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**WOMEN'S PARTICIPATION IN WATER GOVERNANCE STRUCTURES OF  
DIFFERENT WATER PROVIDERS.  
A CASE STUDY OF COMMUNITY WATER PROJECTS AND WATER KIOSKS IN  
NAKURU, KENYA**

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## Abstract

Unable to satisfy the nation's need for water, the Kenyan Government has, in the case of Nakuru, the country's fourth largest city, embarked on two water privatisation projects with local profit-making companies, one to service its urban and the other its rural community. This dissertation analyses the extent to which both these communities dismally fail to access sufficient water for their daily needs, primarily as a result of their women being excluded from the structures which establish and manage the allocation and delivery of their community water. Consequently, the entire health and integrity of the Nakuru community has been seriously compromised and the lives of its marginalised women severely disrupted since, as the communities prime carers and, hence, prime water users, they spend their precious hours queuing or searching for water. The privatised water scheme either fails to deliver water efficiently or at a rate beyond the means of the average resident. Guided overall by the Women's Law Approach, the researcher effectively combines several other methodologies, especially Grounded and Human Rights based Theories, to research this topic which he conducts by implementing several complementary data collection methods including in-depth interviews, focus discussion groups (of a selection of affected women as well as relevant government and community representatives) and extensive research into the relevant laws and literature in the area. He discovers that, although the Kenyan government has established a commendable policy and legal framework which protects the right of women to access water, it has failed to make this right a reality for various reasons, including its failure to address the negative aspects of poverty, illiteracy, culture, and, especially, gender discrimination. For example, the Government fails to hold private water companies to account for failing to ensure that the minimum legal number of women from the local community are elected on to its critical management structures. Hence, in order to improve this situation, the Kenyan Government is encouraged to make the establishment and management of any water development project more sensitive to and pro-active in favour of supplying the water needs of its communities' women. He also suggests that, amongst other things, men and women should participate equally in the establishment and management of any water project. It should also follow the lead of South Africa whose Constitutional Court recognises that the Government should provide a minimum amount of water to its poorest and most vulnerable citizens, especially its women, free of charge.

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## **Dedication**

This dissertation is dedicated to my beloved children and wife who gave me the encouragement and the support to pursue this course.

To my beloved parents Khakayi and the late Ignatius who made it possible for me to pursue my education to this level.

## Acronyms and Abbreviations

MDG	Millennium Development Goal
WRUA	Water Resource Users Association
MWI	Ministry of Water and Irrigation
GoK	Government of Kenya
CBO	Community Based Organization
CDF	Community Development Fund
NAWASSCO	Nakuru Water and Sanitation Services Company
NARUWASCO	Nakuru Rural Water and Sanitation Company
RVWSB	Rift Valley Water Services Board
WRMA	Water Resource Management Authority
CDN	Catholic Diocese of Nakuru
WSB	Water Services Board
WSP	Water Service Provider
WSTF	Water Service Trust Fund
NWCPC	National Water Conservation and Pipeline Corporation
FAO	Food and Agriculture Organization
WB	World Bank
IMF	International Monetary Fund
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
WHO	World Health Organization

## Table of Cases cited

*Mazibuko versus city of Johannesburg* (2009) <http://www.ejiltalk.org/a-human-right-to-water-the-south-african-constitutional-court>

## **CHAPTER ONE**

### **1.0 INTRODUCTION AND BACKGROUND TO THE STUDY**

#### **1.1 Introduction**

This dissertation is based on research that was carried out on the participation of women in the governance of community water projects in the Baruti Division of the Nakuru District, Kenya and women's participation in the governance of water kiosks within Nakuru Municipality. The research topic was women's participation in governance structures of different water providers in Nakuru. The dissertation is divided into seven chapters. This chapter addresses the framework of the study and covers the background of the research, why the topic was chosen, the objectives of the research, the assumptions made and the questions formulated based on the assumptions and conclusion. Chapter two addresses the institutional framework of the Kenya water sector, the main water service providers in Nakuru, community water projects in Baruti division of Nakuru district, water kiosks within the Municipality of Nakuru, the constitution of Kenya, the Kenya Water Act 2002 and the National water policy. Chapter three reviews the literature and international instruments relevant to the research topic. Chapter four addresses the methodologies that were adopted and how the methodology informed the method that was used in conducting the research. Chapter five contains an analysis and discussion of the findings of the research. Chapter six addresses issues which emerge from the research and their implications, while chapter seven presents the conclusion based on the study and recommendations.

#### **1.2 Background of the Study**

Kenya is a country which suffers from a scarcity of water. It has a surface water coverage of about 2% which means that there is approximately 647 cubic meters per person as compared to the ideal of 1700 cubic metres per person. The annual water surface potential is estimated at 19,590 million cu meters and ground water potential at 619 million cu. meters<sup>1</sup>. Out of the total

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<sup>1</sup> Ministry of Environment and Natural Resources, Kenya National Assessment Report to WSSD ( Rio+10) 2002.



for domestic use. It has also accelerated the problem of availability of water and made water providers ration water which has resulted in long queues of water vendors and consumers at the water kiosks and prevented the community water projects from managing the supply of water to its members.

There are two main water service providers in Nakuru. One is Nakuru Rural Water and Sanitation Company Limited (NARUWASCO) which is a private company registered under the Companies Act Chapter 486 of the Laws of Kenya. It is a water service provider (WSP) under the County Council of Nakuru and licensed by the Rift Valley Water Services Board to supply water in Nakuru rural areas. The company has contracted community water projects to supply water in some areas where it is unable to supply water. These community water projects come into existence when people residing in one area come together and form a group due to the problems of water shortage. Community water projects are entities registered as community based organizations (CBOs) by the Ministry of Gender, Culture and Social Services. It is a water service provider in rural areas and supplies water to community members who have installed meters and the rest buy water direct from the borehole. These community water projects are meant to make water accessible to the community especially women who are the main users of water so that they travel for less distance looking for water for domestic use.

The second main service water provider in Nakuru is Nakuru Water and Sanitation Services Company Limited. Nakuru Water and Sanitation Company Limited (NAWASSCO) is a water service provider (WSP) owned by the Municipal Council of Nakuru. It is a private company licensed by Rift Valley Water Services Board (RVWSB) to supply water within the Municipality. The company has contracted water kiosks to sell water in densely populated areas within the municipality. A water kiosk is a small building located in densely populated areas within the Municipality which sells water to poor people who may not afford to be connected with piped water. A water kiosk is supplied with water by the main water service provider who charges the management of the kiosk by reading a water meter installed by the main water service provider. The water kiosks are meant to reduce the water shortage in densely populated areas by making the water accessible to the people at an affordable price but still you find long queues of people lining up to collect water. Without women participating in governance

the primary users of water should be part of governance structures to participate in the improvement of the supply of clean water.

