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**Privatization, commercialization of water services and its  
implication for women's access to and control of water:  
a case study of Njoro community water project**

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## DECLARATION

I certify that this thesis is my original work; it is an honest and true effort of my personal research. I certify that the thesis has not been presented anywhere else before.

Signature

Date:

Millicent Akinyi Odeny

## DEDICATION

*This dissertation is dedicated to my beloved children, Sharon, Nicole and Andrew and to my husband, Cyprian, who gave me the encouragement and the support to pursue this course.*

*To my beloved parents James and Isdora Obwa who made it possible for me to pursue education up to this level.*

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## **List of legislation**

### *Kenya*

Constitution of Kenya

Water Act (2002)

National Water Policy 1999

### *International*

International Covenant on Economic, Social and Cultural Rights (UN, 1966)

International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (UN, 1979)

African Charter on Human and Peoples' Rights (OAU, 1981)

Convention on the Rights of the Child (CRC) (UN, 1989)

Universal Declaration of Human Rights (UN, 1948)

Declaration on the Right to Development (UN, 1986)

The Rio Declaration on Environment and Development (UN, 1992)

Agenda 21 (UN, 1992)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (OAU, 2003)

The Dublin statement on Water and Sustainable Development (UN, 1992)

## **List of abbreviations**

FAO	Food and Agriculture Organization
IMF	International Monetary Fund
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ICESCR	International Covenant on Economic, Social and Cultural Rights
RVWSB	Rift Valley Water Services Board.
WRMA	Water Resources Management Authority
WHO	World Health Organization





## Background to the study

*‘Nilifika hapa saa kumi na moja, na mpaka sasa sijachota maji. Nimepanga laini kwa saa mawili ili nipate maji.’* laments Njeri. (I arrived here at 5.00am and up to now I have not yet fetched water. I have been in this queue for the last two hours so that I can get water) <sup>1</sup>

The lament from Njeri, a respondent from Njoro community in Kenya illustrates the problems of access to water. Water is one of the most important resources for a human being’s survival. Access to clean and potable water has been an issue of concern for the world as a whole but more particularly the African continent that has suffered due to bad governance. Lack of access more often results from socio-political factors and institutions that constrain delivery rather than from scarcity of water resources.

Access to water is a major issue since 300 million people in Africa lack reasonable access to safe water (United Nations, undated). In sub-Saharan Africa, only 51 per cent of the population has access to safe water. United Nations Food and Agriculture Organization (FAO) has further documented that over 230 million people live in 26 countries classified as water deficient, of which 11 are in Africa.

‘Water is a fundamental and inalienable human right and a common good that every person and institution of this planet should protect. This resource is, like air, a heritage of humanity and must be declared that way. Water is not merchandise and no person or institution should be allowed to get rich from the sale of it. It should not be privatized, marketed, exported or transferred to a few multinational companies, which today already control 90 per cent of privatized water utilities. For the GATT, NAFTA and FTAA, water is a commodity, an investment, a simple service for commercial use and profit’ (Obando, 2003).

Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the rights contained in international instruments such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the women’s protocol) and the Convention on the Rights of the Child. For instance, water is necessary to produce food (right to adequate food). This is provided for under article 15 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa which states:

‘States Parties shall ensure that women have the right to nutritious and adequate food. In this regard they shall take appropriate measures to:

- a) Provide women with access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food;
- b) establish adequate systems of supply and storage to ensure food security.’

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<sup>1</sup> Interview on 24 October 2005

Further, article 18 of the women's protocol provides for the right to a healthy and sustainable environment which cannot be achieved without access to water. It states:

‘Women shall have the right to live in a healthy and sustainable environment.

‘States Parties shall take all appropriate measures to:

- a) ensure greater participation of women in planning, management and preservation of the environment and the sustainable use of natural resources at all levels.’

This is also to ensure environmental hygiene (right to health). Lack of access to clean and potable water impedes the right to health as it results in waterborne diseases. Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water should be given to the water resources required to prevent starvation and disease, as well as water to meet the core obligations of each of the Covenant rights.<sup>2</sup>

Water, being basic to the very existence of human beings, should not depend on multinational corporations that are economically driven and who make money through privatization at the expense of the poor.

### **Why my interest in water?**

‘As a young girl growing up in the village situated in Nyando District, a flood prone area, I experienced a lack of access to water which was acute. It would rain heavily in the Nandi hills and the effect was that we could wake up in the morning and find our homes flooded without having had the rains. This was devastating due to the fact that we would wade through the floods to go and fetch water from the swollen river which had dirty water. We had no alternative source of water so we had to exist with our dilemma. This was dangerous as snakes would be swimming and thorns would frequently prick our feet. Further, I was required to fill a big drum with water and I used a container that was thought to be too big for girls of my age to carry so that I could spend less time going to the river. To date everyone in my village remembers this saga of the container.’<sup>3</sup>

This experiential data shows how access to water is dear to me and that is why I chose to undertake a study on the issue of water.

### **Statement of the problem**

The central problem is the impact of the commercialization of community-managed water services on women's access to and control of water. This is a major problem, not only in Kenya but also in Africa as a whole. Currently there is a rush to privatize water services around the world. The World Bank and the International Monetary Fund (IMF) are pushing for privatization of water services by European and United States based companies like the French company, Suez Lyonnaise des Eaux. They are pushing privatization through trade agreements and loan conditions to developing countries. This has serious consequences for the entire population but more so for women in particular. This effort is being met with increased opposition.

These water sector reforms, initiated by the World Bank and IMF, are aimed primarily at privatizing water resources and commercializing water management.

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2 See also paragraph 25 (c) of the Plan of Implementation of the World Summit on Sustainable Development (Report of the world Summit on Sustainable Development, Johannesburg, South Africa, 26 August – 4 September 2002 (United Nations Publication, Sales No.E.03.II.A.1) resolution 2,annex)

3 Writer's experiential data.

## **What is privatization?**

Privatization is a generic term used to describe a range of policy initiatives meant to alter ownership or management away from the government in favour of the private sector. It is the nature of privatization to entail a massive and radical reallocation of available productive resources, as it is a tool to attain the expansion of private markets and business consensus. (Nyon'go *et al.*, 2000).

The use of the term privatization varies greatly, particularly with regard to water services. Privatization is the gradual process of disconnecting state-owned enterprises or state-provided services from government control and subsidies, and replacing this duct with a conduit linked to market forces (Moyo, 1995). This definition therefore includes management contracts, concessions, franchises, leases, commercialization and pure private entrepreneurship. Privatization can also be viewed as a form of decentralization of management functions from government to private enterprises.

Privatizing has meant commercializing services or attempts thereof by the municipal service departments. Privatizing water has led to commercializing it and hence resulted in commercializing human lives.

In view of the above, Kenya has resolved to introduce the commercialization strategy as a means of ensuring sustainability and efficiency in the delivery of water and sanitation services. The government of Kenya has been at pains to distinguish between privatization and commercialization. Kenya has chosen to commercialize the provision of water services as opposed to outright privatization through ceding control to private enterprises.

## **Objectives of the study**

The main objective of the study is to examine the impact that commercialization of community-managed water services has on the livelihoods of poor rural women in Njoro area.

### **Specific objectives**

- 1 To determine whether commercialization of community-managed water services perpetuates or increases gender inequalities in families and households.
- 2 To understand how women's limited access to and control of land and financial resources impacts on their access to water resources.
- 3 To examine the impact of women's participation in community-managed water services on their access to safe drinking water.
- 4 To analyze the implications of the Water Act 2002 for the poor rural women in the management of water resources and delivery of water services.
- 5 To determine whether commercialization of community-managed water services conforms with international human rights standards on the right to water.
- 6 To make recommendations for necessary law reform and measures to ease women's access to water.

## **Research assumptions**

Before I went to the field to conduct the research, I made several assumptions which were to inform the study. These were:

- 1 Water is a key resource, both for men and women.
- 2 Poor rural women are adversely affected by commercialization of community-managed water services.
- 3 Women have particular or special needs related to water and access to water which are not factored into water policies or law.

- 4 Women's limited access to and control of land and financial resources means their special needs in relation to water and its access are not factored into planning in relation to accessing and using water.
- 5 Gender inequality and power relations in families and households deprive women of free or perhaps independent access to water resources.
- 6 Women are not recognized as stakeholders in decision-making process in community water services management.

### **Research questions**

The following were the research questions based on the above assumptions.

- 1 Is water is a key resource for both men and women?
- 2 Are poor rural women adversely affected by commercialization of community-managed water services?
- 3 Do women have particular or special needs related to water and access to water, which needs are not factored into water policies or law?
- 4 Do women's limited access to and control of land and financial resources mean that their special needs in relation to water and its access are not factored into planning in relation to accessing and using water?
- 5 Do gender inequality and power relations in families and households deprive women of free or perhaps independent access to water resources?
- 6 Are women recognized as stakeholders in decision-making processes in community water services management?

### **Literature and discussion**

Before I embarked on the research, I undertook a survey of the relevant literature in respect of the topic under study. The literature review gave me an insight into the subject of commercialization of water services and water as a human right. It further provided me with the theoretical framework within which to operate. I categorized the materials and the literature that I read into three major topics to enable me to capture them well:

- International instruments relating to the human right to water
- The law relating to water
- Dilemmas of water provision

A major useful source of information were the publications of Professor Anne Hellum (2000) who has written extensively on water, capturing different perspectives, including the human rights based development approach. She argues that the right to development, the right to the environment or the right to land and water are human rights issues. She points out that CEDAW forms the most important human rights framework for promoting women's access to water and participation in water management. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa stipulates in article 18(2)(a):

‘States Parties shall take all appropriate measures to:

- a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.’

Governments should ensure that women are given an opportunity to participate in all levels of management including water resources and water services provision as women have indigenous knowledge which is ignored in most cases. Women's indigenous knowledge is in respect of preservation and management of natural resources, for example, protection of water sources like springs and medicinal plants.

Hellum (2000) analyzes the water reform process in Zimbabwe and its implication for women, custom and culture through a human rights based development approach. She argues that development projects, such as land and water reform, should be considered in the light of the rights and obligations embedded in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and other related instruments. CEDAW is a socio-legal tool that links the human rights of women to the processes of development.

Valuable literature also emerged during the 1990s on water market efficiency, water rights and water pricing models (Meizen-Dick, 1998; Easter, Rosegrant and Dinar, 1998) but little attention has been paid on the gendered dimensions and the impact of commercialization of community water based resources on women and the rural poor. Finally, I also benefited from government publications and articles on the implementation of the Kenya Water Act of 2002.

## **International instruments relating to the right to water**

The Universal Declaration of Human Rights did not mention water as an explicit right. Its explicit inclusion was believed unnecessary given its nature as a resource essential for basic survival.

