

Global Political Economy and Development

The World Bank Inspection Panel (MSOC 7)

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A Case Study on World Bank Inspection Panel Case 115

**Republic of Kenya: Water and Sanitation Service Improvement Project WaSSIP
(p096367) and Water and Sanitation Service Improvement Project - Additional
Financing WaSSIP AF (p126637)**

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List of abbreviations

ESIA	Environmental and Social Impact Assessment
GoK	Government of Kenya
GRS	Grievance Redress System
IP	Inspection Panel
IPE	Independent Panel of Experts
MWI	Ministry of Water and Irrigation
MC	Murang'a County
NEMA	National Environmental Management Authority
NCWSC	Nairobi City Water and Sewerage Company
NCT1	Northern Collector Tunnel Phase 1
OP	Operational Policy
WB	World Bank
WSRB	Water Regulatory Services Board
WRMA	Water Resource Management Authority
WSB	Water Service Board
WSP	Water Services Providers
WSS	Water Supply and Sanitation Service

1. Background: Kenya's water profile

Ensuring availability and sustainable management of water and sanitation is one of the seventeen Sustainable Development Goals (SDGs) set by the United Nations to be achieved by 2030. The sixth goal emphasizes that access to safe water and sanitation and responsible management of freshwater ecosystem are indispensable to human health, environmental sustainability and thereby economic prosperity (UN-DESA, 2015). Thus, the importance of water in development effort of a nation is of paramount importance. The Eastern African country of Kenya, stands as one of the most water scarce countries in a region that is striving to achieve the SDGs. With only 2 percent of its total landmass covered by surface water, the country had borne the brunt of water scarcity and faced recurrent droughts. As its population growth is moving rapidly, outpacing agricultural productivity, the apparent water shortage in Kenya is setting a recipe for a potential conflict over this scarce resource (USAID 2010, p. 1).

Cognizant of this looming threat, over the years, the Government of Kenya (GoK) has made several strides to meet the growing demand by embarking on various projects. Nevertheless, despite its efforts to enhance water coverage and maintain the growth momentum unimpeded, recent studies indicate that, the attempts made to increase water supply so far, have failed to match the needs and advance the country towards achieving its development objectives (Chepyegon & Kamiya 2018, p. 85). Hence, it is this reality, which is believed to have informed the country's move towards a comprehensive water resource management and water supply and sanitation service (WSS) (USAID 2010, p. 1). As part of its endeavour to develop the country's water resources, along with expansion of water infrastructures, the GoK has undertaken several legislative reforms in the sector. Thus, in a bid to make service delivery more efficient, the new water policy, which was adopted in 1999, introduced (in principle) a separation between water service provision and regulatory function. Further solidifying on these policy gains, a new Water Act was passed in 2002. The act authorized the splitting up of the management of water resources and water services and decentralized to semi-autonomous government agencies, a jurisdiction previously held by the central government (Chepyegon & Kamiya, 2018 p. 86).

Following the policy reform, tasks were divided among different entities. The Ministry of Water and Irrigation (MWI) was made responsible for the management and development of water resources, irrigation and drainage (MWI, 2017). Whereas, the independent Water Regulatory Services Board (WSRB), was tasked with regulation of water and sewerage services, such as licensing, quality assurance, and overseeing service complaints (WSRB, 2018). Accordingly, with the aim of achieving efficient provision of water and sewerage services, eight Water

Service Boards (WSBs) were constituted by the MWI. The WSBs became responsible for mobilization of resources, developing assets and water administration and sewerage infrastructures within their dominion (USAID 2010, p. 2).