Kenya has a legal framework which provides for women's participation but it seems there is no political will to implement the laws and international instruments because there is still a lack of representation of women on water management boards. As regards the supremacy of the Constitution, Article 2(5) and (6) provides that the general rules of international law shall form part of the Laws of Kenya and any treaty or convention ratified by Kenya shall form part of the Laws of Kenya under the Constitution. As regards economic and social rights, Article 43(1) (d) of the Constitution provides that every person has the right to clean and safe water in adequate quantities. As regards minorities and marginalized groups, Article 56 of the Constitution provides that the state shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life. As regards general principles for the electoral system, Article 81(b) provides that not more than two-thirds of the members of the elective public bodies shall be of the same gender. The national water policy emphasizes the need to encourage community participation and to systematically integrate gender issues and Kenya Water Act 2002 provides for stakeholder participation.

#### **1.4 Demarcation of the Study**

The research was carried out in Nakuru District. Nakuru is the district headquarters of Rift Valley province. It is about 160 kilometers from Nairobi, the capital city of Kenya. The area of the research was within Nakuru Municipality and Baruti Division. The researcher examined the water kiosks which are located in densely populated areas of Nakuru urban areas within Nakuru Municipality and community water projects which are located in Baruti Division.

2. That at present women do not constitute more than a third of elective posts in governance structures of different water providers in Nakuru as provided for in the Constitution.
3. That women are not elected as members of governance structures of different water providers because of factors such as lack of education, cultural roles and beliefs.
4. That the widespread lack of women's participation in water governance structures has negative consequences for addressing the problem of scarcity of water.
5. Lack of implementation and enforcement of affirmative action measures is a major reason for women's continued low participation.

### **1.7 Research Questions**

The following were the research questions emanating from the above assumptions which guided me to achieve the objectives of the research.

1. Are women members of water governance structures of different water providers in Nakuru?
2. Do women constitute more than a third of the members of elective posts of governance structures of different water providers in Nakuru as provided for in the Constitution?
3. Are factors such as lack of education, cultural roles and beliefs a hindrance to women being elected as members of governance structures of different water providers?
4. Has women's lack of widespread participation in water governance structures had negative consequences in addressing the scarcity of water?

## **CHAPTER TWO**

### **2.0 MAIN WATER PROVIDERS IN NAKURU RURAL AND URBAN AREAS**

#### **2.1 Introduction**

This chapter addresses the main water service providers in Nakuru, Community water projects in Baruti Division, water Kiosks within Nakuru Municipality and the legal framework that regulates water in Kenya, that is, the Kenya Water Act, 2002, the National Water Policy and the Constitution of Kenya.

There are two main water service providers in Nakuru which have been contracted by Rift Valley Water Services Board to provide water in Nakuru. The first one is Nakuru Rural Water and Sanitation Company which is a private company and is licensed by the Rift Valley Water Services Board to supply water within the County Council of Nakuru<sup>3</sup>. It is not allowed by law to supply water within the Municipalities. The second main water service provider is Nakuru Water and Sanitation Services Company Limited which is a private company owned by the Municipal Council of Nakuru<sup>4</sup> and is licensed by the Rift Valley Water Services Board to supply water within the Municipality. The main water service providers also contract other water service providers to supply water on their behalf such as water kiosks which provide water to densely populated areas in Nakuru urban and community water projects which provide water in Nakuru rural.

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<sup>3</sup> A County Council is a region established under the Local Government Act, Chapter 265 of the Laws of Kenya, by the Minister of Local Government in consultation with the Electoral Commission with defined boundaries governed by elected and nominated councillors. It is a body corporate with perpetual succession and a common seal capable of suing and being sued and can acquire, hold and alienate land.

<sup>4</sup> Municipal Council is a town established under the Local Government Act, Chapter 265 of the Laws of Kenya, by the Minister of Local Government in consultation with the Electoral Commission with defined boundaries governed by elected and nominated councillors. It is a body corporate with perpetual succession and a common seal capable of suing and being sued and can acquire, hold and alienate land.

Nakuru Rural Water and Sanitation Company Limited (NARUWASCO) is a water service provider (WSP) under the County Council of Nakuru and licensed by the Rift Valley Water Services Board. It is a private company incorporated under the company's Act Cap 486 of the Laws of Kenya. The company is thus legally constituted entity capable of undertaking its functions as stipulated in its Articles and Memorandum of Association. The Board of Directors is composed of 11 members who represent various stakeholders including the county council of Nakuru, a representative of Naivasha, Subukia, Rongai, Molo, and Kuresoi Constituencies and other special interest groups. The service area of the company is the whole of Nakuru County except Nakuru and Naivasha Municipalities. Nakuru Rural Water and Sanitation Company is primarily established to provide water and sanitation services within its service area in accordance with section 55(1) of the Water Act 2002.

### **2.2.1 Community Water Projects**

These are projects which are in Nakuru rural areas which have been contracted by the main water service provider in this case Nakuru Rural Water and Sanitation Company to provide water in rural areas. The projects cover small areas and they hardly serve everyone in the area in which they are located. These water projects are started by the community members when they experience water shortages. Community members come together and contribute labour, materials and land. It is a requirement that for a community water project to be licensed by Rift Valley Water Services Board, it must be providing services to more than twenty households and supplying more than 25,000 litres of water per day for domestic purposes and 100,000 litres per day for any other use. In addition the projects should be legal entities and provide proof of technical and financial capabilities. The Water Act 2002 Section 83(2) provides that such community water projects be financially funded by money which is set aside by Parliament through Water Services Trust Fund (WSTF)<sup>5</sup>. Community water projects supply water to their members after payment of a deposit.

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<sup>5</sup> Water Services Trust Fund (WSTF) is a fund which assists in financing the provision of water services to areas of Kenya that are without adequate water services.

### **2.3.1 Water Kiosks**

These are small structures which are contracted by the main water service provider in this case Nakuru Water and Sanitation Services Company to provide water to densely populated urban areas in Nakuru. A water kiosk is started when a need for water is identified by a group of people who come together to form a community based organization. They have to identify the name for the group and register with the Ministry of Gender and Social Services as a community based organization (CBO). It is a requirement that it must have at least three officials that is a chairman, secretary and a treasurer and a constitution governing the organization. After registration, they write a proposal to the Municipal Council indicating where the kiosk is to be located. One of the requirements is that the water kiosk is to be located in densely populated urban areas to serve people who cannot afford to be connected with piped water due to financial constraints. If the Municipal Council approves the water kiosk, the group pays a deposit of US\$ 150 to the Municipal Council and then makes another application to the main water service provider who requires a further deposit of US\$ 60 before they are connected with water. The CBO has to buy the pipes and hire a plumber at their own expense for the water to be connected to the kiosk. The water service provider reads the water meter every month and charges the group at a subsidized rate of US\$ 0.007 per twenty jerry can container while the water kiosk attendant charges the consumers US\$ 0.02. The water kiosk is managed by the management committee elected by registered members of the organization.