Due to water's fundamental nature to human survival, it was considered necessary to include it in General Comment No 15 in articles 11 and 12 on the right to water, adopted in November 2002 by the Committee of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It explicitly recognizes water as a fundamental human right. This agreement was ratified by 145 countries who are obliged to progressively ensure that every person has access to safe drinking water, equally and without any discrimination. This obligation requires that all parties adopt the necessary measures to guarantee the right to drinking water. The right to water has been consistently addressed by the committee during its consideration of states parties reports, in accordance with its revised General Guidelines regarding the form and content of reports to be submitted by states parties under articles 16 and 17 of the covenant and its general comments.<sup>4</sup>

The right to water is explicitly mentioned in two international treaties, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979) and the Convention on the Rights of the Child (1989). In CEDAW, article 14(2)(h), it is established that rural women's health depends on adequate and non-discriminatory access to water and that states parties must:

‘... ensure that rural women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

As stated earlier, CEDAW forms the most important human rights framework for promoting women's access to water and their participation in water management.

Article 24(2)(c) of the Convention on the Rights of the Child (CRC) requires states parties to combat disease and malnutrition ‘through the provision of adequate nutritious foods and clean drinking water’.

Article 15(a) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (which is now operational) stipulates that:

‘States parties shall ensure that women have the right to nutritious and adequate food, taking appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land and a means of producing nutritious food.’

The International Water Conference on Freshwater (Bonn, Germany) took the view that water policies and water management systems must be sensitive to gender issues. Any issues linked to water must deal with the division of labour – with or without remuneration – between men and women. Men and women must participate in the management of sustainable water resources exploitation and in the distribution of benefits in equal conditions. Women's participation must be strengthened and broadened in water issues.

The Dublin Statement on Water and Sustainable Development (1992) is also important as it states in principle 3 that ‘women play a central part in the provision, management and safeguarding of water’.

The Rio Declaration on Environment and Development and Agenda 21 (chapter 18) emphasize that women are an important user group that should participate in the decision-making, allocation, management and use of water resources.

Water is important for human survival and therefore more effort should be made at country level to recognize as a human right in constitutions. The recognition of the role that women play in water provision and management should also be emphasized.

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<sup>4</sup> *Official records of the Economic and Social Council, 1991, Supplement No.3 (E/1991/23-E/C.12/1990/8),annex IV*

## **The law relating to water**

The Constitution of Kenya does not expressly recognize access to water as a human right, though it can be implied in chapter V, article 71 which deals with protection of the right to life under fundamental rights and freedoms of the individual. This makes it an uphill task to prove in a constitutional court that your right has been violated if you do not have access to clean potable water.

### **Kenyan Water Act 2002**

In Kenya, water is regulated by the Water Act 2002, Act no 8 of 2002. This Act repealed the Water Act (chapter 372) of the laws of Kenya and certain provisions of the Local Government Act; and was for related purposes.<sup>5</sup>It provides for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services. The Water Act 2002 separates policy formulation, regulation and service provision; it defines clear roles for sector actors and a decentralized institutional framework.

Kenya recently restructured its water sector, harmonizing institutional roles and service jurisdictions to improve the quality and coverage of services. This was intended to separate water resource management from water supply and delegate service provision to a variety of entities, both public and private

The Water Act 2002 became operational in 2003 when effective implementation of its provisions commenced. It brought with it radical changes to the legal framework for the management of the water sector in Kenya. The overall power for control of every body of water is exercised by the minister. The Act has vested all water resources in the country in the state, centralized control of water resources and subjected the right to use water to a permit. It makes it an offence to use water without a permit; therefore community-managed systems have to obtain a licence to continue providing water to their members. It is also important to note that permits run with the land. Section 34 of the Act requires that a permit specify the particular portion of land to which the permit is to be appurtenant. Permits are given for a specified period of time. The authority is given power to impose a charge for the use of water which may comprise both an element of the cost of processing the permit application as well as a premium for the economic value of the water being used.

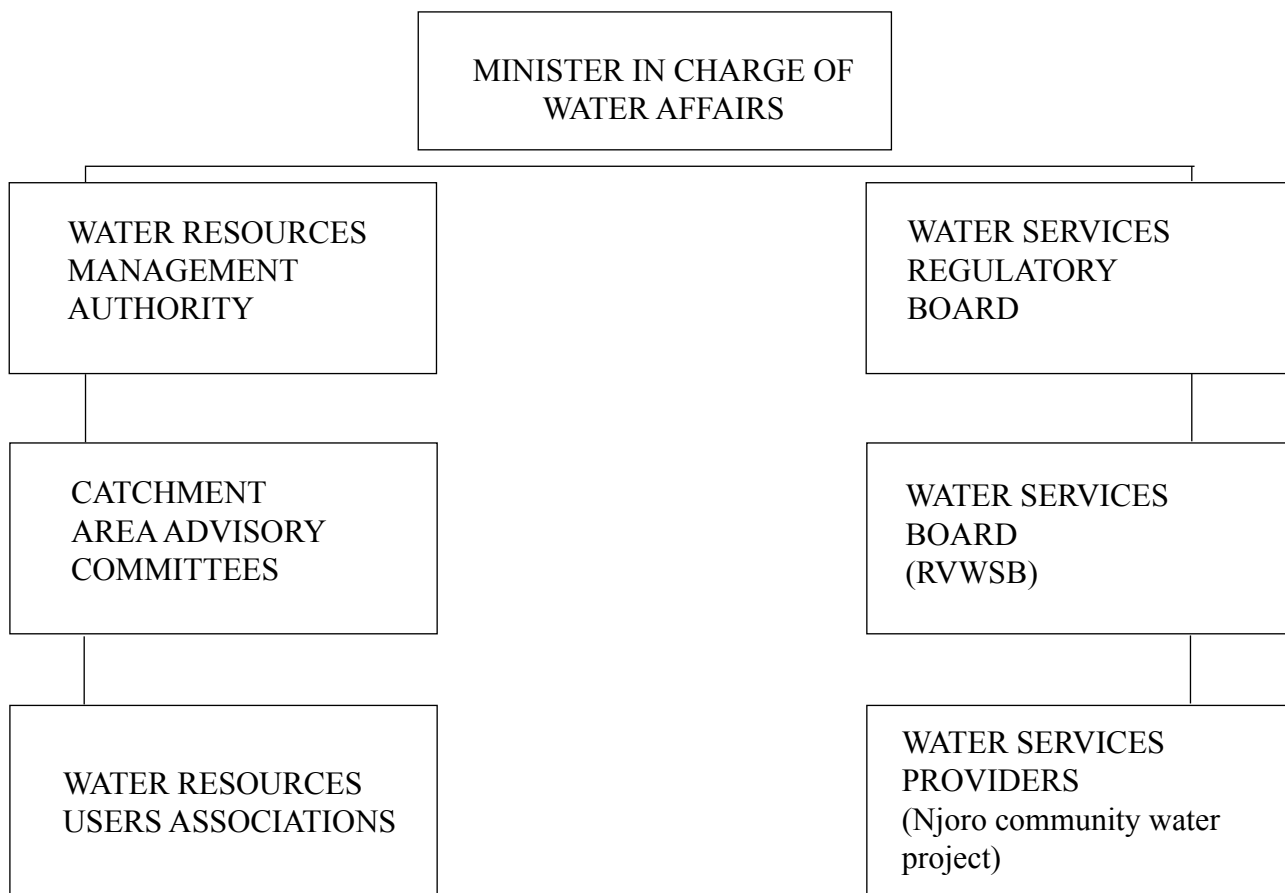
It establishes two autonomous public agencies: the Water Resources Management Authority, whose duty is to regulate the management of water resources and the Water Services Regulatory Board which regulates provision of water and sewerage services.

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5 Preamble of the Water Act 2002, Act no 8 of 2002

The diagram below illustrates the institutional framework for the reforms in the water sector

**Diagram for institutional framework for the reforms in the water sector**



The Acts divest the minister in charge of water affairs of regulatory functions over the management of water resources.

Section 7 of the Act establishes the Water Resources Management Authority that is responsible for allocating water resources through a permit system.

Section 46 establishes the Water Services Regulatory Board whose mandate is to license all providers of water and sewerage services who supply water services to more than twenty households. Community-managed water systems therefore need to obtain a licence from the regulatory board to continue providing water to its members.

Section 14 of the Act provides that the authority may designate catchment areas and appoint a committee of fifteen persons in respect of each catchment area. It does not take gender into consideration in the appointment of the fifteen persons.

Section 51 of the Act establishes Water Services Boards whose mandate is to provide water and sewerage services within their area of coverage and they must obtain a licence from the regulatory board.

Finally, section 53(2) stipulates that water services shall only be provided by a water service provider which is defined as ‘a company, non-governmental organization or other person providing water services under and in accordance with an agreement with a licence’. Community self-help groups providing water services may therefore qualify as water services providers.



## Old institutional and legal framework

Before the repeal of the Water Act chapter 372, there were a total of twenty-six other Acts of parliament which had a bearing on issues concerning water. For instance, the Agriculture Act, chapter 318 defines watercourses and catchments areas in relation to food production and related activities. These Acts often had conflicting provisions, hence the difficulties in enforcement. This led to many different actors whose activities would conflict and there were no mechanisms for resolutions.

In the Repealed Act, chapter 372, the Ministry of Water handled policy, regulation and service provision. There was no distinction between water resources management, development and service provision. This made it difficult to implement the provisions of the Act. It was a supply-driven environment with serious consequences on sustainability and efficiency in usage of the resource.<sup>6</sup>

Inadequate institutional frameworks resulted in poor sector performance. These were the bottlenecks in the water sector (under chapter 372):

### *Policy formulation*

- Poor coordination in the water sector
- Poor policy accountability
- Poor attention to water resource management

### *Regulation*

- Lack of clear regulatory frameworks
- Lack of performance monitoring and evaluation
- Poor management of water undertakers

### *Service provision*

- Poor management of water resources (quality and quantity)
- Failure to attract and retain skilled manpower
- Inadequate allocation of resources
- Poor service delivery
- Low coverage
- Inability to attract investments
- Dilapidated infrastructure

The absence of written policy in the past, prior to Sessional Paper no 1 of 1999, created room for the sector to implement policies devoid of a holistic approach to sectorial objectives.<sup>7</sup> These failures necessitated the repeal of the Act to address the above issues. The question that needs to be answered is whether the new Water Act 2002 has addressed these issues so as to enable people to have access to adequate water.

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<sup>6</sup> Water sector reform

<sup>7</sup> Water sector reform

<sup>3</sup> See also Ndlovu's work referred to previously.

## Dilemmas of water provision

A lot has been written on commercialization or privatization of water services in different countries like Ghana, South Africa and Bolivia. The experiences of these countries are examined to provide a contextual review of challenges and opportunities. Most of the literature emphasizes how the World Bank and International Monetary Fund (IMF) imposed privatization initiatives on countries through the structural adjustment programmes. The arguments presented by the World Bank and IMF are that privatization promotes better and efficient service delivery and that states will be able to pay their national debts. This has been proven to be the opposite as some states have been exposed to more debts.

