihood of the rural communities. The mere recognition of the need for benefits to the rural communities has not however become an agenda in the CITES meetings nor has the parties came up with the strategies to make the same a reality.

⁹⁸<https://www.cbd.int/abs/>[accessed on 3rd March 2018]

⁹⁹Barnaby, J. and Parry-Jones, R. (eds) (2006b): EC Wildlife Trade Regulations: An overview of problems identified with regard to implementation and interpretation. TRAFFIC report to the European Commission.

¹⁰⁰Ibid

Nevertheless, there have been a recent initiative in the wake of the decline of the African lions population between CITES and the Convention on Migratory Species (CMS) where a meeting between the two parties agreed that amongst other things, the creation of incentives towards rural communities as a key in the conservation of Lions.¹⁰¹ The meeting proposes benefits-sharing of conservation initiatives either by distribution of tourism revenues or employment opportunities to the host community in efforts to mitigate human-wildlife conflict. The meeting also agreed on the need to also give right to host community to participate in meetings that decision is made and deliberations are undertaken on how wildlife is managed. This gives community right and voice to effect on conservation policy including decisions on any applicable incentives.

2.6. Benefits-sharing legal arrangement in other natural resources (mining and forestry and oil)

2.6.1. Forest

Forest benefits-sharing has also attracted significant attention from conservationist with the role the forest plays in the whole question of mitigating climate change. The need to relook benefit-sharing as an integral arrangement in conservation is due to the dwindling forest cover in the country, especially in the 1980s.¹⁰² One such approach to benefit-sharing of forestry is through REDD+, a global fund that is used to motivate communities and governments in developing countries to keep their forest cover and grow the same for the purpose of helping mitigate climate change. The REDD+ incentive is shared both vertically and horizontally. Vertical mean that the central, regional and local government, as well as participating non-governmental organization get a share of the fund for purpose of engaging in forest conservation. Horizontal sharing signifies within communities as well as households who shall receive fund from the international community in order to motivate them in rearing trees.¹⁰³

Another approach towards sharing of the forest benefits is through the participation of the Community Forest Association (CFA) as direct participants in the conservation of forests.

¹⁰¹Convention on International Trade in Endangered Species of Wild Fauna and Flora, 2017.<https://cites.org/sites/default/files/eng/com/sc/69/E-SC69-58.pdf> (accessed on 2/4/2018.)

¹⁰²Kariuki Muigua, Didi Wamukoya and Francis Kariuki, '*Natural Resources and Environmental Justice in Kenya*' 1st edn, Glenwood Publishers Limited 2015.

¹⁰³<https://theredddesk.org/countries/kenya>[Accessed on 21st February 2018]

The CFA together with the Kenya forest service participate in the decision regarding use of forest for farming in what is known as the shamba system of utilizing forests, use of forest for religious purposes as well as use of forest resources for firewood, especially harvesting of dead woods by the local community.¹⁰⁴ The conservation of forests is very important to the wildlife industry since the survival of wildlife depends on having a habitat for accommodation and leaves for feeding

2.6.2. Mining

The Mining Act 2016 provides for robust avenues that shall see communities benefitting from the share of the revenue generated from mining. The Act provides for a formula and establishes a system of benefit-sharing in resource exploitation, between the national government, the county and the local community where the mining takes place. The Act expressly provides that the local communities benefit from employment opportunities from Mining.¹⁰⁵ The Act also provides that the mineral exploiters also make available opportunities for technological transfer to the local community.¹⁰⁶ The legislation tends to remove community benefits from the realms of social corporate responsibility to the realms of entitlement by law of benefits of mining to the communities where mining is taking place.

Christabel Nyamwaya, in her writing on “Benefits-Sharing of the Extractive Industry”, underscores the need for mining industry benefits to reach the to the local community. She conceptualizes this as key in sustaining the mining activities, since lack of sharing may results in creating tension between the mining companies and the local communities that may lead to conflicts.

2.6.3. Petroleum

Oil exploration has just begun in Kenya and the country is making efforts to avoid what has come to be called the “oil curse”, associated with the discovery of oil. These are the conflicts and even wars that come as a result of fighting for oil resources. In order to avoid the curse, the government initiated the Natural Resource (Benefit-Sharing) Bill which

¹⁰⁴Forest Conservation and Management, No. 34 of 2016.

¹⁰⁵ Mining Act 2016

¹⁰⁶Ibid

seeks to provide an avenue for sharing natural resources, including oil resources. It was debated in parliament and taken to the President for assent. This is one of the bills the president did not assent to and he returned it to parliament for deliberation as the provision of 10 per cent of the revenue to be ploughed back to the local community was perceived to be high.¹⁰⁷ One of the highlights of the Bill is that it establishes statutory benefit-sharing percentages and revenue structures that shall be controlled by the national government. The structure task the Commission on Revenue Allocation in Clause 6 with the function to review, and where appropriate, determine the royalties payable to an affected community engaged in natural resource exploitation. The Bill further creates a County Benefit-Sharing Committee.¹⁰⁸ It also provides for a committee under clause 11 to determine an amount the community shall be allocated, while Clause 13 creates the Local Benefit-Sharing forum at the community level to negotiate with the County Benefit-sharing Committee on an agreement on benefit-sharing between the local community and the county committee. The creation, by law, of the local community forum as a tool for negotiation, provides the community with an active voice, other than leaving them at the mercy of an official at the county level.

2.7. Human rights and wildlife benefits-sharing

In his writing on “Utilizing Africa Resources to Fight Poverty in a Continent that Has Majority of its Citizen Living below a Dollar a Day”, Dr. Kariuki has approached resource utilization from a human rights angle as the guide in its utilization, that includes sharing of benefits equitably.¹⁰⁹ His sentiments have also been advanced by Prof Miranda in his writings on human rights approaches and good governance. He argues that primarily, proper management of natural resources would in the long run bring down poverty levels amongst citizens and breaking down its cycle as well.¹¹⁰ He buttresses his argument that by breaking down the cycle of poverty the local communities will be able to enjoy greater fundamental freedoms as well as safeguarding fundamental freedoms when they are

¹⁰⁷Natural Resource (Benefit-sharing) Bill 2018.