As one of the eight WSBs established at the time, the Athai Water Service Board (AWSB), covering an area of 3,810 square km with a population of 5.5 million people serves a population of over 4.5 million through its twelve Water Services Providers (WSP) (AWSB, 2018). The Board has the responsibility to develop infrastructures to capture, treat and distribute water, within the specified geographic area where the city of Nairobi is included. Even though the Board's accountability is to the MWI, given its semi-autonomous status, it owns and administers water infrastructures supplying water to Nairobi. Hence, this gives it a degree of influence over those who depend on its service provision. However, as Nairobi is the seat of the government, the AWSB is under an executive pressure to expedite the construction and deliver projects as the Northern Collector Tunnel Phase 1 (NCT1) (Oates & Marani 2017, p. 33).

2. The Project

Republic of Kenya Case 115: Water and Sanitation Service Improvement Project WaSSIP (p096367) and Water and Sanitation Service Improvement Project - Additional Financing WaSSIP AF (p126637)

2.1 General Information

The World Bank Board of Executive Directors approved US\$150 million equivalent (IDA Specific Investment Loan) on December 20, 2007, for the implementation of WaSSIP. The Development Objectives of the project were “(i) increasing access to reliable affordable sustainable water supply and sanitation services; and (ii) and improve the water and wastewater services” (IP 2017b, p. 1). Later in May 2012, the Project was further expanded, through an Additional Funding (WaSSIP AF) of US\$300 million (IDA Specific Investment Loan). Hence, with the expansion, the Project Development Objective (PDO) was revised to “*increasing the access to water supply and sanitation services in the project implementing entities' service areas*” (ibid, p. 2).

The AF came with three new components and was co-financed by the French Development Agency. The first component is expected to assist “*the rehabilitation and extension of water supply systems, the development of additional water sources for Nairobi, drought mitigation measures, and improvements in wastewater collection and treatment facilities in the*

jurisdiction of the AWSB” (IP 2017b, p. 2). With estimated cost of US\$85 million, the NCT1, which is a subcomponent of Component 1 of the AF, is the foci of the Request. While the credit for the original WaSSIP was fully disbursed and the Project was terminated on December 31, 2013, WaSSIP AF, whose 73 percent of its credit disbursed, is set to be closed on December 15, 2017 (ibid).

Component 1 of the AF is aimed at supporting rehabilitation of the water supply system and developing new water sources for the capital city. The NCT1 project, is located around the Aberdare Conservation Area, 60 km North of Nairobi. The constructions are to takes place in Kangema and Kigumo Sub-Counties of Murang’a County (MC). The Project includes, the construction of water intake structures at Maragua, Gikie and Irati rivers; construction of access adits at Gikigie, Irati and Kaanja; and the construction of 11.8 km long, 3.0 wide, fully concrete lined water tunnel, from Maragua intake to Githika outfall near Makombi. which is found upstream of the Thika Dam i.e. the main source of Nairobi’s water supply (IP 2017b, p. 2; AWSB 2016, p. 3). The NCT1, which is one of the four crucial elements of a master plan which aims to enhance water supply to Nairobi and its environs. The master plan includes “*Transfer of water from Maragua River, Irati River and Gikigie River to Thika Dam; Construction of a water treatment plant 6 km downstream of the dam; Construction of a raw water gravity main from Thika Dam to the proposed water treatment plant; and Construction of a 44-km treated-water gravity main up to Kabete reservoirs (capacity1.60m³/s) via Ngethu and Gigiri water treatment plants to meet the city’s year 2017 water demand*” (IP 2017b, p. 2).

Even though the Project was started in February 2015, its Environmental Assessment (EA) category was changed (while construction was underway) from category B to A, which indicates the potential environmental and social impacts it carries with it. Hence, the NCT1 has brought seven safeguard policies to light, namely “(i) Environmental Assessment (OP/BP 4.01); (ii) Natural Habitats (OP/BP 4.04); (iii) Physical Cultural Resources (OP/BP 4.11); (iv) Involuntary Resettlement (OP/BP 4.12); (v) Indigenous Peoples (OP/BP 4.10); (vi) Safety of Dams (OP/BP 4.37); and (vii) Projects on International Waterways (OP/BP 7.50)” (IP 2017b, p. 2).