This has had different effects and reactions in different countries. The most well-known example of the global conflict over water privatization is the case of Cochabamba, Bolivia. It is a clear example of the conflict over the privatization of water services and a victory for the people opposing privatization. For example, Elizabeth Peredo Beltran (2004) analyzed the conflict that was provoked by privatization of water services in Cochabamba Bolivia in 2000. She says that this was an example of how financial policies and the tendency to commercialize water services affect local communities, making evident one of the contemporary world's central contradictions: privatization versus the common good. She further analyzes five levels of impact as a result of the privatization process that was put into practice in Cochabamba:

- Rates;
- The conditions that surround privatization and the degree to which privatization affects the communal potable water systems;
- The right to private business to use water sources that rural communities and peasant irrigation systems have access to;
- The impact on the water culture in the region hence; and
- The impact of investment protection laws on women's rights.

This led to a water war which was a citizen's response to all the arbitrary measures and conditions that attacked their rights. One of the most important groups in the movement was made up of women who were affected most by the privatization. Beltran (2004) concludes that they managed to defeat the legal reforms to water and changed the law that attacked their rights.

In Ghana, Amenga-Etego (2002) wrote an article entitled, 'Water privatization in Ghana; women's rights under siege'. He analyzes the process of water privatization in Ghana, looking at the main actors, the key legal and contractual issues and the overall social implications for workers, women and children. He discusses the social implications of privatization of water services and comes to a conclusion that the most affected are women and children.

He says that donor and creditor agencies (World Bank, IMF) have been highly influential in the current process of privatization but note that current attempts at reforming public utilities are neither driven by national priorities nor aimed at universal access.

In her book *Water wars; privatization, pollution and profit* (2002), Vandana Shiva, lists nine principles underpinning water democracy. She states in point four:

‘...water must be free for sustenance needs. Since nature gives water to us free of cost, buying and selling it for profit violates our inherent right to nature's gift and denies the poor of their human rights.’

She states that when private companies try to make large profits through high water prices, it denies the poor the inalienable right to the most necessary substance of life. Lastly in her point seven, she states that ‘water is a commons..... it cannot be owned as private property and sold as a commodity’. These are arguments against privatizing water services.

In South Africa, different forms of struggles were waged by the poor against the privatization of water services and other basic services. They argued that water is a natural resource and therefore they should have rights of access to clean and healthy water; water should not be a commodity but a right and there should be free water for all.

Water became inaccessible, unaffordable, and unsafe after the water supply was privatized by Suez Lyonnaise des Eaux in Johannesburg. The literature reveals that rural areas were mostly affected by the issue of privatization which exposed the residents to serious health problems and diseases due to scarcity of water and poor access to clean and healthy water. It further led to water disconnections for the poor who could not pay their bills.

Opponents of privatization of water services have argued that it creates thirst, water scarcity and increased water prices.

In Nairobi, resistance was experienced in the initial attempts to introduce privatization of solid waste management at the council level. The privatization of solid waste management was realized after direct intervention from higher authorities. The following lessons can be drawn from the experience of privatization of solid waste management by the Nairobi city council: privatization should aim at lowering the cost of service delivery and at efficiency. However, in most cases it does the opposite.

### **Why water is a women's issue**

*'All the taps are dry, the only ones running are my eyes —*

*When I cry because the teacher scolds me for coming to school dirty ...*

*My sister also cries*

*When I go to the school line*

*And she goes to the water line ...*

*My mother also cries, yes my mother too, she cries*

*When father shouts because he has no water to bathe ...*

*Or because she does not smell nice when he comes to bed ....'*

(11 year old boy) (Seaforth, 1996)

While I was going through my literature review, I came across the above recitation by a boy in Nairobi's Mathare Valley slum which I found interesting as it summarizes the whole issue of women bearing the burden and responsibility of water collection for the family. It also illustrates the hidden costs that women have to pay every day for not having easy access to water (Seaforth, 1996)

### **Practice and norms**

Customary law refers to a set of rules and norms practised by a community over a long period of time which often are not codified. These laws provide for a set of rights and duties to be observed by certain communities against outsiders. Customary law exists parallel with the statutory law. The communities living in Njoro are mainly from the Kikuyu tribe who believe that water access should be freely available to all as it is a gift from God. No person should be denied water for drinking. They also believe that water was rarely 'owned' exclusively; however, access by others was often allowed subject to permission being sought from the relevant authorities.

Even though some of these traditions are waning due to modernization, the practices are still deeply rooted and are useful in resolving water use conflicts. These practices have been established over the years and they need to be reflected in the law for the better management and voluntary enforcement of the laws.

Islamic law and Hadiths stress the importance of providing water to guests and extend the ‘right to thirst’ for animals and plants as well (Faruqui *et al.*, 2001). In the Christian Bible, Matthew 25:42 relates that on judgment day, giving water to those who are thirsty will be one of the defining criteria for separating those who are to go to the kingdom of heaven from those who are cast out. In Hinduism offering drinking water benefits the donor (*Laws of Manu: IV: 229*). These comparisons depict the importance of water and the practices and norms from different communities. In other words people should not be denied access to water whatever the circumstances.

## **Research methodology and methods**

This chapter addresses the research methodology that I used and the demarcation of the study. It also deals with the theoretical frameworks and methods applied during the data collection. Finally, it further addresses the problems encountered in the field while conducting the research.

### **Methodology**

The overall guiding principle employed in this study was the women's law approach which takes women as the starting point. Women's law is a discipline that explores the reality of women's lives and experiences with a view to explaining, understanding and critically analyzing women's legal rights in order to improve their legal position in society (Dahl, 1987). It interrogates and investigates the law in all its pluralities as it affects women. This approach uses perspectives from 'below' and 'above', assuming that there are problems beyond law reform needing to be addressed and that this can only be done by carrying out field research using women as the starting point.

This research methodology was useful because it gave me an insight into the lived realities and experiences of women in their daily routine of fetching water. I was interested in their water collection timetable, how much time they spent collecting water, the distances they walked, how much they paid for water, whether they played any role in managing the community water project and finally how commercialization of water services had affected them positively or negatively. The women were able to relate their experiences in relation to water and how water shortages have caused them inconvenience and suffering.

Even though this study has a bias in favour of women, water is fundamental to human survival therefore its scarcity affects both men and women, although women bear the biggest burden due to their triple roles. This methodology enabled me to explore men's perceptions on access to water and issues to do with gender relations in the household.

The women's law approach as a methodology for research requires examining all the relevant social, economic and cultural influences. This made me research a cross-section of women, men and girls of diverse backgrounds and ages to get different pictures of their lived realities and experiences.

### **Grounded theory**

A feminist approach was applied which as Dahl (1987:22) argues 'means that one perceives legal rules in the light of both women's experiences and interests', thus using the strategy of taking women as the starting point.

The grounded theory perspective was important as it made me deal with the emerging themes which developed as I was conducting my interviews. It looks at the lived realities of both men and women and the interplay of the law in trying to analyze the factors or forces that control women's lives (Bentzon *et al.*, 1998).

The women that I interviewed related their experiences in their day to day lives as they fetched water for domestic use for their families. A burden is placed on them by their gender role as haulers of water; they shared their experiences of standing in the long queues and, for those who could not afford the commodity, being forced to fetch water from the Ndarugu river which is polluted.

### **Human rights approach**

This study examines how both local and international instruments treat issues of access to water as a human right. I employed this methodology and used the human rights based development approach in analyzing the individual as a holder of basic rights, like the right to access to clean and potable water. I looked at the right to livelihood and sustainable development through broadening women's access to water and enhancing their participation in water management. The issues of equality between men and women in managing water resources for the benefit of everyone were also important. The human rights instruments relating to access to water as a human right and women's participation in water management and the role they play as water users and managers was also examined.

This broad approach emphasizes the relevance of the whole human rights issue in development processes. These include, firstly, civil and political rights, such as the right to participation, the right to freedom, the right to self-determination and the right to equality. Secondly, the social, cultural and economic rights, such as the right to health, the right to food and the right to a livelihood. Thirdly, the so-called solidarity rights, such as the right to development and the right to environment (Hellum, 2000).

The right to access to clean and potable water falls under all these categories as it is intertwined in so many aspects which include the right to food which is produced using water, the right to health, whereby poor health at times might be caused by lack of clean water, and the right to development and the environment. This is why I used the human rights perspective to examine the issues which affect women.

### **Gender and sex analysis**

Gender is seen as a concept that involves cultural interpretations of the biological differences between women and men. Gender thus entails, on the one hand, men and women's active roles in society and, on the other hand, ingrained social ideas about femininity and masculinity. What men and women should do and how they ought to behave and interact, spliced together with cultural, social and legal interpretations of perceived gender differences, constitute a gender system (Stølen, 1991: 5).

This paragraph summarizes the methodology of the gender and sex analysis as I explored to see whether gender inequality and power relations at the household level impacted on women's access to and control of water. It has been established from the findings that women are the water haulers for the family.

The gender and sex analysis methodology was important since gender is an issue in water, particularly in relation to opportunity costs. Women spend a lot of time fetching water which limits their ability to engage themselves in income-generating activities. Socially-constructed gender roles disadvantage women and therefore perpetuate women's subordinate position to men. I managed to ask some men why they do not fetch water for their wives but they said that since time immemorial, fetching water was a woman's role. Because of these gender roles, women and men have different stakes in water use. The majority of the respondents stated that fetching water was women's work.

### **Legal pluralism**

Legal pluralism describes a system where the tiered and interactive systems operate within a framework either inside or outside the formal legal state system (Griffiths, 1986). It is also understood as referring to a situation characterized by the coexistence of multiple normative systems all of which are valid (Von Benda-Beckman *et al.*, 1997)

In many modern, post-colonial African states, the general law, made up of the imported common law of the European colonizers and statutory law, operate side by side and interactively with customary laws of different ethnic groups (Bentzon *et al.*, 1998).

Legal pluralism was a useful framework for understanding the provisions under the Water Act and how they affect women's access to and control of water. It was evident that the Act does not recognize the pluralistic legal framework of Kenyan society. The community within Njoro, like any other Kenyans, live in a legally pluralistic environment so I had to interrogate the composite water delivery system. Apart from the formal court, women had ways of solving their problems, customarily through family heads or through elders. For example, the Njoro community water project committee members had forwarded their complaint about interference with the running of the water project by an opposing group to the chief and the district water engineer before they finally resorted to taking it to court.

Thus, they were using multiple systems of law, such as formal law, and other non-legal factors, such as taboos in respect of water. For example, one of the women told me that it was a taboo to deny someone water since it is a natural resource from God. This taboo has the characteristics of a right since it is from God therefore nobody has the right to deny a person this right.

Diffuse legal pluralism arises where a group has its own rules regulating social behaviour whose operation is neither sanctioned by nor emanates from state law (Kameri-Mbote, 2002).

### **Methods of data collection**

I used a multifaceted approach and different techniques to collect data from the field. One single method would not have sufficed. This was because I wanted to have a wide spectrum of data to capture local nuances. This was a means of getting to the core problem. The information provided by the committee members of the water project, government officials and women, was checked and clarified by members of the community and other relevant persons.