## **2.4 Local Laws And Policies Relating To Water**

### **2.4.1 Kenya Water Act 2002**

The Kenya Water Act, 2002 separates water resource management which is provided in Part III from the delivery of water services and Sanitation which is provided in Part IV. The Act establishes two agencies for regulation of the management of water resources and for provision of water and sewerage services. The regulatory functions are performed by the water resources management authority established in terms of Section 7 of the Act and its responsibility is the allocation of water resources through a permit. The provision of water and sewerage services is

and social good and recognizes the poor people who cannot afford to pay for water services. The policy has introduced the “polluter-pays principle”<sup>6</sup> and has made a distinction between water service delivery and water resource management and has decentralized these functions to regional areas. The policy has also recognized Water Services Trust Fund (WSTF) which is meant to finance small projects at the community level in order to enable small communities who cannot get finances to be able to acquire a license for the provision of water. The WSTF provides direct funding to these communities who could be disadvantaged to raise money to set up a water project. The policy provides that sustainable use of water resources requires an integration of water resource management and water service delivery which makes it mandatory for Water Resource Management Authority (WRMA) and Water Services Regulatory Board (WSRB) to co-ordinate their work. The functions of the two institutions are linked up at the top management level by the government being in charge of co-ordination, control and policy making. At the community level it is difficult to separate water service delivery from sustainable water resource management because you find communities involved in afforestation, biodiversity conservation and improved land use to prevent water loss. The national water policy identified the following problems that had constrained the water sector: shortage of funds for development, operation and maintenance of water supplies and management of water resources, centralization of decision making, fragmentation of water resource management responsibilities, uneven distribution of water resources, lack of co-ordination of various actors in the water sector and inter-linkages with other water-related sectors. To address the problems, the government adopted the following principles which are contained in the National Water Policy Sessional Paper No. 1 of 1999. (a) That water should be treated as a social and economic good. (b) Preservation and protection of available water resource. (c) Sustainable, rational and economical allocation of water resources. (d) Supplying adequate amounts of water meeting acceptable standards for the various needs. (e) Ensuring safe wastewater disposal for environmental protection. (f) Developing a sound and sustainable financial system, for effective and efficient water resources management, water supply and water borne sewage collection, treatment and disposal. The policy is complemented by other policy documents to ensure integration with other

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<sup>6</sup> ‘The polluter-pays’ principle means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this act or any other applicable law (EMCA section 2).

## **2.5 Conclusion**

Ownership of water is vested in the state and the right to use water in the Minister. The Act has laid down conditions for obtaining a license as a water service provider as one has to have technical and financial resources which means that agreements to provide water can only be granted to well established community groups and other organizations to the disadvantage of the self help initiatives of the local communities such as water kiosks and community water projects. It is hard for community water projects to provide proof of technical and financial capabilities as provided for in Section 57 of the Water Act, 2002 since most of them are in rural areas where the majority of the people are poor. The community water projects play a very great role in the provision of water services in rural areas since they operate in areas where the main water service provider does not have a network. The projects provide clean water which is accessible to the local people instead of having to travel for long distances to fetch water from unreliable sources such as rivers. Unlike community water projects which operate in rural areas, water kiosks provide water to residents in densely populated urban areas with the main aim of providing water to the poor which is affordable within a short walking distance.



of access to and control of the resources which they need to sustain and improve their lives. Participation is an instrument of change and can help break that exclusion and provide women with the basis for more direct involvement in community project management.

Participatory development should seek to improve gender inequalities by providing means by which women can take part in decision-making. Women's participation must be transformative though there are often enormous social and cultural barriers which hinder women's participation, participatory development should seek to bring about change and to create the circumstances where women's voices can also be heard and efforts to involve them must be central. Participation must be active, free and meaningful and thus needs to go beyond mere consultation and provision of information. It requires a genuine opportunity to express demands and concerns and influence decisions. It is crucial for women to take part or be represented in participatory processes of community water projects and water kiosks. To ensure meaningful participation for women in water projects, it requires full respect for the freedom of expression, assembly and association and for the right to information.

### **3.2.2 Governance**

Governance has been defined as a multi-faceted concept encompassing all aspects of the exercise of authority through formal and informal institutions in the management of the resources endowment of a state (Huther and Shah, 2000). I looked at the number of directors in governance structures of water regulatory boards and water resources management authority who are women and found out that we had only two women. Since women are not part of various power relations in the society, it is difficult for them to decide where to have water points and when it should be constructed since women are the ones who need water most for domestic use. Some respondents said that provision of water is influenced by politicians especially at the lower level. This brings me to the constitutional provision that unless women make up at least more than a third of the elective posts so that they be part of decision-making, their presence today would make little difference to the outcome of governance. This provision is in line with the Beijing Platform for Action (1995) which provides that without the active participation of women and incorporation

water governance is less democratic because the water Act 2002 Section 7(3) provides that the minister in charge of water appoints Board members of these institutions and is not specific on gender equality.

The Millennium Development Goals number seven is to halve the proportion of people without sustainable access to safe drinking water and basic sanitation in the world's population. (Millennium Development Goal 7). Water deprivation is a major concern, involving both the quality and the availability of water. According to the United Nations Food and Agriculture Organization (UNFAO), over 230 million people live in 26 countries classified as water deficient, of which 11 are in Africa. Water scarcity hits the poor and most vulnerable first and hardest, as impoverished families draw most heavily on common property resources such as water bodies and inshore fishing grounds.

### **3.3 Women's Reproductive And Productive Roles**

Women and men have different responsibilities in using and managing water. In most cases women and girls collect water for cooking, bathing, cleaning, maintaining health and hygiene, raising small livestock and growing food. In rural areas men need water for irrigation and larger livestock but women care for the milk cattle and younger animals. Women also oversee family health. Because of different gender roles, women and men have different stakes in water use. Women manage and safeguard water for use by the family and have pressing needs for water to engage in economic production including agriculture and microenterprise. Women need water for domestic use while men need water for commercial use. Women's needs are sometimes in direct conflict with those of men like food production can be an important source of family food and income for women but women's access to irrigation is minimal (UNDP 2002). Women and girls are occupied with time consuming and duty of supplying the water needs of their households. They walk long distances to fetch water. In urban areas, women and girls spend hours queuing for water supplies and remain with no time for education, income generation or cultural and political activities.

access to public information and participation by women should be facilitated. (World Summit, 2002). At the third World Water Forum, a strong gender lobby organized several gender theme sessions. This effort found its way into the first paragraph of the Ministerial Declaration which declares that water is a driving force for sustainable development including environmental integrity, and the eradication of poverty and hunger, indispensable for human health and welfare and that prioritizing water issues is an urgent global requirement. Each country has the primary responsibility to act and both the international community as well as international and regional organizations should support this and empowerment of local authorities and communities should be promoted by governments with due regard to the poor and gender.(World Water Forum, 2003). Critical stumbling blocks for women regularly arise in terms of land tenure, access to water, resource control, affordability of privatized resources, participation and capacity. Managing water in an integrated and sustainable way can actually improve gender equity by easing access, both to water and to related services (UNDP, 2002). Experiences around the world have shown that moving in this direction calls for mainstreaming gender and women themselves are already strong advocates for their own concerns, which have become a central part of the water agenda at many levels (YOON, 1991). Frameworks still need to be developed that ensure that both women's and men's concerns and experiences consistently appear as an integral dimension of water projects, legislation, policies and programmes (Francis, 2003). Most decisions in the management of water projects do not revolve around women's specific concerns regarding access to water such as location of boreholes and other water facilities, issue of distance to the water point and erratic water supply. International recognition of the need to fill this gap is growing, and countries are devising inclusive water policies and programmes that account for the differing demands and needs of women and men. These do not preclude the involvement of men or children and in general they must link clearly to the broader goals of economic development and poverty eradication, given the centrality of water as a resource. In many of these efforts, formal and informal women's networks can play important and stimulating roles.