¹⁰⁸ Natural Resource (Benefit-sharing) Bill 2018 c. 13 ‘There shall be established by each affected community a Local Community Benefit-sharing

¹⁰⁹Kariuki Muigua, ‘Reflections on managing natural resources and equitable benefit-sharing in Kenya’ 2017.

¹¹⁰Kariuki Muigua, ‘Reflections on managing natural resources and equitable benefit-sharing in Kenya.’ 2017.

threatened either by the government or individuals. The protection of rights and their safeguard can best be undertaken by communities themselves other than reliance on some external forces or help in undertaking the same.

The question of benefits-sharing has also been approached from the theory of fairness and equity¹¹¹ by all parties of the industry. In international law, it provides that in a conservation discourse, especially in benefits-sharing with the local community, the approach acceptable is that of bottom up approach. This is informed by the realization that there exist inequalities between communities and power wielded by parties that come to the negotiation table, especially in the access and sharing of benefits from genetic resources and the complexity of the science involve.

2.8. Conclusion

Long-term considerations for the sustainable management of wildlife, involves both access to non-monetary benefits as well as monetary ones. Monetary benefits include skills transfer and training of local communities, creation of employment opportunities as well as recognition of all merits thereto, coupled with genuine support for direct involvement of communities in wildlife management. This generally requires improvement of legal framework towards recognition of use-and-management rights and security of these arrangements.

¹¹¹ Institute of international Environment law and development Website

CHAPTER 3.0: MECHANISM FOR BENEFITS-SHARING

3.1 Introduction

There are some general principles that any mechanism used for the redistribution of benefits-sharing should be founded on, in order to render efficiency and effectiveness in benefits-sharing. Benefit-sharing mechanisms should meet the following criteria. They include;

- i. appropriate benefits that are actually relevant to the issues in context, such that there is no mismatch between the community needs and the existing benefits;
- ii. there is also need for the mechanisms to be accountable and transparent in their implementation and governance structures; systems that mechanisms establish should enhance community participation; and
- iii. Finally, the mechanisms should be sustainable and provide a system of equitable distribution of benefits to all the members of the community, regardless of the differentials in socio-economic status.¹¹²

Several countries have established different mechanisms in areas of natural resources management, in order to enable the sharing of benefits with the community. The countries have experimented with either the establishment of mechanism that are community-based, like the Community Development Fund in Kenya or national run mechanisms like the National Trust Board, to manage wildlife resources and share it with the community.

3.2. Constraint in effectively achieving benefits-sharing

The pursuit of benefits-sharing and the study on the opportunities and constraints that enhance or impede equitable sharing of wildlife resources in the context of wildlife conservation and sustainable use have also captured the attention of practitioners and academics in the recent years. The International Institute for Environment and Development [IIED] has, for example, moved from investigating the need for benefit-

¹¹²David N. Barton, Irene Ring and Graciela M. Rusch, Policy Mixes: Aligning instruments for biodiversity conservation and ecosystem service provision, *Environmental Policy and Governance*, 27, 5, (397-403), (2017).

sharing in wildlife sustainable use to the need to enhance equity and viable avenue for local communities to receive benefits.¹¹³ This is because of the existent of power dynamics and strong bureaucracy that tend to capture benefits from reaching local communities but retaining it in the hands of the few elites. The institute appreciates that even within local communities, due to power dynamics, there could be unfair distribution of benefits in the form of employment opportunities, community projects and tourism development, hence, raising an alarm , especially on mechanisms of benefits-sharing that are opaque, thereby limiting room for transparency and accountability.

Martin et al¹¹⁴ have advanced the concept equity in conservation of wildlife with social justice. In his work, he highlights that governments, especially within protected areas should endeavor to reconcile conservation attempt with social justice, even within benefiting communities. This is because their perception of what equity is within their cultures and instead imposing as western understanding of equity in distribution of wildlife benefits. It appreciates that cultures have ways of thinking about equitable distribution and procedures of attaining the same. The IIED, in its study, has found that sharing benefits can, indeed, in certain circumstances, lead to unjust results where benefits are unfairly distributed and in some cases the poor not benefiting proportionally, resulting in resentment towards conservation and, consequently, defeating the whole purpose of benefits-sharing.

3.3. Applicable principle/concepts

3.3.1. The principle of public participation

The principle of public participation has now acquired the status of customary international law in the management and conservation of the environment. Even without codification, public participation in decision-making, as well as the other aspects of environment management and conservation, is becoming compulsory. The principle is codified as Principle 10 within the Rio Principles, which provide thus in part' "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning

¹¹³Institute of international Environment law and development [Annual Report 2016]

¹¹⁴<http://www.benelexblog.law.ed.ac.uk/2016/08/04/benefit-sharing-and-wildlife-links-with-conservation-trade-and-trophy-hunting/>[Accessed on 1st March 2018]

the environment that is held by public authorities”.¹¹⁵ Article 10¹¹⁶ of the Constitution of Kenya provides for public participation as one of the national values, placing the participation of the people in almost all the spheres of the nation, be it in their social, economic or political lives. This puts citizens and stakeholders at the heart of policy decisions and formulation that affects the wildlife conservation framework in Kenya including the question of equity in the sharing of wildlife resources. This principle is effective is that it helps to increase and enhance accountability and transparency in the running and management of wildlife. This is particularly important, bearing in mind the exclusionary policies of the past in environment management which excluded the participation of the local people in the management of their own resources or those around them.

This principle has, as well, found its way in primary statutes relating to the environment. The Environment Management and Co-ordination Act in section 5¹¹⁷ provides for public participation as a guiding principle in matters environment. Section 124 of the same Act provides that the Attorney-General shall advise on the process of actualizing the operation of the international conventions dealing with environment and honor the obligations in it.¹¹⁸ The Section goes on to dictate that the State shall put in place mechanisms that will make international treaty obligations realized in Kenya. The Rio Principle 10 mentioned above provides for public participation, which is reflected in section 124 of EMCA.

Equally, the Wildlife Management and conservation Act 2013¹¹⁹ has also clearly incorporated this principle by stating that amongst its principle is public participation. In its general principles in Section 4, it recognizes that conservation of wildlife shall be run with effective public participation. Public Participation Bill, 2019, provides in clause 5 for the guiding principles in public participation. It makes it mandatory for state organs to put in place structures that promote it and implement the guiding principles.