The nature of the problem of the research determined the sample and data collection methods used. I also took the following factors into account in determining the methods to use:

- Target group
- Timeframe allocated to undertake the research

The categories of analysis were individual respondents, key informants and international and national instruments on the right to water.

The following are the methods used to get information from different sources:

- In-depth individual interviews
- Key informants
- Group discussions
- Perusal of court records
- Participant observation
- Library research
- Internet research

### **In-depth individual interviews**

This method of interview is considered an effective way of gathering information because the interviewer can observe facial expressions, gestures and body language as well as probe for more. Cohen and Manion (1980) point out that this method allows a researcher to obtain the most pertinent and confidential information in face to face interaction.

Before embarking on the research, I prepared interview guides which would assist me to be focused on what kind of data I wanted to collect. I realized that this was the only way that I could get a flow of information on the research topic. I had contemplated using a questionnaire but I realized that it would limit me as I would not be able to get the lived realities and experiences of the respondents which are so important in the research process. This method also helped me to take into account the facial expressions, body language and gestures of the respondents which gave me an insight into how they feel about the issues under discussion.

In-depth individual interviews helped me identify how women and men access water, and what types of collective action they are involved in to alleviate water shortages.

The aim of the interviews was to ascertain how commercialization of water services has impacted on women and how they were coping with the impact. This approach enabled me to collect detailed accounts of women's lived realities and experiences of fetching water, standing in the long queues and getting contaminated water from the Ndarugu river.

I conducted a total of 29 in-depth interviews with 18 women and 11 men. This was done by introducing the research topic to the respondents, then letting them narrate their experiences from their own perspectives without fear of being victimized. I explained to them that the exercise would not prejudice them in anyway. Some gave the information on condition of anonymity as it touched on the politics in the area.

This method also helped me to examine how relationships within the households influenced women's participation in community management of water services. There were also interviews on the norms and practices surrounding water rights in the different groups as well as on gender-based barriers to participation.

**Table showing the number of respondents interviewed**

<b>Category of interviews</b>	<b>No of women</b>	<b>No. of Men</b>
In-depth individual interviews	18	11
Key informants	3	7

### **Key informants**

Before I went to the field, I had already in mind the possible key informants that I wanted to interview. I had to seek appointments to enable me to get an audience with them.

Key informants were chosen mainly because of their expert knowledge and experience in different structures and institutions that deal with water management and regulation.



I managed to interview a total of ten key informants and these included:

- Chief executive officer, Rift Valley Water Services Board
- Chief executive officer, Rift Valley Water Resources Management Authority
- Engineer, Rift Valley Water Services Board
- Executive director, RECONCILE (non-governmental organization)
- Matron, Njoro health centre
- Officer in charge of community water services, Rift Valley Water Services Board
- Chairman, Njoro Community Water Project
- Treasurer, Njoro Community Water Project
- Vice chairman, Njoro Community Water Project
- Member of Rift Valley Water Resources Management Authority

These key informants were chosen not only due to their expert knowledge but also because of their representative capacity of other normative structures and orders which play a crucial role in generating and upholding rules which are applied or invoked water-related issues.

The chief executive of the Rift Valley Water Services Board gave an insight into government policy on the issue of commercializing water services and what they are doing to regulate community water services to be a viable enterprise. He talked of the regulations and the requirements before a community can be licensed to operate as a water service provider.

The Matron of Njoro health centre, who is also the treasurer of Njoro Community Water Project, was my major key informant as she was the one who gave most of the information, being a woman who also bears the burden of triple gender roles. As a matron she gave me information on how she is forced by circumstances to buy water to sustain the maternity wing of the health centre. She said that when there is no water, women are forced to deliver and discharged the same day to be taken care of at their homes by their relatives.

As a treasurer, she was also useful because she is instrumental in managing the water project. She also introduced me to the other committee members and took me to the site of the boreholes and the water treatment plant which was not functional due to lack of water. She also introduced me to women and men whom I interviewed in respect of my topic. I went to Nakuru law courts with her to check on the position of their case which was pending before the senior resident magistrate. She told me that she had been following the outcome of the case alone as the men in the committee had given up.

Finally, the executive director of RECONCILE, a non-governmental organization, really gave me an insight into what they were doing to disseminate and sensitize people on the Water Act 2002. He said that they had written a proposal to the government so that they could train people on the new legislation and how it affects communities. They were still awaiting for a response from government but he was positive that it would work out.

### **Group discussions**

Informal group discussions were held in order to obtain the general views from women and men on the issues of access to water. They said that, since independence, water has been seen as a free commodity hence the reluctance to pay for it.

I organized the group discussions with the help of the treasurer, the matron at Njoro health centre. I had discussions with a group of 15 women who were waiting for various services at the health centre. Further, I talked to seven women who were in a queue at the Catholic church borehole, waiting to fetch water. I met ten

men at the annual general meeting and discussed various issues with them concerning access to water and its management.

Group discussion was useful because women opened up when they realized that they had similar problems and hoped that I would forward their concerns to the relevant authorities to alleviate their problems. Initially, they were suspicious and unwilling to talk but when the treasurer reassured them that I would not victimize them, they became more than willing to relate their lived experiences.

### **Observation**

This method involves spending time with people, either as a participant or as an onlooker. This was a powerful tool as everything spoke for itself without actual interviews. My first observation when I went to Njoro was that women and children were walking to either the Catholic church borehole or to the Ndarugu river with 20 litre jerrycans to fetch water. As much as they were going to fetch water, they did not look tidy (or clean). They looked haggard and exhausted. I also observed that men were fetching water and ferrying it on handcarts, bicycles or even motor vehicles.

This research tool was useful because it gave me a picture for analysis and also helped fill in the gaps from the individual interviews. It also had its shortcomings but nonetheless I gathered valuable information by applying non-participant observation techniques.

### **Library research**

Before I went to the field, I thought it necessary to do some library research to enable me get some insight through literature relating to my area of study. I looked at materials that had been written by other authors to guide me into my field work. It was also important for me to look at the national and international instruments relating to the right to water so that I would know whether there was any violation or compliance at national level. The texts looked at were for the purposes of correlating the information that exists with the findings in the field. This method was useful because it made me read widely and enlightened me on issues relating to water.

This was combined with internet research which was useful because most of the international instruments and literature on water are available on the internet. When I went to purchase the Water Act 2002 I was told by an official at Government Printers that it was out of stock until further notice. I found that the Act was on-line and could be downloaded; this was the saving grace of the internet.

### **Demarcation of the study**

This study was designed to focus on Njoro community water project within Njoro Township. This included rural and urban areas. The aim was to interview both male and female respondents within that area in respect to water issues. Njoro is a farming community situated about 30 kilometers from Nakuru town.

The first reason for identifying this community was that they had already signed a Memorandum of Understanding (Agreement) with the Rift Valley Water Services Board to supply water according to the Water Act 2002.

Since this was an area covering both rural and urban sites, I wanted to establish how commercialization has impacted on women's access to and control of water. It would also give me an opportunity to ascertain whether women participate in managing the water project and whether their input is considered at all.

## **Limitation of the study**

The major limitation that I encountered in this study was the time factor. This study was conducted over a period of four months which I found inadequate due to the type of interviews and information that I required to collect to enable me to analyze the pattern of events that took place at different times. I needed to get the patterns of time spent collecting water during dry and wet seasons to compare and contrast whether the burden would be lessened for the women or whether the access to water would be eased.

It took me a long time to interview the officials of the Water Board as most of the time they were either in meetings or workshops training people on the implementation of the Water Act 2002. I booked appointments but sometimes would be kept waiting at the reception for long hours before I could see the respondents. While interviewing the respondents there would be a lot of interruption which would cut short the interviews. They had to deal with other urgent administrative matters which had to be given priority over my interviews. This made the interviews either disjointed or repetitive, doing the same thing more than once.

Getting to interview women who were busy fetching water was not easy as they were in a hurry to get to other tasks, so I resorted to walking with them in the direction of their homes to get the interviews.

I also encountered a language barrier with the respondents who could not communicate in Kiswahili so I engaged the services of a translator which was not free. I had to drive around with a translator who could interpret for me in cases where I could not communicate with the respondents. This kind of communication sometimes has its shortcomings because you might not get the correct translation. For example, sometimes the respondent would talk very fast and the translator could only translate some words to catch up with her. There were certain words which she could neither translate in Kiswahili nor in English which made it impossible to communicate.

In conclusion, the methodology and methods applied were useful for the research, especially the women's law approach and the human rights perspective. This was important as they formed the analytical framework for discussion of water as a human right and the need for women to be included in planning and managing water resources.

## **Research findings and analysis**

This chapter presents the research findings and analysis of the findings.

### *Has the Water Act 2002 addressed communities' access to water?*

With the Repeal of the Water Act chapter 372 and the enactment of the Water Act 2002 there was a lot of hope that the failures of the previous Act would be addressed.

### *National water policy*

The National water policy is contained in the Sessional Paper No. 1 of 1999. The key objectives of the policy are:

- preservation, conservation and protection of available water resources and allocation in a sustainable, rational and economic way;
- supply of good quality water in sufficient quantities to meet various needs;
- establishment of an efficient and effective institutional framework to guide development in the sector and sustainable service provision.

In order to analyze whether the failures have been addressed by the new Water Act, it would be essential to list the expected outcomes of the said Act.

### **Expected outcomes under the Water Act 2002**

The expected outcomes are divided into three categories, that is, policy formulation, regulation, and service provision which are the core mandate of the Act.

It is expected that there shall be improved coordination in the water sector under one ministry and clear policy accountability. Attention should also be focused on water resource management. Clear regulatory frameworks are anticipated to be put in place with the implementation of the Act and performance monitoring and evaluation which was missing in chapter 372 has to be present. The major expectation under regulation is the improved performance of the water undertakers which will in effect supposedly improve access to water.

Under the service provision heading, it is expected that there will be improved management of water resources which includes quality and quantity of water. There should be the ability to attract and retain skilled manpower which is anticipated to result in efficient provision of services to self-sustainability. Further, there should be improved service delivery, increased coverage and ability to attract investments and put improved infrastructure

in place. The pertinent question is whether these expected outcomes of the Water Act 2002 have been met.

Based upon the research findings of the demarcated area of study, which was a small sample, I established from the interviews with both key informants and other individuals interviewed that the Act is in the process of being implemented but so far only the structures of separation of policy formulation, regulation and service provision have been put in place.

I attended a workshop at Egerton University, Njoro, organized by the Rift Valley Water Services Board where the main objective was to train district officers and other administrative officers on the implementation of the new Water Act. The workshop gave insights into the water policy framework and the strategic plan. Many questions were asked on how the Act is going to affect the community water service, especially as the communities were going to be required to become legal entities.