The African Charter of Human and People's Rights of 1981 recognized that every individual shall have to enjoy the best, attainable state of physical and mental health and that all people shall have the right to satisfactory environment favourable to their development which implicitly provides for a right to water and sanitation. The right to water as a social and economic right is a human right which responds to women in rural areas concerns as providers of food and other maintenance requirements for their families. The United Nations Committee on Economic, Social and Cultural Rights addressed the human right to water in their General Comments No. 12, 14 and 15 under the right to an adequate standard of living in Article 11 of the international Covenant on Economic, Social and Cultural rights. In its general comment No. 25 on the right to participate in public affairs, voting rights and the right to equal access to public service, the human rights committee interprets Article 25, explaining that citizens may participate directly, or indirectly through freely chosen representatives, in the conduct of public affairs which is considered to cover all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.

Article 11 of CESCR provides that the state parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The covenant further provides that states should ensure that everyone is free from hunger and should take measures to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; and take into account the problems of both food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need. On rural women, Article 14 of CEDAW provides that states shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present convention to women in rural areas. It further provides that states shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure,

introducing gender sensitive criteria for water allocation. Although affirmative action is not obligatory, it represents a measure that may be taken to enhance de facto equality. The CEDAW Committee has on a number of occasions, recommended that states parties make use of this measure (McClimans, 1997). Kenya has incorporated this measure in its Constitution in Article 56 on minorities and marginalized groups which provides that the state shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups have reasonable access to water, health services and infrastructure.

On children's right to water article 28 of the convention on the rights of the child states that the child has a right to clean drinking water. General Recommendation No. 15 provides that water and sanitation must be available, accessible and affordable. It further provides that the right to water is broader than just clean drinking water since water resources are necessary to prevent malnutrition, starvation and disease. On the issue of equality the African Protocol on Women's Rights Article 9(1)c provides for equality of partnership of women and men at all levels and article (9)2 provides for effective representation and participation of women at all levels of decision-making. On sustainable development Article (19)(b) provides for the participation of women at all levels in the conceptualization, decision-making, implementation and evaluation of policies and programs. In the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article (14) (a) provides a right for women to participate in the elaboration and implementation of development planning at all levels. This ensures that women should be involved at all stages of development. Lack of participation can compromise the effectiveness of a project such that if new water projects are to be built in a community and women do not actively participate in the process, the intervention may not meet their need. There is a need for both women and men to participate because if only men participate, the projects can be built where men see it to be convenient while women are the ones who are the prime users of water in most cases may find those locations inconvenient. Participation is a requirement in the human rights framework and indivisible from the realization of all other human rights.

## **CHAPTER FOUR**

### **4.0 RESEARCH METHODOLOGIES AND METHODS**

#### **4.1 Introduction**

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

#### **4.2 Research Methodologies**

##### **4.2.1 *Grounded Theory***

I applied a feminist approach which Stang Dahl (1987:22) argues “*means that one perceives legal rules in the light of both women’s experiences and interests*”, taking women as the starting point. Grounded theory 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). This perspective made me deal with emerging issues which developed as I was in the field conducting the interviews. Women that I interviewed related to me why they are unable to participate in management of the projects due to gender roles, lack of ownership of land, lack of education, cultural belief, political interference and poverty. I was investigating whether women compose more than a third of elective posts in governance structures of water service providers so I interviewed women who fetch water from community water projects and committee members and those who fetch water from water kiosks in order to investigate the lived realities of the two categories and their take about participation in water governance structures and what is currently taking place in governance structures. I also wanted to test what is emerging in the field like women telling their husbands to represent them in meetings, poverty denying women to afford water and develop theoretical categories while in the field.

that although article 81(b) of the Kenyan Constitution provides that not more than two-thirds of the members of elective public bodies shall be of the same gender, it is not reflective on the ground. It came out that although the law provides for women's participation and Kenya having ratified human rights instruments which provides for the right of women to participate in water governance, the law is not implemented. Women narrated their experiences on how a few participate in elections because of household chores. Realities on the ground were analysed and the law on women's participation in governance structures in community water projects and water kiosks. While in the field, the law was tested with a view to analyzing the reality on the ground so that an insight into those realities can be used to develop a new area of the law and further to see how the current provisions of the local law and international instruments can be implemented.

#### **4.2.3 Human Rights Approach**

This study examines how local Laws, international instruments and conventions provides and treats issues in regard to women's participation in governance structures of water resources as a human right. I used the Human Rights Based Development Approach in analyzing the woman as a holder of basic right to participate in governance structures of water resources. I examined the right to livelihood and sustainable development and women's participation in water management. The issues of equality between men and women in the management of water resources for the benefit of all as provided for in the international instruments were also important. I examined the human rights instruments relating to women's participation in governance structures of water resources as a human right and the role women play as water users. I looked at role of women as service providers and their limited role in decisions of where water facilities should be placed and how women play a great role in facilitating community contributions towards the projects when water pumps break down.

The broad approach emphasizes the whole human rights in development processes encompassing the civil and political rights such as right to participation, freedom, self-determination and

I interviewed women and men in community water projects and water kiosks with a view to assess who is most affected with the privatization of water and its availability between men and women with special reference to their gender roles and differences in their sex since women require water in everyday life for domestic use that is cooking and taking care of the family. Through observation and interviews, I was able to understand gender differences in access to water resources and participation as women could tell that they hardly participate in elections because of lack of ownership of land. They said that they remain at home taking care of the children and such differences affect their participation in governance structures of water providers. Appropriate measures were looked at that can be taken to ensure that women are not excluded and realized from the interviews in the field that gender is often overlooked or given insufficient attention and there is need for undertaking specific gender analysis in order to identify the particular obstacles to women's participation in governance structures of water providers. Several focus group discussions and interviews were held in conducive environment to enable women to express their own opinions, difficulties and needs and also encouraged them to analyze their own relationships with men and related position in the society. The lived realities of women and the impact of non participation in governance structures were examined. While in the field, women were asked to identify their roles and how they manage them on one hand and the roles of men on the other. Men were also asked to identify gender roles. Women said that they had a productive role where they get engaged in activities that generate income for the household like labouring jobs to feed the family, professional jobs like primary school teaching and income in kind like working on family farm. They said they have a reproductive role to play by engaging in domestic activities that increase household resources like creative role which leads into bearing of children, looking after them and their education needs. Women said that they have a maintenance role to play like cooking food for the family, washing clothes and growing food for home use and take part in community management role as in the provision and allocation of water resources as members of committees on community water projects and water kiosks but said positions of leadership and influence are frequently occupied by men. Most women said that what they need is reliable, accessible water supply to assist them in undertaking their domestic tasks. Some women had a strategic gender need of empowering and changing their position in society access to resources, their legal status and cultural attitudes towards them



they provided the information freely. I also focused on women’s participation in decision-making process if at all they participate and the consequences of non-participation.