¹¹⁵Dr Patricia Kameri-Mbote (2005) Towards greater access to justice in environmental disputes in Kenya: opportunities for intervention, International Environmental Law Research Centre

¹¹⁶Constitution of Kenya 2010

¹¹⁷Environment Management and Conservation Act 1999

¹¹⁸EMCA, 1999

¹¹⁹Wildlife Management and Co-ordination Act, 2103

3.3.2. The concept environmental democracy

Environmental democracy is based on the idea that the interests of citizens should be adequately and equitably captured in land and natural resource decisions.¹²⁰ Rather than setting a standard for determining a good outcome, environmental democracy sets a criterion for the decision-making process. Environmental democracy ensures that communities exercise the right and the ability to influence and shape future decisions about their Environment. The concept of environment democracy has three components; access to information, public participation and access to justice. These three access rights are cardinal and pragmatic means of ensuring that decisions by governmental agencies take into account sustainable development concerns and the interest of the poor and the vulnerable.¹²¹

3.4. Mechanism for distributing wildlife benefits to local communities.

This refers to the typologies for redistribution of benefits-sharing. The Convention on Biological Diversity advocates for mechanisms that facilitate benefits-sharing, especially to the indigenous people. Although attempts in decentralizing wildlife management have been made in Africa, especially in Zimbabwe, Wildlife Management and benefits from wildlife is still been channeled through the State or local government agencies that are traditionally corrupt and bureaucratic. The use of the States affiliated procedures or State-owned structures, has the element of resulting on the bureaucratic hurdles; there is often a delay in local communities receiving their share of benefits which are usually reduced as a result of this administrative encumbrances.¹²² It is, therefore, recommended that mechanisms and structures meant to channel wildlife benefits be diverse, with local communities being at the Centre of decision-making and the participation of all stakeholders including investors. The mechanisms should as well be effective in ensuring that resources reach people directly without undue delay. This ensures that the program has a greater impact on the lives of the local populations.¹²³ This chapter, because of the inefficiencies of State-run mechanisms, will explore alternative mechanisms for

¹²⁰<http://www.environmentaldemocracyindex.org/>[accesssed on 12th March 2018]

¹²¹<https://medium.com/economic-policy/why-democracy-matters-to-the-environment-8b8920077943>

¹²²Ntuli et al (2015).The role of institutions in community wildlife Conservation in Zimbabwe.In Environment for Development (Feds)

¹²³The Natural Resource Benefit-sharing Bill 2014

redistribution of wildlife resources to the local community, including the government-run mechanism.

3.4.1. Sovereign Wealth Fund

In the National Benefits-Sharing Bill 2019, the legislators propose the creation of a Sovereign Wealth Fund established and run by the national government.¹²⁴ Sovereign Wealth Fund has been explored in oil-producing countries, especially in enhancing equity in benefits-sharing of oil between the present and future generation. The establishment of the Sovereign Wealth Fund will ensure that the benefits of the finite wildlife revenue mechanisms are preserved for the future generations. The Sovereign Wealth Fund aids in the realization of the principle of generational equity by meeting the needs of the present generation while taking care of the future generations. The Sovereign Wealth Fund constitutes a percentage of all the revenue received by the county government from Wildlife being put in baskets for investment as hedge fund to generate revenue for the present and the future generations. The Sovereign Wealth Fund will be composed of two funds namely the natural resources fund and the futures funds; this is replicated from the practice in the oil industry in the Middle East.¹²⁵ Sustainable development houses the sub-theory of intergenerational equity, which provides that the current generation in their consumptive activities should ensure that there is no depletion of the finite earth stock to the detriment of the future generations. The Sovereign Wealth Fund ensures funds from the finite wildlife resource are used in line with the principle of sustainable development. This guarantees the enjoyment of positive impact of wildlife revenue by the future generations through sustainable conservation. Norway presents the best practice of ensuring the sustainability of oil revenue. The oil revenue has been utilized by the Norwegian government¹²⁶ to establish purchase prime real estate in other jurisdictions as a measure of ensuring sustainability of the finite oil revenue.

¹²⁴ Ibid.

¹²⁵ Agius Emmanuel (1998) Future Generations and International Law London Earthscan Publications

¹²⁶ Draft National Energy and Petroleum Policy

3.4.2. The Use of Corporate Social Responsibility

Corporate Social Responsibility programs have been identified and listed by the Draft National Energy and Petroleum Policy as a way of benefit accruing from petroleum exploitation going back to the local community.¹²⁷ That gainsaid, it is often argued rather erroneously that Corporate Social Responsibility accords great benefits to members of Local Communities. Corporate Social Responsibility has been a tool in the hands of the investors in the wildlife industry as well as the other natural resources, especially the Extractive Industry Companies, to hoodwink the Local Communities to complacency. Lisa Calvano posits that Corporate Social Responsibility has been used as an avenue of manipulating the local communities and fleecing them of their natural endowments. The Multinational Industry Companies achieve their objectives by the use a meager percent of their profits to appease the local communities without taking into account the greater role played by the community in sustaining wildlife. Dr. Duncan Ojwang,¹²⁸ in his article “Converging Ubuntu Principles with Corporate Social Responsibility to Extend Corporate Benefits to Communities”, elucidates that the basic principle of Corporate Social Responsibility is currently defined as a mere non-binding corporate “charity. “It is a voluntary definition and non-binding venture hence it does not address the exploitative practices as a result of the globalized market at present.¹²⁹ The investors are not legally bound to provide benefits to the Local Communities; they are persuaded to do so with the intention of acquiring and retaining a social license to continue their operations on community land. Corporate Social Responsibility is charity in which legislation is a mirage. The Multinational Companies unilaterally determine the amount of money and the projects they deem fit to invest on, without seeking the necessary input from local communities on their developmental needs. This is a clear violation of the environmental law principle of public participation.¹³⁰ Many corporate social initiatives narrowly restrict themselves in philanthropic gestures; for example, donating objects such as schoolbooks and mosquito nets to local communities, without any attempt to consultatively engage the

¹²⁷Draft National Energy and Petroleum Policy

¹²⁸Ojwang Duncan International Conference on Indigenous Knowledge Systems and Environmental Ethics: Implications for Peace-Building and Sustainable Development April 2015 University of Kwa Zulu Africa

¹²⁹ Ibid

¹³⁰ibid

local communities or a development specialist. However, with these shortcomings, there still need to legislate corporate social responsibility and a framework be worked out whereby an amount to be given back to the community is agreed as well as the structure for distribution. This mechanism is effective as investor-relationship with the local community is strengthened and the investors will begin to appreciate the role played by the local community in making the industry a success.