One of the district officers commented on the complexities of the process and the problems for the officials and the communities:

‘I am glad that you are training us on the implementation of the Water Act. You are telling us that communities have to become legal entities and have to apply for permits, as a district officer, how am I going to assist the communities to become legal entities yet it involves lawyers and fees to be paid? You have also shown a sample of how the application form looks, personally I find difficulties in filling in the information required, so how will I be of any help to the community?’

A sample of an application form which the communities are required to fill if they wish to apply for funding from the Water Services Trust Fund was availed to the participants but it seemed complicated and technical.<sup>8</sup> The information required needed a person to be trained before they could fill in those forms, especially in communities where many people are semi-illiterate.

For instance, the communities were required to state their legal status and prove it by attaching the registration certificate; describe themselves and their mission; describe their skills; and summarize the relevance of their project to poverty eradication and wealth creation, just to mention a few of the requirements for analysis. I showed the form to one of the committee members of the Njoro Community Water Project and asked him whether he could fill it in but he said that he did not even understand what was required in the first place. He suggested that such forms should be simplified for communities so that they can be of help to them. These requirements increase the transaction costs for the communities since they have to hire the services of experts like lawyers and engineers to draw up the necessary documents.

The executive officer of a non-governmental organization known as RECONCILE, based in Nakuru, commented that it was not right to implement the Water Act 2002 without training people on how it was to affect their access to water. He remarked:

‘It is a great fallacy for the government to implement a new Act which has several repercussions on the people, especially the rural poor, without training and dissemination of information. Looking at the provisions of the Act, it is state-centric and it introduces permits and licences which are dependent on land ownership. This in effect privatizes water to a few title holders. We have written a proposal to the government for training communities on the provisions of the Water Act and we hope that the response will be positive.’

When a new Act is enacted, it is imperative that the people to whom it is to apply know about its contents before implementation. This can be done through dissemination campaigns and workshops or through the media.

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<sup>8</sup> See Appendix: Application form for assistance to community water supply and sanitation project

## Taking charge of water

### Background to the Njoro Community Water Project

Njoro community Water Project was formed in 1999 and was issued with a license to operate by the Rift Valley Water Services board in 2002. This was to conform to the provisions of the Water Act 2002. Taking up the challenge presented problems as expressed by the key informants like the treasurer, vice-chairman and the secretary of the water project. The treasurer, a woman, said:

‘We started this project because we had suffered a lot due to the Njoro county council’s failure to manage to supply us with water services. This was due to corruption and incompetence of the staff that would collect money from homesteads without paying. By the time we were taking over, the county council had left an unpaid bill of Kenya shillings one million (1US dollar to Kshs 73/: 2006) which we had to undertake to pay before we could be allowed to supply water services.’<sup>9</sup>

It is evident that this community was suffering from lack of access to water and sat down as a community to try and alleviate this problem. But this was not easy because it came at a time when Kenya was undertaking reforms in the water sector and thus came up with the Water Act 2002 whose provisions had to be complied with.

This community water project is managed by a committee that consists of the following:

Chairman	Male
Vice-chairman	Male
Treasurer	Female
Secretary	Male
Technical Advisor	Male
Two members	Female
Chief	Male
Councilor	Male
Board representative	Male

This current committee was elected in 2001 and confirmed in October 2002. The treasurer narrated the problems that they have had ever since they were elected into office:

‘We are likely to have elections on 22 October 2005. We have had many problems due to political interferences by political leaders especially the area member of parliament who imposed his cronies in the management of the water project to gain political mileage. In January 2005 the opponents took away books of accounts and forcefully took over the management of the water project. We went to court and obtained a court order restraining the defendants from interfering with the running of the water project but it took us two and a half months to get the project back.’<sup>10</sup>

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<sup>9</sup> Interview with the vice chairman on 7 October, 2005.

<sup>10</sup> Interview, 7 October 2005.

The Njoro community water project purchases water in bulk from the Rift Valley Water Services Board then supplies it to four different categories of water users within the township and the outskirts. These categories are namely: kiosks, institutions like schools, hospitals and police stations, individual connections and commercial plots like petrol stations. Even though they have signed a Memorandum of Understanding with the Board, they have not been able to get enough supply to enable them to serve the community well.

This is what the treasurer had to say:

‘We initially had eight operational kiosks but due to low production of water from the Rift Valley Water Services Board and the collapse of the water pump at the borehole, only two are currently operational. We have lost four pumps at the borehole. I have been going to the offices of the Board to request them to come and repair it but they have not taken any steps.’<sup>11</sup>

Although the members of the community complained about the water pumps which had not been repaired by the Rift Valley Water Services Board, they said that they were better than their predecessors who were lax in maintaining the boreholes and the pumps. They had attributed this to corruption, collecting money from homesteads and leaving so much water unaccounted for.

### **Charging for water**

There are different rates that are charged for the different categories of consumers. For an individual to be connected to a water supply, he or she has to pay Kshs6,050 (US dollar rate at Kshs73), which is inclusive of a meter. For institutions and commercial plots they charge Kshs8,500 for the connections. There is a flat monthly rate of Kshs300 for an individual connection without a meter.

The community water project charges Kshs3 per 20 litre jerrycan and employs two women to sell the water when the supply is there. This supply is not reliable and sometimes they go for more than two weeks without any water supply. The amount charged might look small but the findings indicated that most women were not able to afford to pay for the water, hence resorted to other water sources which were not fit for drinking.

### **Training in management services**

The study established that the committee members who run the water project were not elected due to their knowledge and expertise in managing services. Anybody who vied for a post and had a popular vote would be elected, regardless of their experience in management.

When I attended the workshop at Egerton University organized by the Rift Valley Water Services Board, they had indicated that they would train communities on administrative and financial management to make them self-reliant and to become economically viable enterprises. The chairman, secretary and treasurer had not been trained on any management skills which were vital for running the project. The members of the community are supposed to be trained on the qualities, roles, responsibilities and obligations of each of the offices. This is important in that, when electing officers to the respective offices, the communities have certain guidelines and criteria to help in selecting the right candidates for each of the offices. Further, it becomes easier for the respective officers to report back to the electorate based on agreed tasks to be undertaken by each of the officers. The obligations, responsibilities and roles of the community were to be outlined, such as ownership, resource allocation, demand for services and accountability from the elected management when such services were not forthcoming or were substandard.

Currently the roles of office bearers are not stipulated therefore leading to duplication of roles and lack of accountability.

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<sup>11</sup> Interview with the treasurer on 7 October 2005

## **Infrastructure/ extension of water services to new users**

### **Who does the infrastructure constructed belong to and who manages it?**

The infrastructure that was in place has not improved or expanded to cater for the demand and the increase in population. For an individual to be connected to the supply, he or she has to lay the pipes at their own cost which is very expensive. This makes it difficult for the poor to afford, hence they resort to fetching water from the water kiosks and other water sources like the Catholic church borehole or from Ndarugu river. In order to be connected to the water supply, you must be an owner of a plot registered in your name. The current infrastructure belongs to the Rift Valley Water Services Board since it has just been leased to the community.

The extension of services to new users largely depends on an individual's capacity to lay the pipes and pay the requisite connection fees as earlier indicated. The vice chairman of the Njoro community water project suggested that in order to ensure sustainability of the community water supply, it is important that communities be vested with ownership of the infrastructure. He said that this would ensure proper maintenance and rapid interventions in case of breakdowns.

### **Women, the main victims of commercialization**

Commercialization of water services has far-reaching implications not only for women and children but for the family as a whole. No human being can survive without water. Women formed the overwhelming majority of the community's monetary poor. Women are the main victims when water provision is put into private hands as they do not have money to pay for drinking water. The findings established that those who could not afford to pay for water or purchase from the water vendors were forced to fetch it from Ndarugu river which is not fit for drinking.

Women are primarily responsible for water provision in most households. The task of fetching water marginalizes them because they hardly ever have time for income-generating activities or for leisure. Paying a high price for water hits women particularly hard as it puts another burden on their already relatively small income as is established by this study. Therefore water must be identified primarily as a public good and a human right and not simply as a commodity to be traded on the open market.

This situation is not different in the Njoro community where the study revealed that women are in no better situation. This is due to gender and power relations in the family and households which assigns specific roles and responsibilities to men and women in any given society. During the interviews with women and men I established that some men fetched water for their families using bicycles before they went to sell the surplus. Even though the gender division of labour according to some respondents assigns the responsibility for family nutrition and hygiene to women, some men were quick to say that they are ready to change their attitudes.

I interviewed men and women and sought their views on the issue of access to water and their perceptions on the gender roles in fetching water for the family. I asked some of the men why they were fetching water for sale and not supplying their families first but they said that it is a woman's duty to fetch water. One of the respondents remarked that if he fetches water for his wife, then what will the wife do? I found out that some men were willing to fetch water for the family in circumstances where their wives were sick and unable to perform the task. This was not what I expected on the ground. I had assumed that due to patriarchal tendencies and societal attitudes on gender roles, men could not assist their wives in fetching water.

As depicted in the picture opposite, when men are involved in the business of providing water, they often use bicycles, handcarts, wheelbarrows or vehicles. For women and girls, they have to either carry the water on their backs or heads depending on which community they come from. The Njoro community is mainly of the Kikuyu tribe who carry loads on their backs. This affects their backs, especially in old age. I saw a few old women walking while bent due to old age and the effect of carrying heavy loads on their backs.





Providing water for the family forms part of women’s workload and lives and very often they organize around water. Women and men have distinct responsibilities in using and managing water and water systems. The adverse impact of commodified water is exacerbated by many factors which include gender inequalities and inequities in families and households. It has further increased inequalities and vulnerability and the effects of social differentiation, that is, the divide between the poor and the rich has increased, maintaining exclusion of a high number of poor households.

**Gender dimensions of access to water**

**TABLE 1**

Women and girls	Men
Cooking	Irrigation
Bathing	Larger livestock
Cleaning	
Maintaining health and hygiene	
Raising small livestock	
Growing food	

Because of these different gender roles, women and men have different stakes in water use (Gender and Water Alliance, 2003) as illustrated in the table above. Women have special needs in relation to water which sometimes go unmet. It is therefore necessary for women's participation in the use and management of resources to be looked at in the broader context of the social construction of gender roles. Women and men's needs sometimes conflict over what is perceived to be the most important water use. Men engage in water collection for commercial purposes while women do so for domestic use for the family. The different perceptions would only be solved by equal involvement of women and men in the relevant decision-making structures where everybody could air their views.

The findings indicate that only three out of the ten officials at the management level of the water project are women. Two of the women have been given lowly posts as members of the committee and the other woman has been given a heavy task of handling money and running around collecting water revenue from the members.