#### **4.3.2 Individual Interviews**

Interviewees	Female	Male	Total Number
Community water projects	7	11	18
Water kiosks	5	8	13
Total	12	19	31

**Table B: Showing those who were interviewed**

I started the interviews by introducing myself to the informants and telling them the objectives of my study and made it clear that the study is for academic purposes. This was important because some of the informants had high expectations when they saw me. They thought I was a donor and the study was for the purpose of funding their projects. Individual interviews were conducted at the water kiosks when women had gone there to fetch water, at community water projects when women had gone to fetch water, at their homes and their places of work. Most of the informants were women and men of middle age and some were old. Women were asked why they hardly participate in governance structures of water providers, how they get water and if they understand that it is their right to participate in elections and in management of community water projects and water kiosks. Women told me their experiences why they are not participating in governance structure, how gender roles affect their participation, education and cultural beliefs that women should not talk in the presence of men. Women were asked their role and the roles men play in the management of water and the composition of the management committees. This gave me a tool to analyze gender roles and why women are not members of governance structures of water providers. The roles and responsibilities of men and women in the household.

take care of the domestic work in the house. The interviews made women and men have understanding of women's necessity to participate in management of water projects.

#### **4.3.4 Observations**

Observations were done on how the water projects were being managed. I observed that most of the women fetch water from the water kiosks in the afternoon and at some point I noticed long queue for water vendors at the water kiosks. At all the community water projects, I noticed that all had water troughs where cows could drink water. Women were observed taking livestock to the river and in some instances grazing cattle. Observation as a tool of collecting data brought out directly the real situation of women and what they are undergoing through instead of being told by informants. I managed to triangulate the information obtained because informants can exaggerate data during interviews and discussions expecting assistance of any type. The water projects were far apart and most of the homes I visited did not have piped water and women were complaining that water was being rationed and was not regular so they were forced to go and collect water at the borehole. The officials in the office had said that people have no problems of water in rural areas and this did not corroborate with the data I collected in the field and what I observed. By comparing what was observed in the field and data collected from officials in the office and women's lived realities, I could triangulate.

#### **4.3.5 Library Research**

Library research was carried out to get some literature relating to women's participation in water governance structures by reading some materials written by different authors in relation to the subject of my study. The human rights instruments and conventions were looked at and in particular articles specifically dealing with women's participation in development and the right to water. The legal framework in Kenya, Water Act, 2002, National Water Policies, the Constitution of Kenya was looked at and other laws related to water. These laws were looked at with the purpose of investigating whether the laws are being implemented from the data to be

## **CHAPTER FIVE**

### **5.0 FINDINGS, DISCUSSION AND ANALYSIS**

#### **5.1 Introduction**

This chapter outlines the findings from the field and discussions in relation to research assumptions, human rights instruments and the local laws mentioned in the previous chapters. The findings are further used to discuss women's participation in official governance structures of water service providers within the Municipality and the County Council of Nakuru, community water projects and water kiosks and the analysis thereof.

#### **5.2 Women's Participation In Official Structures**

The Kenya Water Act, 2002 establishes two agencies for regulation of the management of water resources and for provision of water and sewerage services in Kenya. The regulatory functions are performed by the Water Resources Management Authority (WRMA) which is provided for in section 7 of the Act and its responsibility is allocation of water resources through a permit. The provision of water and sewerage services is vested in the Water Services Regulatory Board (WSRB) established in section 46 and its mandate is to license all providers of water and sewerage services that supply water to more than 20 households therefore community managed water systems need to obtain a license from the regulatory board to provide water to its members. The Act decentralizes functions to the regional public institutions. The water service providers are private companies at the district level and the lower level entities such as community water projects and water kiosks which are contracted by the main water providers perform both functions of provision of water services and management of the projects. The decision-making processes on water resources remains centralized with the minister in charge of water and irrigation.

I looked at the number of directors in governance structures of Water Regulatory Boards and Water Resources Management Authority who are women and found out that we had only three women. Since women are not part of various power relations in the society, it is difficult for them to decide where to have water points and when it should be constructed since women are the ones who need water most for domestic use. Some respondents said that provision of water is influenced by politicians especially at the lower level. This brings me to the constitutional provision that unless women compose at least more than a third of the elective posts so that they be part of decision-making, their presence today would make little difference to the outcome of water governance.

It is clear that the law providing inclusion of women in official water structures is clearly provided for in the constitution and international instruments. The data collected shows that representation of women is minimal in governance structures of water providers. It seems that the process of appointing the directors is not gender sensitive and the people who carry out these appointments are not in compliance with the international instruments on equality of representation in governance structures. This is evidenced from the Water Act 2002 which provides in Section 7 that the President shall appoint the chairman and the rest of the board of directors are appointed by the Minister in charge of water and irrigation. The respondents could not tell whether they have any representation on the boards of these structures which means there is a very great disconnect between women at the community level and in densely populated areas who are naturally poor and women who are on this boards because they are not elected by the people.

#### **5.4 Composition Of Board Of Directors In Water Service Providers In Nakuru**

There are two main water service providers in Nakuru. Nakuru Rural Water and Sanitation company which is mandated to provide water services in the County Council of Nakuru and Nakuru Water and Sanitation Services company which is mandated to provide water within Nakuru Municipality.

pumps as that is the work of men. Women said that they do not participate in governance structures because of household chores and when a woman is not educated, she cannot be elected as an official because they prefer a woman who knows how to read and write. Some women said that they are not allowed to talk in the presence of men and others said that they prefer men to represent them in water meetings. Women said they do not participate in elections because they are not members of the project since to be a member you must have land in your name. Women’s productive and reproductive roles prevent them from participating in the governance structures of water providers.

### 5.6 Composition of Management Committee Members of Community Water Projects

Community water project	Female	Male	Total number
Ingobor	2	7	9
Kamasai	2	7	9
Mogoon	2	7	9
Ainaptich	3	12	15
Kapnandi	2	7	9
Total	11	40	51

**Table E: Showing the composition of men and women on certain community water projects**

Most of the community water projects had only 2 women out of 9 management committee members. They said that few women participate in elections because of gender roles of caring for the family and domestic work. One respondent from Kapnandi community water project said as follows:

‘We have a lot of work to do at home, cook for the children when they come from school, fetch water and take care of the cows we have little time left to attend meetings.’