3.4.3. Community-Based Organizations

This is the translation of Indigenous Management structures from the realm of operation within indigenous law to statute law, by dint of registration of voluntary organizations. Professor Mumma asserts that the prevailing practice in Kenya is that members of a community wishing to acquire a legal status register an organization which can be vested with legal rights and responsibilities.¹³¹ Communities have a wide array of forms of registration of voluntary organizations under the Kenyan legal regime.

The idea of adopting a mechanism that is completely run by the community is borne with the equal responsibility of the community to participate in the totality of conservation and management of wildlife. Ghana has experimented on this approach with wildlife conservation and has proved successful to the extent that REDD+ adopted the same mechanism in its exploitation and distribution of forest benefits. The community formed groups that were trained and facilitated registration. The community-based organizations [CBOs] engage in wildlife conservation and management and the distribution of profits of the sector.¹³² The CBOs, due to their improved capacity, are able to enter into agreements with investors in the wildlife industry. The only role the national body for wildlife management does, is to ensure that the CBOs are in line with the policy and legislation regarding wildlife, leaving the rest of the roles to the community groups.

Statute law in Kenya provides for a plethora of outfits through which the Indigenous Management Structures can acquire legal status. First, the registration of community organization can be in the Assistant County Commissioner's Office of the Ministry in

¹³¹<http://www.ikm.co.ke/sectors/public-benefits.html>[Accessed on 4th February 2018]

¹³²Lucy Emerton, *supra*.

Charge of Trade where Community Based Organizations [CBOs] are registered. Secondly, under the Cooperative Societies Act, this Act affects the registration of Cooperate Societies¹³³ with the aim of promoting the economic interest of the members. Thirdly, the Non-Governmental Organization Act enables organizations whose substratum is the advancement of economic development to register under its provisions. Lastly, the non-governmental organization, trusts and companies limited by shares are other forms of registration that communities may adopt. Despite the lack of legal or corporate personality, most local community projects operate by such self-help groups. This is so particularly among the rural communities, in which concepts such as legal personality and corporate identity in terms of statute have little significance.

3.4.4. Government-run mechanism

Government-run distribution of benefits mechanisms are fully run and organized around government structures, from the chain of command or the appointment of people to run it. Most natural resources in Africa are still run by governments, which are reluctant to release the control of resources sources and finances to local community. In Kenya, most national parks are run by the government through its structures like the Kenya Wildlife Service while a few, like the Maasai Mara National Reserve, are run by the county governments. In the Maasai Mara case, a mechanism that is an arm of the county government with members appointed by the county government run and manages the benefits-sharing scheme is in place.

The county government collects close to Kshs. 1.5-2 Million yearly from the National reserve and has passed legislation that provides that the amount of 19% of financial resources shall go back to the community who host wildlife within the Mara ecosystem.

The County legislation establishes the Mara Community Support Fund, which has a board appointed by the Governor, that runs finance and investment of funds not immediately required for any purpose, mirroring the Sovereign Fund in the Norway.¹³⁴ The Maasai Mara Community Support Fund Management Board have a chairperson appointed by the

¹³³The Cooperate Societies Act CAP.490

¹³⁴Maasai Mara community Support Fund Act 2014

Governor and six other nominated members, not being public officers. It shall constitute committees, including the ward committee to ensure community participation in development projects at that level. However, this mechanism has been criticized, like all government projects, to be ineffective and inefficient. The mechanisms are prone to stringent and bureaucratic approaches that impede quick decision-making as well as groom grounds for corruption due to the opaque nature of the funds management board appointment. Though there are wards committees which are large in size the level of community participation is limited, hence, shrinking their opportunities for decision-making. The mechanism can, as well, lead to exclusion and inequities in the sharing of resources.

3.4.5 Joint Ventures between Investors and Communities

The concept of joint venture as a means of sharing wildlife benefits is evolving. Just like the community-based organization, mechanisms not only put the community at the heart of the process of distribution of resources but also in the conservation and management of Wildlife resources. Developing countries prefer joint management of natural resources to indigenous management structures, due to the limitation within community-based structures. However, there are success stories in the developed world. In Alaska, for example, a joint venture between the community and the investors in the bird conservation project became very successful since its management was at the hands of both parties as well as the benefits which are shared proportionally by the parties in the joint venture. This preference in ordinary parlance is occasioned by the fact that joint management structures allow the State some level of control and power over the decisions made by the institutions in collaboration with the identified state agencies. The potential to generate economic benefits for local people has been a key driver of efforts to revive or stimulate joint measures. This practice has also been tried in Zimbabwe, although with limited success under the Community Area Management Programme for Indigenous Resources [CAMPFIRE].¹³⁵

¹³⁵Fischer, 'A Bio economic Model of Community Incentives for Wildlife Management under CAMPFIRE,' Environmental and Resource Economics, 2011

There are two typologies of Joint Management institutions which are set up in accordance with the principles of concentration and those established under the principles of decentralization.¹³⁶ Joint venture approach is advantageous for several reasons; the decisions of the Joint Management institute are more acceptable and enjoy greater legitimacy and credibility by the Indigenous Local Communities. This is because they have higher local content owing to the broad-based consultations, when juxtaposed against statutory bodies whose decisions are often too aloof and viewed as foreign impositions which are not alive to the peculiarities of the traditions, customary law and circumstances of the Indigenous Local Communities. Lastly joint management may be viewed as a progressive step towards the attainment of complete indigenous management of benefit-sharing revenue.

However, the Joint Management Institutions face various challenges which include; political interference and elite capture. This is due to the overbearing and manipulative nature of government officers who may ostensibly undermine and intimidate the members of the Local Communities who form part of the Committee because of their superior education levels, articulation and exposure. The impact of this capture is that members of the Local Communities become relegated to the periphery of the decision-making process; hence, their decision will lack the requisite local content, legitimacy, credibility and authenticity. This would lead to the alienation of the members of the Local Communities from the governance of the Local resources and benefits that accrue from these resources.