Accordingly, the AWSB has commissioned GIBB Africa Ltd. to prepare an Environmental and Social Impact Assessment (ESIA) and a Resettlement Action Plan for NCT1. The ESIA when completed in January 2014, indicated, emphasis should be given to provision of adequate water supply, to the city of Nairobi and its environs and creation of employment opportunities and related social and economic benefits. It also noted the possibility of potential environmental impacts, such as possible reduction of water flow downstream and obstruction of the movement

of migratory fish by the intake structures upstream. Thus, it proposed “*abstractions to be monitored routinely and the construction of fish passes*” as mitigation measures (IP 2017b, p. 3).

2.2 The Request for Inspection

On November 29, 2016, the WB Inspection Panel received a Request for Inspection from representatives of residents of MC, Kenya. The Requesters implied that they have suffered or are likely to suffer harms, due to World Bank’s failure or omissions by providing funds to the construction of Northern Collector Tunnel Project located in MC, (Kigumo, Kandara and Kangema Sub-Counties), Kenya (IP 2016, p. 2). The Request was made by 47 residents of the County, with the assistance of a local NGO. The Requesters who asked for their identities to remain confidential, alleged that, by causing water shortages and thereby food insecurity, the diversion of water from rivers in their county would bring an irreversible environmental impact. They also noted that, the Environmental Social Impact Assessment (ESIA) has not been conducted in a comprehensive manner and there was no adequate community involvement (IP 2017b, p. 1). By implying the Bank’s Operational Policies have not been properly observed, the Requesters asked for environmental impacts to be identified and mitigated. They also stated that, they have complained to Bank on two occasions, by submitting list of grievances to the WB Grievance Redress System (GRS). Thus, following their Request, even though an Independent Panel of Experts (IPE) was set up by GRS and the AWSB to study the project, they believe, the response they received was not satisfactory. They also allege, the IPE works in a slow manner and it has only replied to one of their submissions. Yet, the response, instead of addressing the underlying problem, only focuses on giving promises that their concerns would be addressed during construction, through the guidance of the IPE, the very IPE which they accuse for lacking impartiality. Thus, they requested the IP to recommend World Bank's Executive Directors for full investigation to be carried out on the matters (IP 2016a, p. 2; IP 2017b, p. 3).

2.3 Determining Eligibility and Notice of Registration

In determining eligibility of the case, instead of making assessment on the substance of the case, the IP looked at set of verifiable facts expressed in the Request, in contrast with the established criteria. Thus, as stipulated in the 1999 clarification¹, after conducting its initial due diligence,

¹ The 1999 Clarification of the Board’s Second Review of the IP, April 1999.
(available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf>)

the Panel determined the case meets all the six technical eligibility criteria (See IP 2017b, p. 6-7; IP 2014, p. 15-16). Afterwards, as per paragraph 17 of the Resolution, on January 12, 2017, in a letter addressed to WB President and the Executive Directors, the Chairman of the IP notified the registration of the case (IP 2017a, p. 4).

2.4 The Request

The claims of the Requesters and the following response from the WB management are broadly categorized into five major thematic areas, namely Environmental Impacts; Cumulative Impacts; Water Availability and Demand Water Storage Capacity; Disclosure of Information and Community Participation (IP 2017b, p. 3). Each of them will be discussed in the following sections.

Environmental Impacts: The Requesters claimed that the ESIA has not been conducted in a comprehensive manner, and thus the project is being carried out with the absence of geotechnical studies to map rocks, aquifers, water table, swamps, springs and relevant mitigation measures. As a result, they are worried that tunneling could puncture aquifers, interrupt underground water flow paths and eventually dry rivers and springs and cause irreversible environmental damage, which is against Bank policies (IP 2017b, p. 3; IP 2016b, p. 2).