I perused the membership register at the offices of the Njoro Community Water Project and it became apparent that out of the 228 members only 64 were women. I also interviewed a woman clerk at the office who was the only employee of the project. This is what she said:

'I am the one in charge of running the office, keeping records, the register of members and issuing water bills to the members. Currently we have 228 members but we also have eight kiosks from which we sell water to those who are unable to connect to the supply. These kiosks are spread all over because we cover a vast area which includes Shell, Bondeni site, Jawatho, Majango and Uhuru estate. We only connect water to plot owners; women are mostly disadvantaged due to lack of financial resources.'<sup>12</sup>

I gathered that women are most disadvantaged due to lack of financial resources; they are not able to purchase plots to be able to qualify for connection to the water supply. Some are forced to rely on their male counterparts among those who are attached. The lack of financial resources marginalizes women and further leads to the harsh impact of commercialized water which they have to purchase. Without monetary power and with no say in their counterparts' money, it becomes difficult for them to decide on how much is to be spent on water or whether money should be spent on water at all.

Women suggested that they needed to participate in the management of the water project but they had many factors that hindered their involvement. The first impediment is the power imbalances in communities. There are often strong divisions along the lines of age, class and gender. Religion was not a major factor although it also counts. Power differentials made it difficult for some women to voice their opinions that contradict general views. The power imbalances also affect who participates in which meetings.

Intra-household and intra-family relations are also factors that hinder women's participation in water resource management. For example, some women found it difficult to speak in front of their husbands or fathers. The other constraint to participation was the issue of time; they complained that meetings were set at 9.00am when women were busy with domestic chores, childcare and fetching water. The root cause of the problem of lack of participation was gender biases in education; women's literacy levels were lower than those of men. There was a high drop out rate from schools for girls due to many factors which affects their literacy levels. One woman interviewed on the issue of women's participation in community water management said:

'I would really like to participate but the problem is that my husband is also active in the affairs of the water management, therefore making it difficult for both of us to attend meetings. My husband cannot sit at home as I go for meetings. He has not refused me to attend the meetings but I just feel that it would be odd since he is the head of the family.'<sup>13</sup>

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<sup>12</sup> Interview on 29 October 2005

<sup>13</sup> Interview on 29 October 2005

Women have to develop self-esteem and confidence to be able to move from the private sphere to the public sphere and compete favourably with their male counterparts. In this particular case, the woman admitted that she has not been stopped from attending the meetings by the husband but it seems there are unwritten rules and code of conduct of women which they cannot question or go against. Why can't the husband remain at home as she attends the meeting?

### Time

Gleick (1999) estimates an average need of five litres per person per day for drinking, ten litres for food preparation, fifteen litres for bathing and twenty litres for basic hygiene and sanitation, making a total of 50 litres per day per person. Therefore if each individual requires 50 litres per day in a family of more than six, how much time does a woman need to fetch the water?

Time is an important asset for women in terms of organizing their activities around the household and outside. The respondents complained that they spent a lot of time fetching water and waiting in long queues for those who could afford the amount required to purchase the water. Others complained about the distances to the river and to the Catholic church borehole. This was due to the fact that most of the kiosks operated by the Njoro community water project did not have water.

The other pertinent observation was that the community water project's boreholes were not operational due to a sunken pump and therefore the eight water kiosks did not have any water. There were long queues at the Catholic church borehole and it seemed to me that men were given preference in the queues.

I also observed that women spent a lot of time fetching water and at the health centre to get health care services.

**TABLE 2**

**Women's domestic water collection timetable in Njoro Township**

Woman	Distance (km)	F a m i l y size	water use	Amount of water required(litres)
1	1	6	Drinking, bathing,cooking,washing clothes	100
2	3	5	Drinking, cooking, bathing, animals.	120
3	1	7	Washing clothes, cooking, bathing, drinking.	100
4	2	4	Animals, drinking, cooking, washing,	80

The table illustrates the time spent and how much water is collected by different women. The number of hours depends on the distance from the water point; and the amount of water is dependent on the family size and the water uses. There were respondents who required more water but could not meet the demand. This was due to time and other pressing domestic chores which had to be attended to, like preparing food for the family. In such cases they had to recycle water for other purposes like cleaning or washing.

## **The cost of water**

The cost involved in water collection is not only measured in monetary terms but also in opportunity costs. For women, the opportunity costs are more than the money they spend to purchase water. The study revealed that women often spent a lot of time fetching water thus denying them time to engage in other income-generating activities like selling wares in the market.

In poor households, women have to make sacrifices in order to provide water. When Wanjiru was asked why she fetches water from Ndarugu river which is not fit for drinking, she said:

‘I fetch water here because I cannot afford to buy water from the Catholic church borehole or from the kiosks of the Njoro Community Water Project. I use the little money that I save to buy food for my children. I am aware that this water is not safe but I have no alternative. I sell vegetables which gives me very little income. I do not have a husband to depend on.’

These are the difficult choices that women face every day in their lives due to commercialization of water services.

There has been a drastic and traumatizing increase in water rates since commercialization began. Currently the average tariff charged on water is Kshs 25 per cubic metre compared to a production cost of Kshs 40 per cubic metre for the same amount. Pressure is already mounting from some water service providers who argue that they cannot service their loans based on the water tariffs currently in use (*Kisima, 2005*). Women have been the most affected by these increases. These increases have led to disconnections which inconveniences the women who interact a lot with water.

Men care little about water bills and how and where the water is obtained. I asked Baba Kamau about where water is fetched and he said:

‘I do not know where Mama Kamau fetches the water, maybe you can ask her. When I wake up I find she has prepared for me water for bathing and the breakfast is also ready. I have never bothered to know where she gets the water and the problems she undergoes in fetching it.’

Women must know how to get the supply and pay for it. In most cases, power at the household level is concentrated in the hands of men; that is why a man can give such a statement comfortably and life continues.

Experience the world over shows that selling water on the open market does not meet the needs of the poor, especially of poor women. According to the World Commission on Water, some 1.2 billion people in peri-urban communities in developing countries pay on average twelve times more for water than their better-off compatriots in the affluent areas in the cities. I established that the beneficiaries of low water prices are not the poor but the middle class who have access to piped water. The poor pay more to the water vendors. Women recounted to me the problems they face when there is a water shortage and the high prices they would have to pay for water from the water vendors which makes it unaffordable. They also said that they resorted to fetching water from Ndarugu river, which is polluted, due to the unaffordability of the water leading to many cases of waterborne diseases like typhoid and diarrhea.

Through group discussions conducted, I got more information about women’s suffering due to the exorbitant prices and the unavailability of water. They gave a recommendation that while the government is commercializing water services, it should not impose an undue burden on the poor. Safety nets and subsidies should be considered for the poor.

## **Health**

I visited the Njoro Community Health Centre which caters for most of the residents within Njoro Township. This was by courtesy of the matron who doubled up as the treasurer of the Njoro community water project. I

found many patients waiting to be attended to but I was taken aback by the fact that most of them were women and children. This made me take an interest in the type of services that they required. Were they seeking ante-natal services, family planning services or medical attention in respect of various ailments? Is it that men do not get ill or is it that they did not attend that particular health centre? All my queries were answered when I interviewed the respondents and the matron in charge of the health center who said:

‘I am the in-charge of this health centre. We handle all cases that we receive; we only refer complicated cases to the Rift Valley Provincial General Hospital in Nakuru. I must say that we are overwhelmed because we receive too many patients. Due to a shortage of staff, we are unable to handle all cases. We run a maternity wing to cater for women living around here. Our major problem is water, it comes intermittently and, as you know, a hospital requires a plentiful supply and a continuous flow of water. When water is available, I always make sure that it is pumped to the health centre before other consumers get it. When water is not available, I am forced to buy water to fill the tanks for hospital use because I cannot run the maternity wing without water. I had to talk to the medical officer in charge to allow us to levy some minimal charges in order to cope with the pressure. It pains me as a woman but I have no choice when we have to discharge mothers who have just given birth to be nursed at home due to lack of water.’

Women suffer a double burden due to lack of water in situations where they have to be discharged from hospital after delivery because there is no water. Who is going to ensure that she has enough water to take care of herself and the newborn if she is the same person expected to fetch that water?

Further, incidences of waterborne diseases were common as one of the hospital staff said:

‘I have worked here for a period of two years and I have noticed a similar trend of waterborne diseases. We have always advised the patients to boil water for drinking, even if it is piped water. We have tried to discourage them from using water from the Ndarugu river but it is difficult to monitor people in their households. We have no mechanisms for ensuring compliance. We receive many cases of typhoid, diarrhea and dysentery on a daily basis which is a pointer to the use of untreated or polluted water.’

All these were due to lack of access to clean, potable water which is exacerbated by the impact of commercialization of water services. I established that most of the patients had either come or brought their children for treatment for waterborne diseases and other related ailments. The burden of taking care of the sick still lies on women.

Medical research has documented cases of permanent damage to women’s health attributed to carrying water. Problems range from chronic fatigue and spinal and pelvic deformities to effects on reproductive health, such as spontaneous abortions (Seaforth, 1996). A key informant, Mr. Njoroge said:

‘When my wife is pregnant, we spend more money buying water because she cannot fetch it due to her delicate position. She is normally advised to be on bed rest, due to cervical incompetence. This eats into our meager income but I have to persevere because I know the consequences.’

Men are ready to spend money only when what they value is at stake.

Seaforth (1996) further states that it has also been determined that the nutritional levels of children are often negatively related to the distance the mother must walk for water. For example, if a mother has to walk a long distance to go and fetch water first, it means the children will have to wait until the mother comes back with the water to prepare the breakfast or lunch for them because the preparation of the food is dependent on the water.

Lack of clean water frequently leads to waterborne diseases such as typhoid, bilharzia and malaria which are killer diseases. Women and children are exposed to this kind of life daily as they conduct their multiple gender roles.

From my observation, the women and children looked haggard and untidy; there was a lack of proper hygiene. It was difficult to ask the women how many times they bathe or if they bathed at all. One woman admitted that in order to save time and money, she recycles dirty water for use in the household. Health and hygiene of women and children is thus seriously compromised in their bid to economize on the use of water.

Women are further burdened by the HIV/AIDS scourge. Women carry the bulk of responsibility for looking after sick family members. The time and attention required by AIDS-infected patients places another burden on women. The household need for water to nurse the sick is increased while at the same time the available labour for fetching water is decreased. This in effect exposes women to infections since they might try to recycle water to use.



The picture above shows the Ndarugu river which is an alternative source of water for the community living in Njoro Township and the outskirts. It is drying up due to poor resource management.

### **Education of the girl child**

Women and girls walked long distances in search of the precious commodity – water. One of the immediate effects on the girl child was on her schooling, as much time is spent on fetching water resulting in poor performances at school and high drop-out levels. This was confirmed through interviews with women and girls whom I found fetching water during school-going hours. Some of the girls went to school on alternate days after accomplishing their tasks. Two girls abandoned school because of punishments due to lateness and absenteeism which had led to poor performance. They said that they feared becoming laughing stocks due to their marginal performance.



This photograph, though not clear was taken about one kilometre from the Ndarugu river and illustrates how young girls walk long distances to fetch water. I interviewed the two girls in the picture and they told me that they walk for about 3kms to fetch water from Ndarugu river. Even though they pass by the Catholic church borehole on their way to the river, they are not able to afford to pay for the water; secondly the queues are too long.