One of the most difficult problems in arriving at the amount accurately that investors make in the business where they are supposed to give back a percentage to the local community but with the joint venture the cost of doing business, net profits and distribution of these profits is very easy and accurate due to the joint management of all parties.

3.5. Conclusion

Conservation of Maasai Mara Wildlife resources requires a mechanism that embraces public participation and environmental democracy in distribution of benefits. Communities in the region need to feel the economic value of the resources. Provision of social amenities

¹³⁶ Ibid.

is not enough and more needs to be done. A mechanism that takes into account their needs will go a long way in promoting sustainable development while cushioning against the decline in wildlife population

CHAPTER FOUR: RESULTS AND DISCUSSION

4.1 Introduction

This chapter presents the data collected through key informant interviews [KII], Focused Groups Discussion conducted by the researcher from the community adjacent to the Maasai Mara National Reserve. The interviews revolved around the research questions and objectives of this thesis in trying to find out the existing legal framework on benefit sharing, the available benefits that the community receive from the Maasai Mara National Reserve, the mechanism that have been put in place to access any benefits that comes from Wildlife.

Results have been organized around objectives of the research. The respondent are categorize into three being the Community, County Government officials and the Investors. Results from each respondent are exhausted in regards to the three objectives of the study with the community member's discussion around all the three objectives starting next being the County Government key informant interviews findings as well as the Investors who were represented by the hotel industry practitioners.

4.1.1 Community finding on the law, available benefits and the mechanisms for benefits sharing

The study aimed to establish from the community the legal arrangement for benefits sharing, the available benefits from the Wildlife industry and the mechanism that benefits are accessed by the community members to enhance sustainable wildlife conservation.

4.1.2 Community awareness of the existing legislations and regulations on benefit sharing being objective one

The study established that most participants were not aware of the existing legal framework on benefit-sharing from wildlife. Some of them said that they have heard that laws exist on compensation whenever there is human-wildlife conflict. However, they were not able to pin point how they have benefitted from it. One participant during the focus group discussion said, "*my sheep had been killed by hyenas but I have never received any compensation.*" Noticeably, most of them were not aware that laws exist that entitles them

benefit from wildlife instead they confuse benefit sharing with compensation from Wildlife attacks to their livestock and attack on human being.

4.1.3 Findings from the community on the available benefits from Wildlife being objective two

The study found out that the community members understood benefits from wildlife differently from the position of the law. The study revealed that most participants understood benefits as compensation for loss suffered when their animals or crops are destroyed by wildlife. The study also established that some of the participants were aware of the existing Maasai Mara Community Support Fund which they refer to it as ‘*nineteen percent*.’ that gives money to their Member of the County Assembly to undertake community development. One member thus said” *our MCA get money on our behalf and construct classroom and the money we were told came from Wildlife so sometimes Wildlife is important*”. The study found out that the participants in the focus group discussion perceive this money as an affirmative action to give back to the community targeting the 8 ranches that are at the periphery of the protected areas who are hard-hit by human wildlife conflict. On the available benefits they pointed out that they receive bursaries for children from needy families. Some said that some of the investors in the region had built schools for them and provided them with clean water noting that there is no clear knowledge about monetary and non-monetary benefits.

4.1.4 Objective three on community mechanism to access wildlife benefits

The study established that the County government is responsible for distribution of Wildlife benefits including the fund that a community member earlier referred as ‘*nineteen per cents*’ which act as a safety net for community hosting wildlife. However, they are no laid out procedure on how the community can access the funds. One of the participants said, “*they once called us to a meeting in sarova hotel and said now we have nineteen percent that goes to the community.*” It also established that the fund is being managed by a board appointed by the county government and yet there are no representatives elected by the community in the board or elected by the other stakeholders like Hotel investors. *This study affirms Muthui’s argument that management methods often do not take into*

*account the local people living with the animals.*¹³⁷ It also established that benefits take long to arrive to the community due to non-representation directly of people in the management entities or key decisions making organs.

During the FDG, participants reported that due to their non-participation in the management of fund it has come to their knowledge that the fund meant to target the 8 ranches or the community adjacent to the game reserve was diluted to benefit the whole county defeating the very purposes to which it was created by the County government. They also complained that there are no accountability measures to ensure that the community can get to know how the money is spent.

4.2 Findings from the key informants from the County government on the objectives of the study

The key informants were from the County government of Narok and the study aimed at establishing their feedbacks around the objectives of the study being the legal arrangement, available benefits and mechanisms for accessing benefits. The study particularly targeted the County government officials because they are responsible for the overall management of the National reserve on behalf of the community.

4.2.1 Legal framework on benefit sharing in Narok County

The study established that the County government was slowly putting in measures to ensure benefit sharing. One of the key officials from the County Government told the researcher of this study that the county government has come up with a comprehensive Mara Management Plan that took into account the various stakeholders responsibilities such as the County government itself, the community, and stakeholders in the hotel industry. One of the official further said” *there is also a fund which is meant to benefit the community adjacent to the Reserve but we don’t know more about it because it is in the hand of the Governor*”. The Management Plan is endeavored to look into zoning and visitors’ use of the Mara and ecological management focusing on the high human activity within the study area. However, it was established that this plan is still in draft and yet to be actualized.

¹³⁷ Muthui W.L., ‘A Review of Various Options for Alleviating Human-Wildlife Conflicts in Kenya,’ KIPPRA Nairobi: Kenya Institute for Public Policy Research and Analysis , 2012.

The study was also informed of the shortcomings of the plan. One of the participants said that the plan do not look into the benefits since the same is provided for by the Maasai Mara Community Support Fund Act that offers nineteen percent to the community as benefits in terms of drilling boreholes, building schools and bursaries for the community. On obligation to investors to give back to host community the benefits from Wildlife the officials indicated that the county is still young and they will look into that in the future.