Cumulative Impacts: The Requesters stated that, Phase II of the Project, is going to extend the tunnel, to four rivers within MC, sharing common catchment and hydrology and have integrated uses within the County. Thus, even though a Comprehensive Environmental Assessment (EA) is a standard procedure for such projects relying on common water catchment, river and shared utilization, they allege the AWSB turned down the request to perform a comprehensive ESIA for phase I and II of the project (IP 2017b, p. 3; IP 2016b, p. 1).

Water Availability and Demand: The Requesters noted that, diversion of the water flow to the NCT upstream would result in reduced flows. Hence, they fear potentially zero flow or near-zero flow periods, putting the possibility of future domestic and agricultural use downstream, under a question mark (IP 2017b, p. 3; IP 2016b, p. 3).

Water Storage Capacity: The Requesters stated that, due to its small storage space, the buffering capacity of Thika Dam, is limited when the inflows increase. They have also added, twice a year, the dam spills over the water it receives from the Thika River. Thus, they are convinced that, the additional water that will be transferred through the NCT1 would invariably be spilled over three to four months in a year. This would result in wastage of flood water, that

could have been used downstream in MC, to replenish the low lands and make farming possible during the dry season. In this connection, they stressed, a potential food insecurity will increase poverty, which is contrary to WB policies (IP 2017b, p. 3; IP 2016b, p. 4).

Disclosure of Information and Community Participation: The Requesters claim that, there was no adequate community participation and thus, instead of providing accurate information regarding the possible negative impacts of the project, the AWSB was engaged in disseminating wrong information, to uninformed community members, who do not have the expertise to fully grasp technical details. In this regard, they stated the community was informed that NCT1 takes only flood water while the project has been designed to extract Q95 flow for 365 days a year (IP 2017b, p. 4; IP 2016b, p. 1).

The Independent Panel of Experts: The Requesters noted that, following concerns raised by the Requesters and the MC, the WB GRS set up an IPE to study the project and come up with recommendations for improvement. However, they stated since its establishment, the IPE failed to constructively engage the community and it lacks impartiality (IP 2017b, p.4).

2.5 Management's Response

The management in its response stated that, even though it acknowledges the concerns the Requesters raised, as clearly indicated in the comprehensive studies conducted, the Project would have no significant negative effect on residents living along the tunnel. It also added, all potential environmental, health and safety concerns, that may arise from the project, were thoroughly investigated, consulted and addressed through design and mitigation measures. Thus, on the contrary, the Project will bring significant advantages, for beneficiaries, both in Nairobi and MC. As a result, it holds the view that, all pertinent policies and procedures are observed and thus, it concluded that the Requesters have not been or will not be affected by the Bank's failure in implementing its policies and procedures (WB 2017, p. v-vi; IP 2017b, p. 4). Henceforth, Management's response to each concern raised by the Requesters will be discussed.

Environmental Impact: Contrary to the Request, the Management insisted, as per the geotechnical studies which informed the Project design, it is unlikely for the tunnel to obstruct the flow of ground water. Hence, given the considerable wide area the groundwater flows towards to, the tunnel could be seen as a minor obstacle. Yet, to prevent any water from permeating into the tunnel, its structure will be fully watertight and grouted to the rocks outside. Thus, Management is of the view that the Project will neither puncture the aquifers nor dry the rivers and springs, as the Requesters alleged (WB 2017, p. 7; IP 2017b, p. 4).

Cumulative Impacts: Management described that, a full ESIA was conducted in 2015. Thus, following the ecological field investigation under the ESIA, the technical design of the project was revised to entertain the ecological demands of the river, notably, ladders were built at intake structures for fishes. Furthermore, to follow the international practice, an IPE was constituted to oversee the technical design, construction methodologies and unforeseen environmental and social impacts and provide support in project implementation (WB 2017, p. 7; IP 2017b, p. 4).