While walking to the river I met a woman and her daughter who were on their way to fetch water. I interviewed the daughter who was about 11 years old and she said:

‘My name is Wairimu. I am in class 5 at a local primary school. I always assist my mother to fetch water before I go to school. Sometimes I reach school late and I am punished for arriving late. There is nothing I can do because my mother cannot fetch water for the whole family alone, so I have to bear with the situation. When I am too late I do not go to school at all because I fear that the teacher will punish me. If my family could afford piped water I would be very happy.’

These young girls are performing their gender roles at a tender age to the detriment of their advancement in education

#### **Women married to men registered as landowners (wealthy men)**

This category of women who are married to wealthy landowners did not feel the harsh impact of commercialization of water services as the burden is taken care of by their husbands. These women were housewives who performed the household chores. I interviewed three women who admitted that they did not know anything about water bills. They said that even though they suffer from water shortages, their husbands would organize with the water vendors to supply water.

Rich and influential households had preferential conditions of access and different sources of water compared to poor households. This is due to the fact that they are able to pay the high prices for the water. This was a very small percentage of the area of the study.

### **Women registered as landowners**

This category of women felt the impact of commercialization of water services similarly to the others who did not own land due to the water shortages and inadequate supply. One of the women said that even if you are connected to the supply, if there is no water, you suffer the same hardship like people who are not connected. But she further said that they are better off because when the supply is there, they store water in their tanks for several days and thus do not have to walk long distances to fetch water.

I further interviewed women who did not own land. Most of them were young women who were single mothers and were eking out a living from the meagre income from selling vegetables. They lamented that they were finding it difficult to cope with the daily routine of fetching water and also selling vegetables to earn a living. Households without land may have more restricted access to water. Property relations, in other words, establish differential conditions of access to water that exclude some households.

### **Challenges and constraints of community-managed water systems**

The committee members of Njoro community water project expressed the challenges and the constraints they face in running the water project. They listed them as: under-performance, an inadequate management framework, poor record keeping and lack of checks and balances. They said that some of the constraints were due to circumstances that were beyond their control, for example under-performance.

#### **Under-performance**

The treasurer had this to say:

‘The maximum amount of water that we have ever received is 110 cubic metres which is very inadequate and cannot supply all our consumers. The production is currently very low because the pump is very small. We have complained to the Rift Valley Water Services Board and they said that they are looking into the matter; meanwhile we are unable to supply water.’

As much as the project would like to serve the community, they are constrained by the lack of supply of enough water and the installation of the right pumps and maintenance of these pumps.

I went to where the boreholes and water pumps were situated and found them broken and unusable. I found the vice chairman cutting grass for his cows around that area. I interviewed him on the issue of the boreholes and the water pumps and he said:

‘I am the vice chairman of Njoro Community Water Project. We have lost four water pumps here; the last one was being installed recently at this borehole. I believe this pump can be retrieved and be used in another borehole, these water pumps are very expensive and I think the main problem is that the authorities concerned do not listen or take our advice. The other problem is that the people charged with procurement of the pumps go for substandard quality and that is why they sink.’

The vice chairman suggested that the Board should listen to their views so that they can come up with proper solutions to the water problem and management. It was his view that good water pumps come from Germany or the United Kingdom therefore they should source them from such countries. They should not go for cheap water pumps which breakdown before they are installed, causing the community a lot of hardship.



### **Inadequate management framework**

In any organization there have to be guidelines and operation procedures to be followed. If such is lacking then the issue of accountability becomes difficult. There must be guidelines on who does what, how it is done and what happens in case of non-compliance. There was a woman in the office who was the only employee of the water project at that particular time. She was in charge of all the transactions in the office, like keeping records, issuing water bills to the members and cleaning the office. She did not have any specific training on whatever she had been employed to do. This made it difficult for proper management to take place. There were also no checks and balances for accountability on how the committee is running the project and whether they were using the revenue properly.

### **Advantages of the community-managed water supply**

Apart from the few constraints mentioned above, community-managed water services have their own advantages which benefit the people they serve. The major advantage is that the community has a direct interest in the project which helps generate a sense of ownership. They took it upon themselves to follow up the issue of sunken pumps with the Board since they had a stake in it. The only problem that the project had was that the infrastructure and the equipment had been leased to them by the Rift Valley Water Services Board therefore they could not carry out routine repairs without the Board's consent.

The users' knowledge of local conditions is better than that of government officials. This example arose when the vice chairman of the community water project lamented about the sunken pumps at the boreholes. The knowledge helps to improve the project design, monitor the performance of the infrastructure and to report needs for repairs quickly.

The other advantage which was expressed by the members of the committee was that community management helps members to appreciate their own requirements and makes them aware that they must share costs to tailor water supply design to meet the local situations and demands. In addition, direct responsibility for managing a system makes them aware of the cost of operations and maintenance which increases the willingness to pay.

### **Discussions of responses**

In this chapter I discuss and analyze the emerging issues from the findings. It is evident from the findings of the study, as previously stated, that women are the collectors of water and that they have been adversely affected by the commercialization of water services. Water has been a free commodity since independence hence the reluctance to pay.

The absence of a law on privatization establishing legal parameters and a framework has been a major area of weakness and concern, often creating uncertainties and a vacuum. There should be clear policies as well as appropriate legislation to support privatization. This could partly explain the problems encountered in commercializing water services as no clear rules are in place to support it. As I write this, Kenya is yet to develop a well spelt out policy on water privatization and management of water resources.

Experience of many countries like Ghana, South Africa and Bolivia, shows from the literature review that privatized water is more expensive because it often involves ceding control over ownership of water resources by the people to profit-driven private concerns.

The international finance corporations and the World Bank insist on what is termed as full cost recovery. Drawing from the experiences of other countries and the community under study it would be noteworthy to state that privatizing water services does not achieve its goals of efficiency in service delivery and states paying their national debts. In fact the outcome is the opposite. This is because commercialization is neither driven by national priorities nor aimed at universal access to water. For example, in 2002, the French water giant Generale des Eaux proposed taking charge of Nairobi's water billing system. The offer was rejected since there was little interest in rehabilitating the dilapidated infrastructure (Seaforth, 2004).

There is need for caution and reflection to avoid the pitfalls of increasing costs which burden the poor without safeguards, as has been illustrated by the findings in this study.

On the human rights perspective, the right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies, necessary to fulfil the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. These entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water (CESCR, 2002). When you analyze this paragraph in light of the findings of the study, very little has been done to ensure that the right to water is achieved. The water supply systems at the Njoro water project were in a deplorable state and water supplies to the project were inadequate.

It is stipulated in articles 11(1) and 12 of General Comment no 15 (2002) issued by the Committee on Economic, Social and Cultural Rights, that the right to water should be adequate for human dignity, life and health. Water

should be treated as a social and cultural good and not primarily as an economic good. While adequacy of water required for the right to water may vary according to different conditions, the Covenant states that the following factors apply in all circumstances:

- *Availability* – the water supply for each person must be sufficient and continuous for personal and domestic uses – drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO,2003) guidelines.
- *Quality* – the water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical and radiological hazards that constitute a threat to a person’s health.<sup>14</sup>
- *Accessibility* –water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the state party.

The research shows that the issues of quality, availability and accessibility are still not being met by our government, forcing women to walk long distances in search of water when in many cases they might not be sure of the quality of the water they fetch.

Principle 3 of the Dublin Statement on Water and Sustainable Development states that women should play a central part in the provision, management and safeguarding of water. The role of women as users and providers is rarely reflected in policies and in institutional arrangements. Acceptance and implementation of this principle requires positive policies to address women’s specific needs and to equip and empower them to participate at all levels in water resources programmes, including in decision-making and implementing policies in ways defined by them.<sup>15</sup> Women do not play a significant role in the management of the water project as is envisaged by this principle.

Further, it was also apparent that even though the Water Act 2002 emphasizes the role and participation of local communities, it does not recognize gender issues. There is no specific section in the Act that deals with the inclusion of a certain number of women in the committees or on the regulatory boards.

The composition of the members of the Rift Valley Water Services Board is ten men; women are not represented and yet the strategic plan states that they intend to promote gender responsiveness in board management and in all relevant water and sanitation activities. It further enumerates how they intend to accomplish this:

- Identify the constraints leading to poor representation of women in management;
- Develop a strategy to reduce the constraints;
- Implement gender workplace policy;
- Develop and use a gender sensitive monitoring and evaluation system.

This illustrates how even though policies might be in place, their implementation discriminates against women. Why are women not represented on the board yet it states clearly that it will promote gender responsiveness in board management and in all relevant water and sanitation activities? Change has to start with the government regulatory bodies to enable communities to benefit from their examples.

Two reasons for change arising from gender relations and gender inequality emerged from this study. There was a failure of men to value women’s time spent in fetching water due to their perceptions about whose duty it is to collect water. The fact that men wondered what women would do in their spare time if they did not fetch water was a sign of insecurity and patriarchal tendencies. Are women supposed to have any time for leisure or other activities or are they to be engaged with household chores for 24 hours a day?

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14 See WHO, Guidelines for drinking water quality, 2<sup>nd</sup> edition, Geneva, 1994.

15 <http://www.wmo.ch/web/homs/documents/engli>

The impact on women of the commercialization of water services is situated in gender discrimination and poverty, as much as in family relationships and hierarchies. Poverty was a pointer to most of the harsh realities of limited access to clean water within this community. As mentioned previously, women form the majority of the poor hence cannot afford most of the basic services, including commodified water.

Gender relations interact with material inequalities to influence access to water. They also influence the social relations of access to water in at least three ways. Firstly, there are gender-based divisions of work in all societies. In many societies, women have primary responsibility for organizing and undertaking domestic work (Elson,1995:259). This work includes a range of activities, for example, maintaining daily life (cooking, cleaning, washing clothes) and caring for and raising the children. Women also tend to work longer hours than men in many societies (Pearson, 1992). Secondly, it was evident that the majority of productive assets, that is land and finances, are owned and controlled by men. This means that those forms of access to water that involve ownership of property, as already described, tend to be dominated by men. Decision making is male dominated in social access to water. Thirdly, policy discourse and local norms situate economic uses of water in the male domain and domestic uses in the female domain.

## **Conclusions and recommendations**

This chapter deals with the conclusion and the recommendations that are suggested from the study.

### **Conclusion**

In most African countries, women are marginalized in all spheres and as such they have limited access to almost all resources, like education, health care services, water, the labour market, including economic resources. All these resources are interconnected in such a way that lack of access to one leads to repercussions on the other. Women within Njoro community were not an exception to this phenomenon.

Women play an integral part in development in any given society although their contribution is sometimes hardly recognized. Water is one of the most important resources for people's survival. Access to clean and potable water has been an issue of concern for African women. This has far-reaching effects, not only on the women but also on their family as a whole.