The study sought to establish whether the officials were aware of the legal arrangement for benefits sharing and on this objective the researcher established that they were aware of existence of the Maasai Mara Support Fund and the Act that created it, but were not privy of how much the county set aside for such a fund. In their opinion, the Fund does not provide for direct household benefits. However, some instances it can be used to offset hospital bills for families within the protected area and pay their school fees. The synergy between the county government officials and the Board that the Maasai Mara Community support Fund establishes is very minimal as it appears it is left fully in the hand of the Governor.

4.2.2 Distribution and access to the benefits

From the study, the Official said that the department had no idea of how the distribution of benefits is done since it is the Governor's discretion. They said that public barazas, chief's meeting and meeting with the warden are normally held but they were not aware how frequent such meetings are held. They also stated that the community participates through the annual budget meetings where they can air their views on benefit-sharing.

The study established that the community accesses the funds through their member of the County Assembly. In the alternative, they alluded that they apply for bursaries to the board directly.

4.3 Investors -Hoteliers

The study aimed to establish how the investors such as hoteliers give back to the host communities by interviewing representatives/Managers from hotels such as Sarova Hotels, Leopard bean hotels, Simba lodge amongst others. The study sought to find out their understanding about objective one on legal arrangement for sharing Wildlife benefits with the community and the mechanisms for doing so if any.

4.3.1 The law and regulations for benefits sharing from investor of the Wildlife industry

The study demonstrated that most of the participants do not have a policy on giving back to the community. Their sharing of benefits depended on their willingness to give back to the community. All the Investor reached through the KII could not tell of the existence of any arrangement in place as provided in law for the sharing of benefits with the host community of wildlife. Most were not equally aware of the existence of Wildlife Management and Conservation Act 2013 that requires investors to give back at most five percent of their profits to the host communities. One the participants said, *“My responsibility is to educate children and help the villager in the selling of beads, to provide clean water to the local community and employ them, he further commended “*

However, one participant, Sarova Hotel group, had a comprehensive policy of giving back to the society based on three pillars, that is, education, health and employment. They stated that through education they construct schools and equip them and have provided bursaries to about 1000 students in different schools for over a period of 10 years. In the health sector, they provide medical camp such as eye treatment where doctors treat for free at least three times in a year. They also employ 58% of their staff from the local community even though this was an assertion not supported by any record avail to the researcher for verification.

4.4 Summary of Findings

This part of the study presents key findings from the field research report. These findings are aligned along the objectives of this study which is to find out the existing legal framework for wildlife benefit sharing, available benefits and the benefits sharing mechanisms within the study area. The findings are summarized as follows:

First, there exists a national legal framework enacted by the National Assembly that seeks to benefit the host communities of wildlife. However, the community members of the study area have showed from the study that they were not aware of any existing law on this law which entitles them to benefit from the wildlife industry. On the other hand, the officials

from the county government department of tourism and wildlife revealed that they are aware of the existing national legislation on benefit sharing but could not ascertain how the same is being implemented to benefit the host communities by the County Government of Narok.

The study carried out on the hotelier revealed discrepancies in awareness of the existing national requirement of giving back at least five percent of their earning to the host communities. Since some were adamant of giving back while others were complying with the requirement even though the researcher could not ascertain whether the amount reached 5% of their profits. This finding, affirms the first hypothesis of this thesis, that there exist loopholes in implementing the existing legal framework. It also answers the research question regarding the limitation in implementing the legislative Framework, this being lack of awareness for the requirement of benefit sharing by the different stakeholders.

Secondly, the study revealed that the county government had gone ahead and enacted a county legislation known as the Maasai Mara Community Support Fund, that allocate 19 percent of the revenue collected to the community. However, the study showed that the same faces a lot of challenges in implementation both at the county level and at the grass root level.

At the county level, the study shows that there exist gaps on community entitlement within their legal framework despite the fact that the National Reserve is held and manage by the County Government in trust for the community. While the national legislation provides for both monetary and non-monetary legal entitlements to the host community from both county government and the investors, the County Government of Narok has only legislated on monetary benefits depriving the community of a lot of other non-monetary benefits provided for both in national and international law. The respondents revealed that the existing fund faces challenges in terms of management and accountability of how that money is used. Most of them revealed that they do not know where the money is derived from and whether it is exclusive from the wildlife revenues or whether there are from the general county revenues.

The Fund as well is managed by a board that is exclusively appointed by the governor with the exclusion of representation of community members. The community members interviewed revealed that they do not know who the members of the board are. This triangulate with the literature by Kariuki Muigua that regulations to outline mechanism are wanting within the various legal frameworks.

Members of the community have difficulty in accessing the fund because of its location. The Fund board sits at the Narok town offices while the members who need the funds most are within the interior parts of the county. This makes it a challenge for the community to access the funds. Moreover, the procedures involved in accessing the funds are such that it uses the Members of County Assembly which makes it more ineffective since they are politically elected and they tend to favor their political accolades other than the deserving members. The third objective of this study was to analyze the accessibility of benefits by the host community by questioning the mechanisms in place. This has revealed that this has not been met since there are procedural hurdles in accessing the same.

The Hoteliers on the other hand were divided in their awareness of the existing national legislations and regulations that require them to give back five percent of their earnings to the community. The study revealed that those that were aware have gone ahead and enacted policy on the same to give effect to the national legislation. However, the policy doesn't reflect the required national legislation threshold in term of non- monetary benefits. Within the Hoteliers investors, some were not aware of the existing law on non-monetary benefits even though they also indicated that they were not willing to share with the community claiming that they are already paying taxes that benefits the public. Some claim that they have already given back to the community through employment even though they could not ascertain employment ratio of the locals in their entities.

The study also established that the community perceives the term benefit differently from what is stipulated in law. For them they think that benefits refer to compensation for losses they suffer as a result of wildlife attacks. They are not aware that the law entitles them to benefit sharing from wildlife. Despite this kind of perception, implementation of payment of compensation is a challenge as well as it takes a long time for the government to

compensate them or they are never compensated at all, thus they revert to killing of the wildlife that has attacked their livestock.

The study also established that those who implement benefit sharing regulations do so by giving bursaries to school going children from the host communities. Some ensures that they obtain to about fifty percent of their work force from the local communities. Some drills boreholes for the communities while other conduct free medical camps to the community. This alludes to the answer to the research question on what benefits entails.

However, the study revealed that the community does not benefit directly from the wildlife benefits in the form of household goods. Most organization and even the county government focus on the social amenities such building of roads, schools, boreholes rather buying the household goods for the local communities.