Water Availability and Demand: In responding to the concern that, diversions would lead to possible water shortages for domestic, agricultural and industrial use downstream, the management stated, the intake structure are built in such a way to only abstract floodwaters. Thus, the rivers must be at flood level to make it into the intake structures and thereby to the tunnel. The Management emphasized, the guaranteed compensation flows the studies affirmed, and thus more water would be delivered to meet the needs downstream until 2035. It also went on to add that, following the ESIA, such downstream compensation flows were made to increase by AWSB, so that the concerns are addressed, and water demands downstream are adequately met (WB 2017, p. 9; IP 2017b, p. 5).

Water Storage Capacity: Acknowledging the concern that Thika Dam could overflow, following the rainy season, the Management stated that, intake structures of the NCT1 would be made to automatically close their gates prior to any overflow. Additionally, there will be no spill over from the Thika Dam, because the water would return back into Thika River and drain into Masinga Dam (WB 2017, p. 11; IP 2017b, p. 5).

Disclosure of Information and Community Participation: The Management in its response noted that, notwithstanding the Requesters claim, series of consultations regarding the ESIA were held with every relevant stakeholder and the study reports were disseminated among them. It also added, the issuing of licence for the Project by the National Environmental Management Authority (NEMA), came after these consultations including with the supposedly affected people and their suggestions were taken into account. Thus, it discounts the claim that community participation was lacking. Furthermore, Management stated that, most of the concerns of the Requesters are based on wrong information or preliminary documents that have been updated since. Management also added, even though attempts were made together with the Project team, the WB GRS, the implementing agency, and the IPE to engage with them and further discuss their concerns, the Requesters were nowhere to be found (WB 2017, p. vi; IP 2017b, p. 5). As the Panel learned later, the Requesters admitted their absence during the meeting with the GRS. They told the Panel that, they would have rather preferred a written

response regarding their concerns. In addition, they said despite providing comments to the IPE, they have not seen its final report, nor they were able to meet them (IP 2017b, p. 5).

The Independent Panel of Experts: WB Management holds the view that, the procedures followed to hire the IPE are based on universal standards and the fact that it comprised both Kenyan and international experts, would contribute to the credibility and impartiality of their work (IP 2017b, p. 5).

2.6 Inspection Panel's Assessment of the Case

After making a review of the Management's response, vis-à-vis the Request, the Panel travelled to Kenya from February 23 to 28, 2017, to determine the eligibility of the case. During its stay in Kenya, it conducted series of meetings with all relevant stakeholders and visited the Project's construction site. Thus, based on information gathered during its visit, the Panel stated that, it has learned throughout the course of the Project, some technical aspects and data have evolved, to be more efficient and increase in quality and precision. It also added, current programs which are underway, such as additional data generation, analysis and the ongoing preparation of Integrated Water Use Master Plan for MC, as moves in the right direction. The Panel also noted that, it received assurances from the Management that, the on-going consultant selection process is going smoothly and is expected to be completed in February 2018. This, according to the Panel, is a right move as the consultant would be tasked with conducting catchment abstraction survey, need assessment of the County's future (domestic, industrial and irrigation) water use, and workout an integrated Master Plan. The Panel stressed the importance of this masterplan, especially in light of the recommendations it is expected to come up with for appropriate future storage sites, provided that, water demand of the County will exceed the current storage capacity, in the future (IP 2017b, p16).

Regarding the role of the IPE, the Panel stated, it contributed a lot by providing valuable inputs to the Project design, which were then integrated into the Project by the AWSB. The Panel also added, it has learned that, the IPE confirmed the Project's technical viability, if close supervisions are to be made in parallel. With respect to abstractions, the Panel pointed out that, even though the initial identification of Q95, as the minimum compensation flow was lax and could have affected the ecological balance of the river, the later decision (which came after a consensus agreement) to alter the minimum compensation flows, from Q95 to Q80 for Maragua and Gikigie Rivers, and Q68 for Irati River is more conservative and can provide better space for mitigation measures if the need arises (IP 2017b, p. 17).