Another respondent from Ainaptich community water project said as follows:

They also said that they do not participate in electoral process because men claim that women of loose character are the ones who participate and oppose men during elections. A respondent from Ainaptich community water project said as follows:

‘When you want to lead, men call you a prostitute and you get discouraged. This culture must change, you are marked when you talk, men claim that those women who talk know a lot.’

This voice shows patriarchy’s concern on dominating and controlling women so that they remain in the private sphere and insubordinate to men and leave the public domain to men. It can also be illustrated from the following:

*‘Control is also achieved by constructing and exalting the virtues of a good woman as compared to those of a bad woman. The bad woman is projected as the woman who talks back, who is not submissive and who does not understand her role as that one looking after her husband. The good woman therefore is one who understands she is not there to exist by virtue of being herself but by virtue of her service to a superior ‘other.’*

(Tsanga 2003:100)

The management committee is the one which operates the project on behalf of the members. Members pay a deposit to be connected with piped water. The members said that on average the deposit is U\$ 60 and when you are connected, you pay a monthly bill depending on how much water you have consumed. The project charge an average of U\$ 2 per cubic meter of water consumed. Those who have not been connected with piped water pay U\$ 0.03 for fetching a twenty litre jerry can of water and for one cow the charges are U\$ 0.04. Women and girl child are the ones responsible for collecting water.

At the community level, elections are done by the members depending on the rules governing the water projects. The mandate of the management committee of community water projects is to ensure that it is sustainable and water bills are paid efficiently. The election of the committee members is more democratic because members are allowed to vote for whoever they like. The main problem is that majority of the members are men so they tend to vote for their fellow men.

Water kiosks	Female	Male	Total number
Nakuru west	4	3	7
London gioto	2	5	7
Nakuru community	1	8	9
Gilani	4	3	7
Honey cop	3	4	7
Ponda mali	4	3	7
Kaptembwa	5	4	9
Total	23	30	53

**Table F: Showing the composition of men and women of the management committee of water kiosks**

Women are elected by other women who are members of the project. In most cases where women are the majority members they elect women. Most water kiosks had men as chairmen and women as treasurers. A respondent from Gilani Water kiosk said as follows:

‘We trust women with money that is why we choose them as treasurers, they cannot steal.’

Most women said that a few of them participate in elections because of household chores; they have to cook for the children and fetch water from the kiosks. A respondent from Kaptembwa water kiosk said as follows:

‘I do not have time to attend elections because I have a lot of household chores, if I do not do who will do for me my husband is always drunk and he expects to get food ready when he comes home, he was retrenched.’

It was a commonly held view that women neither had the time nor the interest of going for the meetings. Women said they had an interest in working for their families. One of the respondents said that water is expensive and they preferred to be supplied with water by the government for free. A respondent from Pondamali water kiosk said as follows:

kiosk in Nakuru town where CDF money was used in its construction. Others are London Gioto, Maili Sita and Free Area water kiosks.

### 5.10 Implications of Non-Participation

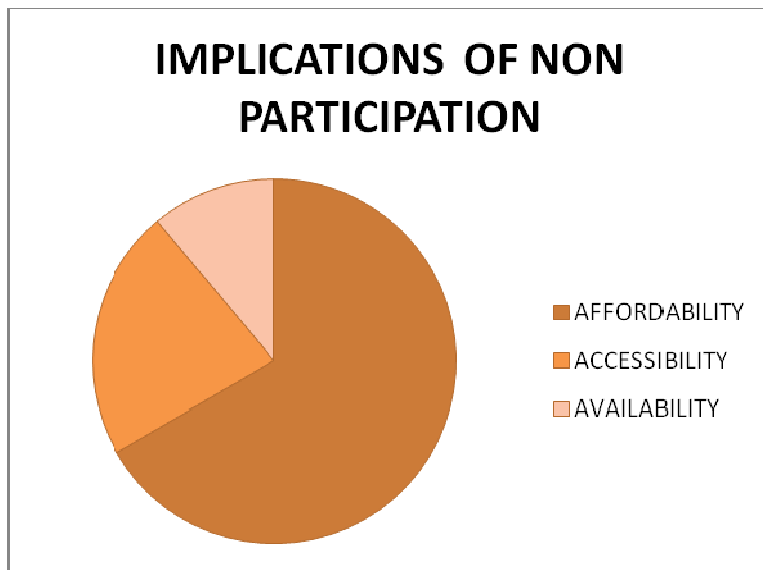


Figure 3: Pie chart showing the implications of non-participation

#### 5.10.1 Availability Of Water

Women said that when the water pump breaks down they resort to going to fetch water from river Ndarugu and its water is very dirty. They are forced to walk for long distances as far as 5km to fetch water for domestic use. I observed queues of women waiting for water because of shortage. Women said water was being rationed because of scarcity so they were forced to wait for long to get water and one could only fetch two to three containers of water with the capacity of twenty litres each which was not adequate for the family. A respondent from Ingobor community water project said as follows:

‘We need to plant vegetables but we do not have enough water and some neighbours are not willing to give others water due to shortage and people without meters are very many.’



The city of Johannesburg appealed to the Supreme Court which on 25<sup>th</sup> march 2009 upheld the decision of the high court in substance, but on different grounds. The court found that (1) the free basic water policy was in violation of section 27(1) but on the basis of expert evidence the minimum amount of water required by the constitution was 42 litres per person, and (2) while the installation of pre-paid meters was unlawful, the declaration of unlawfulness should be suspended for two years to give the city time to bring its water policy in line with the reasonableness required of the constitution.

The applicants then appealed to the constitutional court seeking to reinstate the order of the high court granting 50 litres per person per day and to set aside the suspension of the declaration of invalidity. The constitutional court dismissed the applicants two grounds of appeal and held that (1) the city's free water policy of 25 litres per person per day to be reasonable under section 27(1) of the constitution and (2) the introduction of pre-paid water meters to be lawful, procedurally fair, and not unfairly discriminatory.

The South African Constitutional Court did not incorporate international standards in their interpretation of section 27(1) and did not adopt the minimum core approach to the right to adequate water. Domestic implementation of international human rights in south African Law has not been done to recognize international law as part of the laws of South Africa as is the case in the Kenya Constitution.

### **5.10.2 Accessibility Of Water**

The issues of gender and its implication on inaccessibility of water is well addressed in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) which obliges states parties to ensure women's right to enjoy adequate living conditions, particularly in relation to water supply among others. This is the first internationally binding human rights instrument where the right to water is directly expressed (Hellum: 2001). The International Covenant on Economic, Social and Cultural Rights not only recognizes the right to water but also considers vulnerable groups in societies which is expressed in Article 16 of the General Comment No. 15 (2002) which states as follows:

*'Whereas the right to water applies to everyone, state parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minorities, disabled persons, migrant workers, prisoners and detainees...state parties should take steps to ensure that children*

### **5.10.3 The Affordability of Water**

In Kenya, private companies are the ones which are in charge of the provision of water but it is the government which regulates and licenses the companies. The right to clean and adequate water is provided for in the constitution so the government should be held responsible for the actions of the companies which may make it difficult for people to access water by making it unaffordable.