In conclusion, these findings answers the objectives of the since it found that that there exist loopholes in the County Act especially with regard to management of community benefits. Secondly, that the existing structures are inefficient. The objectives of this study to review on the legal framework and identification of gaps to determine the nature of benefits that the community receive, have established that community benefits are neither households driven nor are their inclusive of non-monetary benefits as envisaged in National and international law. In addition, it established that structure in the Act do not provide for proper management and access of the benefits. It has also established the limitations in implementation, existing mechanisms and scope of the benefits in answering to the research questions posed in this study.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

This chapter gives a conclusion of the study and provides recommendations identified from the field research. The conclusion looks into the existing legal framework and the literature review above and concludes with the recommendations. Recommendations on the other hand, offer suggestion to various stakeholders, academia and the public at large on what can be done to improve the legal foundations and mechanisms for benefit sharing in the study area in future.

5.2. Conclusion

This study has showed that benefits sharing from the Wildlife industry in a critical tool for sustainable wildlife conservation. This study has also identified that despite having a legal framework on benefit sharing, its adoption and contextualization and effective implementation at the county level remains an aspiration rather than a reality.

In regards to objective one, which assessed the legal framework on the sharing of benefits, it found that the concept of non-monetary benefits to host community is not provided in the existing county law leaving the major player in the wildlife industry at their discretion on what to give back to the Wildlife host community. In addition, Maasai Mara Community Support Fund Act establishes a board. However, the management of the board faces many hurdles such as lack of proper stipulations on the qualifications of the members of the board. They are politically appointed which renders it susceptible to political patronage and favoritism.

Further, the law, despite capping a percentage on the amount to be ploughed back to the community, it does not set up parameters on how to arrive this percentage, leaving it for the public to guess. It does not provide the procedure for the community to access the same. In addition, the law does not take into account participation and representation of community members in its management. This defeat the principle of environmental democracy put across in this study.

Referring to objective two, the study found that that a different perception of benefits in the law is different from what the community perceives. For them they think that benefits refer to compensation for losses they suffer as a result of wildlife attacks. They are not aware that the law entitles them to benefit sharing from wildlife as the literature review showed. Despite this kind of perception, implementation of payment of compensation is a challenge as well as it takes a long time for the government to compensate them or they are never compensated at all, thus they revert to killing of the wildlife that has attacked them.

Guided by objective three, the study has demonstrated that the rules and regulations does not provide for mechanisms for transparency and accountability on the management of the fund. Members of the community cannot be able to ascertain how the money is being used for their benefits. Also, the study has established that there is little awareness among the community members and the investors on the mechanism for benefit sharing. Steps should be taken by the county government to ensure that the laws are amended in line with the international best practice and recommendations. This will ensure that there is sustainability in wildlife conservation and reduced human-wildlife conflict due to the satisfaction of the host communities of the benefits they receive.

Moreover, all the stakeholders in the wildlife industry should be involved and hybrid mechanisms on accessibility of benefit should be adopted. Such include the joint venture mechanism and formation of community based organization to ensure that all are brought on board at the implementation stage.

5.3. Recommendations

In order to make benefits from the Wildlife industry available for the community, this study proposes recommendations for decision makers and policy makers. The study revealed several gaps within the framework that guides in the sharing of benefits with the community adjacent to the protected area that is the Maasai Mara National Reserve.

Therefore, this study makes the following recommendations in order to make benefits available to host community and therefore in the long run enhance sustainable conservation of Wildlife within the Maasai Mara ecosystem.

The National Reserve being held by in trust by the County government on behalf of the community of Narok need clear laws and policies which will make benefits accessible to the local community. The County Act should be amended by the County Assembly of Narok to provide adequately on how the income from Wildlife shall be shared back to the host community. The amendment should also define the proper procedures of elections of the members of the board with representation of all stakeholders involved in the wildlife industry within the study area. It should provide for qualifications of the board members as well as the procedure on how to ensure participation of the host communities in election of board members. The amended law should also provide for devolved offices or appointment of representatives from the very local level and interior part of the Mara to ensure access by all members intended to benefit from the fund.

The rules and regulations on how benefits from wildlife should be shared amongst the host communities should be put in place. This will help to specifically allocate benefits to the host community since the existing framework doesn't state what amount goes to the community adjacent to the National Reserve compared to those who live a far from the Reserve. That will ensure that the host communities specifically benefit from them rather than giving a blanket provision for the whole county. This is because they are the ones that are hard hit by human-wildlife conflicts and singularly carry the burden of hosting Wildlife within their territories.

Community sensitization on the existing benefits in which they are entitled within the law, regulations and policy to enhance their participation in the management and monitoring as equal stakeholders in the sustainable conservation of Wildlife. This can be done through amongst others various media such as local radio stations and chief's barazas. A small portion of the total revenue collected from the Maasai Mara National Reserve can be budgeted to undertake this sensitization amongst community members.

The County government should come up with a proper framework and policy on what kinds of benefits the community ought to receive from the stakeholders in the industry since at the moment it seems the law only provides that financial benefit from the County collection to revert back to the community. The regulations should provide for joint ventures in business and employment opportunities amongst others.

Another recommendation will be in the area of monitoring of Bio-prospecting and bio-piracy activities; this is a threat to both the local community and the wildlife conservation in general. Through these activities most of the benefits only accrue to a section of people excluding the community hence the concept of benefit sharing does not suffice if the two activities are not monitored. In the past it has been argued that Kenya needs an Access and Benefit Sharing Legislation which would require bio prospectors negotiate access to benefit sharing with both the government and the indigenous community.¹³⁸This can closely be addressed together with the issue of poaching, which has been on the increase and just like bio piracy the community at the end of the day does not benefit. The ripple effect of poaching is the depletion of wildlife and at the end of the day it means that the county will have to forget a subject such as benefit sharing in wildlife. Therefore, the framework should provide for protection against biopracy and biodiversity.