It is evident from the study that women have a complex relationship with water and are struggling to accomplish their mothering and caring roles of the family as they bear the brunt of commercialization of water services. It is also clear that women, being significant users of water both for production and domestic purposes, rarely have an input into water decision making, either at macro or even at micro level. They have not been considered in water allocation policies.

Water is a human right which, if traded in the open market, perpetuates gender inequalities, unbalanced power relations and stereotyping of gender roles in families and households. As women form the majority of the community's poor, they are not an interesting target group for profit-oriented water companies.

A water provision crisis is often a crisis of governance. Good governance means establishing an effective policy and legal framework to allocate and manage water. Women are the collectors and carriers of water in both rural and urban Kenya. They are also known to play a vital role as water suppliers and water managers. A practical example is that even in urban areas, when there is a water shortage or rationing, it is women who know where to fetch water since they know about the location, reliability and quality of local water sources.

Under international instruments, men and women are recognized as equal and therefore they should participate in making decisions about and managing water resources as equal partners and not as subordinates. Kenya is signatory to most of these international instruments and therefore should implement them through strategic litigation if they cannot be domesticated to form part of the national laws.

Due to women's important role as users and managers of natural resources, they have the potential to be strategic actors in sustainable development and environmental conservation (Dankelman, 2000). Access to an adequate and reliable supply of water would stimulate economic growth which would uplift living standards, not only for women but for the whole family.

Commercialization of water services violates many human rights principles like the right to health and the right to adequate living conditions, as provided for in several international instruments mentioned in this study. Even though commercializing water services affects the whole family, this study established that women and children are more adversely affected than men. This is because they bear the responsibility of fetching water and taking care of household chores. The right to clean water is a human rights issue which should not be taken for granted by governments.

Commercialization of water services can only work in areas where consumers can pay the costs of commodified water services. This leaves a large proportion of the poor and low-income neighbourhoods who cannot afford to pay for such services without water supplies. Commercialization is not viable, especially for community-managed water services that lack financial and technical resources for sustainable management, as seen in the Njoro community water project example.

There should be safety nets and subsidies on water services for the vulnerable and the poor who cannot afford commodified water. Currently, the water Act 2002 does not make recognize customary laws and practices which might impact on the right to access to water, especially on the issue of land tenure systems. This is one of the gaps in the legislation that needs to be addressed. Finally, there is concern that the Act does not adequately safeguard against price increases.

Research or a feasibility study should be carried out to explore the implications of certain policies on the poor before they are implemented because more often than not they have serious impacts on the vulnerable.

Finally, attention should be given to gender differences in community water management. As users of the resource, women and men have different interests, needs and priorities in respect to its management.

## **Recommendations**

Based on the forgoing analysis, the following recommendations are suggested.

### **1 Legislative reform**

I established from the study that Kenya does not explicitly recognize access to water as a human right. It can be implied in chapter V article 71 which deals with the protection of right to life under fundamental rights and freedoms of the individual. There should be specific constitutional provisions that guarantee access to water as a human right. Our draft constitution had progressive articles but it was rejected by the people during the referendum. Merely putting regulatory frameworks in place like the one provided for in the Water Act 2002 will not ensure universal access. Kenya should emulate countries like Ethiopia, South Africa and Zambia whose constitutions guarantee their citizens access to sufficient, clean and safe water respectively. This would be the starting point for legislative reform.

The next recommendation would be to amend the Water Act 2002 to recognize the pluralistic legal framework of Kenyan society so that it can cater for the poor and women who are not able to own land. The Act states that permits run with ownership of land and that the permits are not transferable.

The Water Act 2002 [privatizes](#) water rights for a small section of the community: property owners who are able to acquire and use water resource permits. Most women do not own land so cannot acquire permits. The other important recommendation is that policies that exclude women should not only be condemned but resisted. Therefore we should organize for change and not mobilize for sympathy.

## **2 Administrative reform**

Since the Water Act 2002 has just come into operation, there is a lot to be done to help in its implementation. First and foremost the administrators who are charged with the duty of operationalizing the Act need to be trained to integrate gender concerns into water policies and come up with gender-sensitive policies in water-related areas. The training should target policy makers and implementers on the concepts and tools of gender analysis so they understand women's concerns and special needs.

The administrators should also make the process of acquiring a permit less rigorous. The requirement that a person has to be a legal entity does not help the poor or the communities who want to access water. There should also be capacity building at national and local levels to develop appropriate policies, strategies and programmes for implementing priority activities like repair and maintenance of water pumps and boreholes for the communities. This would help the pathetic situation in which the Njoro water boreholes and pumps were in.

## **3 Empowerment/ gender sensitization**

The most important step in the direction of finding solutions to issues of water management and provision is to change peoples' attitudes and habits. First and foremost men's perception of women's role as water collectors must change in order to achieve gender equity in the household and families.

Most of the women whom I interviewed were not economically empowered and that is why they were fetching water from the Ndarugu river. There is a need to increase women's monetary power by engaging them in the informal economy through increased employment opportunities. They should also be trained in skills for development to make them independent. Apart from economic empowerment women need to be empowered psychologically and socially to respond to the problems they face as women. Women's confidence and self-esteem can only increase when they have greater knowledge, economic assets and income-earning capacity. This will make them more likely to participate in both private and public decision making. Low participation is often due to stereotypes perpetuated by both men and women that assign women's position to the private and men's position to the public sphere. Women's perceptions of being subordinate should change.

## **4 Capacity building**

Capacities of the Njoro Community Water Project committee members as well as other institutions engaged in water resources management must first be built to ensure that they are equipped to undertake the water provision services effectively. The capacities that need to be acquired and strengthened are human resources management (knowledge and skills), technical and financial skills which the committee lacked. The main focus should be on the communities who need to take over the management of water supplies. This includes training communities in all aspects of water management, health and hygiene. Improvement of service levels, proper billing systems and a reduction in illegal connections as well as increased membership should be encouraged. It is important for individuals and institutions to undergo gender training so that they can appreciate the limitations that gender divisions of labour and assigned gender roles pose for women in accessing water.

## **5 Networking**

Networking is important in sharing information on best practices. This would enable communities who have similar projects to benefit from the success stories of others and emulate the best practices. There should be clear and open channels of information flow and sharing among and between all institutions and communities. Networking also requires awareness raising at all levels within and among all the institutions involved in water resources management and service provision. This will ensure the recognition by the communities and institutions of the importance of proper management of water resources and their appreciation of access to water as a human right.

## **6 Political will**

All said and done, without the political will, there can be no progress or change. It is time to make water resource management and provision challenges the focus of politics. We need to respond to these problems politically. This requires lobbying the policy makers to change their attitudes:

‘No matter how inefficient systems may be, there are always those who benefit from these inefficiencies and who therefore oppose change’(Briscoe, 1994).

It should be noted that there can be resistance to change but this should not be a hindrance to lobbying for it. You can enact good laws and put beautiful policies in place but if there is no goodwill from the government then it is as good as nothing. This is worsened by a lack of sufficient funding due to changes of policies by donors and government.

## **7 Monitoring and evaluation**

There is a need for effective monitoring and evaluation systems to measure progress towards the Millennium Development Goals. These should also measure project and policy results in order to guide needed changes. Monitoring and evaluation is a learning and management tool for tackling problems when they arise. There should be periodic assessments of the activities of the communities on the ground to improve the effectiveness of the management.

I would suggest that a gender sensitive approach to evaluation be taken. This will look into the gender inequities and power relations in families and households that marginalize women. We have to focus on women’s lived realities with a view to reversing the inequities and empowering them with knowledge and resources. This can be done through participatory means to bring about awareness raising, capacity building and using the evaluation process to effect change.

While doing this, it is paramount that all stakeholders are involved in the evaluation process so that they feel part of the process. It is important to note that while monitoring, we must know who our beneficiaries and stakeholders are and who is going to use the monitoring and evaluation. Is it the government for law reform purposes? Is it the administrative body? Is it the donor?

We must not lose sight of the fact that monitoring and evaluation depends on many factors like the theory in use in that particular group or country, the assumptions and the intended results. All these are important in carrying out a monitoring and evaluation exercise.



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**APPENDIX : WATER SERVICES TRUST FUND (WSTF)**

**Application form**

Application for assistance to a community water supply and sanitation project

Name of applicant: ..... Title of project: .....

Address of applicant- ..... Location of the project.....

District ..... Division .....

Location.....

Legal status of the applicant (attach registration certificate):

.....

Briefly Describe Yourselves and Your Mission

.....

.....

Describe Your Workforce for the Project – (Name and Skills)

.....

.....

The total budget for the project is: Kshs: .....

The total budget for the proposal is:Kshs .....

**Summarize Relevance of Your Project to Poverty Eradication and Wealth Creation:**

.....

.....

**Expected Project Start Date:** .....

**Expected Project Completion Date:** .....

PROVIDE IN DETAIL EXPLANATION FOR THE FOLLOWING:

(Relevant supporting documentation will be an added advantage. You are limited to maximum of 20 pages.)

Proposal/Application Summary:

(Provide a summary of the water services project including the needs to be addressed, how the Proposal/Application responds to this need, and a description of the water services project goal and objectives)

.....

-

.....

**NEEDS/SITUATION ANALYSIS:**

(Identify clearly the need and/or problem that the Proposal/Application is responding to and how it was arrived at)

.....  
.....

**Water Services Project Description and Rationale:**

(Outline the proposed response to the identified need or problem. Provide a description of the proposed water services project by articulating and explaining fully the project objectives and outcome expected and its rationale)

.....  
.....

(Clearly detail the relationship between the Community for the Proposal/Application and the target group(s). The specific interests of the Community in representing the target group(s) in the Proposal/Application should be discussed and a clear justification provided showing why they are appropriate. Provide details of the level of community contribution to the Project)

.....  
-

**Poverty Reduction and Wealth Creation:**

(Articulate the goal for the water services project (including indicators for measuring results) clearly and discuss in relation to the wealth creation and poverty eradication considerations)

.....  
.....

**Implementation and Sustainability:**

(Give particular attention to considering how the benefits of the water services project will be realized and how the benefits will have a lasting/sustainable impact)

.....  
.....

**Design**

(This section should focus on the design approach to the water services project)

***Outputs and Activities***

.....  
.....

Work plan

.....  
.....

Timetable/Schedule

.....  
-

**Methodology** – Technical design of the project including available water sources and water demand figures (please attach all documents including drawings

.....  
.....

**Implementation:**

Comment on how these will be addressed:

*Monitoring and Evaluation (Self Assessment):*

.....  
.....

*Impact Analysis:*

.....  
-

*Anticipated Risks and Constraints*

.....  
.....

*Capability and Expertise of the Proposed Team and/or Sub-contractors:*

.....  
.....

**Budget:**

(Provide a detailed budget developed from the work plan. This should include the level and amount of community contribution for the project)

.....  
.....

Date of Application : .....Signature:.....

Name:.....Position:.....

Witnessed by: (Stakeholders representative)

Signature:.....Name:.....

Position: .....

(APPROVED BY THE WATER SERVICES BOARD / DISTRICT WATER OFFICER).

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