Community water projects charge U\$ 2 per cubic meter of water for those members who have installed a meter and have piped water in their compounds. Those who have not installed a meter, buy water at U\$ 0.02-0.03 per twenty litre jerry can. Women were still complaining that the cost of maintaining the water pump was very high to them since they are forced to contribute money to repair the pump if it breaks down. A respondent from Kamasai community water project said as follows:

*'Each household is required to contribute \$1 for paying electricity and pump attendant it has become very expensive for us to afford water, we are also required to contribute to repair the pump incase it breaks down.'*

Water kiosks charge Vendors U\$ 0.02 per twenty litre jerry can of water but women were complaining that they cannot afford due to poverty.

Those who cannot afford water in the community are identified by women and the management committee makes a provision for them to collect water from the nearest member who has piped water. During a group discussion at Ingobor community water project one of the respondents said in the presence of other members that:

*'We identify a needy woman who cannot afford water and report to the management committee and the committee allows her to fetch water for free from a neighbour and the units consumed by the needy woman are deducted from the readings of the neighbour at the time of paying the bill.'*

of the month depending on the water bill. Those who are tenants can only get piped water through their landlords so they can not be allowed to vote because they are not members of the project. A respondent from Kamasai water project said as follows:

‘We are not allowed to participate in elections because we are not members, it is our husbands who own land who participate.’

A respondent from Kapnandi water project said as follows:

‘ I do not participate in elections because I am not a member it is my husband who is a member because the water meter is on his land, the water bills come in his name, he is the one who pays the bills.’

### **5.12 Gender Roles**

According to the graph shown in figure 4 above, sixteen women respondents that I interviewed said that their main occupation is gathering water for the family so they are left with little time to participate in elections. It is difficult for women to be elected on management committees if they fail to attend meetings and participate in elections. From the figure above, gender roles was the major finding why women’s participation in elections was not forthcoming.

### **5.13 Culture**

According to figure 4 above nine of the respondents said that culture prevents them from participating in the decision making process. Customary norms and practices lead to women refraining from exercising their political rights and reserved seats for women have been encouraged by human rights bodies such as the CEDAW. Affirmative action as embedded in the women’s convention and in the constitution of Kenya in Article 56 which provides ‘*that the state shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life*’ is a measure aimed at creating substantive equality.

poor who may not afford to purchase water. The obligation to fulfill requires state parties to take all necessary measures to ensure, for each person within the states jurisdiction, opportunities to obtain satisfaction of those needs recognized in human rights law ( Brundtland, 2003: 7:Staib, 2001:36).

The governments have the primary obligation to make sure that women's right to participate in governance is realized and must take steps to ensure that women enjoy their right to water. Water being a prerequisite for the realization of other human rights such as the right to adequate food, preparation and growing of crops and irrigation for food production and livestock rearing. Water is also required for maintaining high standard of hygiene as its absence can cause diseases such as cholera which can be avoided by accessing clean water. Thus to guarantee the right to health, there must be availability of clean water in adequate quantities available to women as caretakers of the family.

Governments hold primary responsibility for ensuring the realization of human rights (WHO, 2003). Article 2(1) of International Covenant on Economic, Social and Cultural Rights provides for states to avail institutional, economic and social environment necessary for the individuals to progressively realize their rights ( Gleick, 1999). The main water service providers should ensure women are on their board of management and are participating in decision-making processes. The constitution of Kenya provides for the right to clean water of adequate quantities and the National water policy provides for representation of women and participation in decision-making. The above provisions place the responsibility to the government to make sure that women participate in governance structures of water providers.

Equal access to resources such as water and land, is within the framework of the women's convention and closely linked to equal participation in the political and public life of the country, including women's participation in elaboration and implementation of development plans at all levels ( Hellum, 2001).

## **CHAPTER SIX**

### **6.0 EMERGING ISSUES**

#### **6.1 Introduction**

This chapter looks at the emerging themes whose findings need to be addressed together with the issues that were the subject of this research. The emerging issues were categorized as: Multiplicity of factors, Poverty and Lack of government involvement in the provision of water.

#### **6.2 Multiplicity of Factors**

The majority of women who were interviewed said that they have a lot of household chores that is why they are unable to participate in elections. Men believe that it is the role of a woman to collect water and cook for the family has made women to remain with little time to participate in governance structures of water providers. This has contributed to women remaining in the private sphere while men venture into the public sphere where economic opportunities are high compared to women's work which is not quantified in terms of money. Some husbands still refuse to permit their wives to go to public meetings and even if they go to those meetings, they are not allowed to speak in the presence of their husbands. Women are also denied an opportunity to hold posts such as chairman of water projects. They live them to men and men recommend women to be treasurers of the projects because they are trusted with money. Men know women cannot steal but men can steal money. Women are denied opportunities to hold public offices by their husbands. Because of the gender roles it is difficult for women to obtain an opportunity to express them and influence decisions that concern their lives in community water projects. Because of these different gender roles, women and men have different stakes in water use (GWA: 2003). Women have special needs in relation to water therefore it is necessary for women's participation in the management of water resources. Men get interested in water because of their cattle while women's interest in water is due to the fact that they use it for domestic purposes such as washing, cooking, bathing and other domestic purposes. Men and women's interest in water can only be handled by equal involvement of both of them in the

activities on the land such as planting of vegetables for domestic as well as for commercial purpose in order to get money to use it as means to invest in income generating activities in order to alleviate poverty. Lack of water resources can be a primary cause of a person's poverty ( Roy, J and Crow, B 2004). Poor people experience low income and high fixed costs of water supply facilities.

When I was doing research, I came in contact with the reality. Despite the fact that my research was concerned with women's participation in governance structures of water providers, the women I met were not as much concerned with participation as they were with how to get the next meal for their family. Through observation, densely populated areas that I did research were notable for high levels of poverty due to the conditions in which they were living. You could tell from their faces and even officials could request that you buy for the people attending group discussions some food as they were feeling hungry. The respondents could tell you how they need support from the donor community to help them not only to expand but also have some money for their upkeep. During the interviews some respondents were interested in the discussion but they were impatient because they were thinking on how to get the next meal on the table so their concentration was limited.

It emerged that most of the women were complaining that they could not afford to buy water despite the fact that it had been subsidized. They also said that the deposit for water if one wants to install a meter is very high because one needs at least U\$ 60 dollars and you have to hire a plumber and a person to dig the trenches and buy the pipes and other fittings. This was very expensive for them as they were housewives who did not have regular incomes and they survived on subsistence farming. Those who are in urban areas complained that they were finding it hard to buy water and food at the same time. They said they could hardly afford enough water for the family because of poverty. Women said they are not in formal employment and they depend on their husbands who are not employed permanently but get casual employment which is not regular and promising. Women in both the rural areas where we had community water projects and urban areas where we had water kiosks needed to be empowered economically. Women's gender roles of taking care of the children prevents them from having time for other activities in the community such as participating in elections because they have to

aside money to assist the community to build water infrastructure. Even if the government has subsidized water, there is need for a free water policy which shall provide minimum number of litres per person per day so that the poor people can have access to clean water instead of resorting to other water sources such as rivers whose water is not reliable in terms of hygiene.