Intellectual Property [IP] rights gap, in 2010 the constitution recognized the importance of IP rights one of the aims being to ensure adequate compensation. It is further specific to the protection of the indigenous knowledge of biodiversity and genetic resources of communities.¹³⁹However there are no effective enforcement mechanisms to ensure that the IP rights of these communities are actually protected. The protection policies and regulations of such rights are not adequate, or rather does not recognize the importance of such rights to the communities. The rationale for any provisions under the constitution is to enforce rights; therefore there is need for an effective dispute resolution mechanism to promote the enforcement of such rights.¹⁴⁰

Weak Community Institutions that cannot negotiate on benefit sharing and the enforcement of their rights. The linkages between the national authorities is very weak, there is need for the government to recognize the presence and the role that the community play in the negotiation process. This should be implemented in Kenya especially with the devolution system which aimed at reaching out to the people at the grassroots. There is also

¹³⁸ Legalthinking.net/132/is-bioprospecting-legitimate-research-or-biopiracy/ accessed on October 27, 2018.

¹³⁹ The Constitution of Kenya ,Article 45(5) and 69(1)(c))

¹⁴⁰ *Anti-Counterfeit Agency and Business Action to Stop Counterfeiting and Piracy: Promoting and Protecting Intellectual Property in Kenya(2012)*
<https://www.iccwbo.org/Data/Documents/Bascap/International-engagement-advocacy/Country-Initiatives/Kenya/Value-of-IP-in-Kenya> Accessed on October 27, 2018

unwillingness of the national government to recognize the role of the communities in the management of such conservations. This has been seen in the past where the government attempted to drive out indigenous communities out of some of these conservations, without taking into account that they actually play a role.

The Support Fund should be reorganized to take into account contribution of the hoteliers to the community through a consolidated fund managed at the County level where all stakeholders contribute and participate in its management. Their involvement in the fund as well as the Conservancies in the area will not only enhance synergy in the managing of the ecosystem but also enhance accountability. This will ensure that there is one pool of resources for the community to benefit from especially in social amenities access as well the distribution of the education assistance in form of bursary for the very needy student from the adjacent community.

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Appendix I. Questionnaires

A Questionnaire on the Legal Framework and Mechanisms for Benefit-Sharing From Wildlife: A Case Study of Maasai Mara National Reserve in Narok County, Kenya

Guidelines Questions to the Maasai Mara Hoteliers

Kindly assist in filling this questionnaire appropriately. Your answers and the resultant report will assist to generate important information necessary completion of my master's thesis.

- ❖ You may, or not indicate your name, title, email address and/ or phone number after filling.
- ❖ *For clarification on any area of the Questionnaire please call 0721 727526 or email:- nkitipa@gmail.com*

1. What is the name of your company/Hotel? [optional]
2. Does your organization have a policy in place to provide for benefits to get in the industry back to the community?
3. Is your organization aware of the existence of any law providing for sharing of Wildlife benefits with the host community? If yes, tell me
4. How about the mechanism of sharing such benefits with the Host community, do you know any?
5. What would you think entails benefits? Financial or more than that?
6. Would you be likely to put in place a policy to ensure there is benefit sharing with the host community?
7. How much have you ever given back to the local community? Can you quantify?
8. Are there gaps you think exist in the legal arrangements on what should be given back?
9. Are there gaps in the mechanism for sharing benefits with the local community?

Thanks and God bless you abundantly

You may, or not indicate your name, designation, email address and/ or your phone number here .

Name:

.....

Email address.....

Phone Number:-.....

Date:-.....

A Questionnaire on the Legal Framework and Mechanisms for Benefit-Sharing From Wildlife: A Case Study of Maasai Mara National Reserve in Narok County, Kenya

Guidelines Questions to the Local Community in FGD (elders, women and youth)

Kindly assist in filling this questionnaire appropriately. Your answers and the resultant report will assist to generate important information necessary completion of my master's thesis.

- ❖ You may, or not indicate your name, title, email address and/ or phone number after filling.
- ❖ *For clarification on any area of the Questionnaire please call 0721 727526 or email: nkitipa@gmail.com*

1. What is your name?(optional)
2. How old are you? What level of education have you attained?
3. Do you know the players within the wildlife sectors that are within your community?
4. Do the activities of those organizations/Players benefit your community?
5. What kind of activities do they engage you in?
6. Are you aware of the existence of any law providing for sharing of Wildlife benefits with your community? If yes, tell me
7. What do you understand about Wildlife benefits? How about types?
8. Other than financial aid, what other benefits exists do you know of?
9. How about the mechanism of sharing such benefits with the Host community?
10. Are there gaps you think exist in those legal arrangements? If yes, what do you think should be done to the law?
11. Are there gaps in the mechanism for sharing benefits with the local community? If yes, what suggestion do you have on the best mechanisms for sharing benefits?

Thank you and God bless you abundantly

You may, or not indicate your name, email address and/ or your phone number here .

Name:.....

Phone Number:-.....

Date:

A Questionnaire on the Legal Framework and Mechanisms for Benefit-Sharing From Wildlife: A Case Study of Maasai Mara National Reserve in Narok County, Kenya

Guidelines Questions to the Narok County Government Officials

Kindly assist in filling this questionnaire appropriately. Your answers and the resultant report will assist in generating important information necessary for the completion of my master's thesis.

- ❖ You may, or not indicate your name, title, email address and/ or phone number after filling.
- ❖ *For clarification on any area of the Questionnaire please call 0721 727526 or email nkitipa@gmail.com*

1. What is the name of your Department?
2. What law do you have in the county regarding wildlife conservation?
3. Does the law if any has components on benefit sharing with the community adjacent to the Maasai Mara National Reserve?
4. What kind of benefits are available to the in the legal framework that your county operates on?
5. If the law exists, how do you distribute benefits from wildlife to the local community?
6. To what level does your Department involve the community and organizations in formulation of benefit sharing laws and distribution mechanisms?
7. Does the county government have a legal requirement for Investor eg Hoteliers to give back to the community from the profit they accrue from the industry?
8. How often do you come together as a county department responsible for Wildlife and other industry players to promote initiatives that benefits the community hosting Wildlife?
9. Approximately, how many and what are the organizations/companies are within the Maasai Mara?

Thanks and God bless you abundantly

You may, or not indicate your name, email address and/ or your phone number here .

Name:.....

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Email address.....

Phone Number:-.....

Date:-.....

Appendix 2. Maasai Mara Ecosystem

MARA ECOSYSTEM