## **6.5 Conclusion**

Gender roles emerged as the main hindrance to women's participation in the management of community water projects and water kiosks. Women are engaged in domestic work and they remain with very little time to attend meetings and participate in elections so they send their husbands to represent them in meetings of water governance. The fact that the government has subsidized the provision of water does not make a very big difference among the poor people who cannot afford it. Apart from empowering women economically there is need for the government to adopt a free basic water policy so that the poor can access water per day as they have a right to water. Apart from relying on affirmative action as embedded in the women's convention as a measure aimed at creating substantive equality, international donor agencies which fund development projects such as community water projects should insist on gender equality as a condition for funding projects. This should not only be applicable to the community water projects and water kiosks but all funding to the government. The condition will encourage more women to participate in governance structures of water providers.

a prerequisite to uplifting the living conditions of women. Women are adversely affected when there is shortage of water or when water is unaffordable because they bear the responsibility of collecting water and taking care of the children and household chores. The right to clean water is a human right and the state has a duty to make it available to its citizens. When water is privatized, it becomes difficult for the poor to afford despite it having been subsidized so there is need for free water policy to be adopted in the laws and policies. The Kenya Water Act, 2002 does not recognize customary laws and practices in regard to land tenure systems which has an impact on the issue of water permits to registered land owners. During the study, it came out from the respondents that men participate in elections because they own land. Women had limited participation because the majority did not own land so they were not members. Further it was found out that Men are interested in water because of their cattle and women collect water for domestic use. Gender differences in the management of water projects and water kiosks needs to be considered because women and men have different needs and priorities in respect to water and it calls for gender equality in the management of community water projects and water kiosks.

## **7.2 Recommendations**

### ***7.2.1 Implementation of Local Laws and Human Rights Instruments***

Kenya has provided for the right to participate in governance structures. The constitution of Kenya in Article 81(b) provides that not more than two-thirds of the members of elective public bodies shall be of the same gender. The research findings show that all the 11 Board of Directors of Water Resource Management Authority were men. This shows that there is non-compliance with the constitutional provisions. The constitution has also provided that any international instrument or convention ratified by Kenya shall form part of the laws of Kenya. The right to clean and adequate water has been provided for in the constitution and it is the duty of the government to make sure that this is fulfilled but from the findings women were complaining that they could not afford to buy water despite the government having subsidized the tariffs. The government should comply with the human right to water as provided for in the constitution and



available at a fee even if the constitution provides for the right to water. There is need to change people's attitudes towards gender roles such as men's perception to women's roles as water collectors, producers and reproducers must change to achieve gender equity in families.

Most women whom I interviewed fetching water from the water kiosks were complaining that they could not afford water. If women are empowered economically then they will have the capacity to purchase water. This can be achieved by engaging them in small scale enterprises and electing them in governance structures of water providers. They should also be trained on how to manage small scale enterprises so that they can sustain the business. Women should also be trained with skills on how to respond to their psychological and social problems as women.

If women are equipped with knowledge and economically empowered, then they can freely participate in decision-making process without fear and the perception of women being subordinate to men can change.

#### **7.2.4 Political Will**

Women's participation is hampered by a lack of political will to recognise and empower them. Kenya has ratified international instruments and conventions but has not implemented them. The constitution provides for the right to water and that not more than two-thirds of elective posts should be of the same gender but the government is reluctant to implement this requirement as it seems there is no political will. There is very little that can be done even if good laws are in place unless the executive is willing to implement them.

#### **7.2.5 Legal Redress**

The constitution of Kenya has recognized and provided for the right to water. Article 43(1) of the constitution on economic and social rights provides that every person has the right to be free from hunger, and to have adequate food of acceptable quality. It further states that every person

## Bibliography

Bentzon, A.W. et al (1998): Pursuing Grounded Theory in Law. South-North Experiences in Developing Women's Law. Tano-Aschehoug, Oslo and Mond Books, Harare.

Chancellor, F. (2000) "Enabling women to participate in African smallholder irrigation development and design" In: Coles, A and Wallace, T., eds *Gender water and development* pp 155-172 Oxford New York

Dahl, T.S.(1987) Women's Law. An Introduction to Feminist Jurisprudence. Oslo: Norwegian University Press.

Gleick, P. (1999) "The human right to water" *Water policy* 1 (5); 487-503 Available online at [http://www.pacinst.org/about\\_us/staff\\_board/gleick/gleick\\_publications.htm](http://www.pacinst.org/about_us/staff_board/gleick/gleick_publications.htm)

Hellum, A. (2001) "Towards a Human Rights Based Development Approach : The Case of Women in Water Reform Process in Zimbabwe" *.Law, Social Justice & Global Development Journal (LGD)* 1.

*International Conference on Fresh water,Bonn* (2001). Available online [http://www.water-2001.de/outcome/Ministerial\\_declaration.asp](http://www.water-2001.de/outcome/Ministerial_declaration.asp) ( accessed on 2012-02-16)

International conference on Freshwater, Bonn 2001: Multi stakeholder dialogue session # 1: *Background Paper on the Local government major group on equitable access and sustainable supply of water to the poor*. Available online at [www.water-2001.de/msd/msd1final.pdf](http://www.water-2001.de/msd/msd1final.pdf)

Kabeer, N. (1994) *Gender and Development: Theory, Concept and Issues*. Available online at [www.sussex.ac.uk/development/documents/genderanddevelopment06.pdf](http://www.sussex.ac.uk/development/documents/genderanddevelopment06.pdf)

Karl, M. (1995) Women and empowerment participation and decision making Zed books, London and New Jersey.

Kenya National Policy on Water Resources Management and Development, Sessional

McClimans, L. (1997) *Political Rights under the UN Women's Conventions: The case of Uganda*. Studies in Women's Law No. 40, University of Oslo.

McEwan, C. (2003) "Bringing government to the people' : *Women, local governance and community participation in South Africa.*", *Geoforum.*, 34 (4). pp. 469-481.  
Paper No. 1 of 1999. Government Printer, Nairobi.

Roy, J. and Crow, B. (2004) Gender relations and access to water: What we want to know about social relations and women's time allocation. Santa Cruz: University of California.

World Summit on Sustainable Development (2002) Johannesburg. *Plan of Implementation*. Available online at <http://www.johannesburgsummit.org>.( accessed on 2012-02-18)

World Water Forum( 2000). *The Hague Ministerial Declaration*. Available online at <http://www.worldwaterforum.net/Ministerial/declaration.html>.( accessed on 2012-02-10)