The Panel stated that, it holds a firm belief that, the Project design was enriched and/or has gained much from wide range of studies, processes and dialogues it has gone through so far namely, the ESIA, Technical Report of MC, the Consensus Agreement, NEMA's licensing process and modifications made because of IPE's involvement. Hence, the Panel noted that, since the launch and later through the course of the Project, the Management came to acknowledge, the potential impacts associated with NCT1. Thus, mitigation measures aiming to remedy the likelihood of any harm, have been introduced and the Panel is of the view that they would be implemented accordingly (IP 2017b, p. 17). The Panel also pointed out that, it took note of the extensive consultations conducted with various actors, both in the contexts of Project preparation and in compliance with NEMA's requirements, as encouraging. Furthermore, it underlined the need for adhering to Operational Procedures for intake infrastructure, tunnels and compensation conduits, as key, in making sure that abstractions would not go beyond the current estimates. Finally, it noted that, it is encouraged by the transparency in providing unhindered access to the community and that, this will contribute to clear out any existing doubt with respect to the amount of abstractions and waterflows. Thus, the Panel expressed its belief that, as part of its communication campaign, the Project implementing agency i.e. AWSB will further reach out to the community with relevant information regarding compensation flows (ibid., p. 17).

2.7 The Panel's Decision

In passing its final decision, the Panel stated that, the Request conforms with the technical eligibility criteria which is stipulated in the Resolution that the IP is founded on, as well as the 1999 Clarification. Nevertheless, based on observations it has made, since the case was brought into its attention and the improvements made on the Project design and the measures being taken, to address the concerns of the Requesters, the Panel did not recommend an investigation. However, it noted that its decision does not exclude any future Request for Inspection by the Requesters, on the basis of new evidence that could arise along the way (IP 2017b, p. 18).

3. Discussion

3.1 The NCT1 beyond the IP

Relying on the review and the final decision made by the IP, the case seems not as much controversial as previous cases that were brought before the Panel. Supporting this statement is, the IP was convinced enough (by Management's response and information obtained from its visit to Kenya) not to recommend for an investigation. However, a further look on the ground in Kenya proves the otherwise. Even though, information regarding the status of the Requesters,

following the decision of the IP is not available in abundance, it is possible to note that, the case seems to not fade away anytime soon and continues to be controversial than ever. According to Kenyan news outlets, the NCT1 became a major political topic and it gained traction among politicians at both national and local levels. One reason justifying this much interest, has to do with the complex nature of the Project, involving multitude of actors with different interests in Kenya. In this regard, I would discuss, the perspectives reflected in Oates & Marani 2017 who have extensively covered the issue. This is also very critical to understand the concept of accountability in political theory as explained in Pereira & et al 2017 to help us determine whether accountability mechanisms were observed in this particular case.

3.2 Any Similarity with Previous Cases?

It can be learned from the NCT1 that, unlike most cases that came to the attention of the IP, there is neither a high-profile international campaign nor greater involvement of NGOs behind, except an identified local NGO assisting the Requesters in filing the initial Request. Instead, as many other cases implied in Treake & et al 2003 p. 253, such as Jamuna, Ecodevelopment, Lesotho Highlands Water, Pro-Huerta, Land Reform, Lake Victoria and Prodeminka, there was no significant international support. The NCT1 gained popularity among the Kenyan public, when the issue was taken up by national political actors. As I would highlight in the following sections, both national and local politicians brought the issue into a limelight, when they came out to vehemently object the Project and present the case as the government's failure to pay attention to citizens welfare.

3.3 The National Actors Around the Project

According to Oates & Marani (2017), the controversies surrounding the NCT1 involve various actors, who have different stakes from the construction of the project. On one hand, the AWSB, the Nairobi City Water and Sewerage Company (NCWSC), Nairobi County Government and the city's residents and industries, that are all set to benefit from the implementation. Whereas, members of the MC administration, local irrigators of MC, water providers at municipal level, and MC businesses make up the group viewing the Project, as imperilling their interests. Likewise, institutions cutting across the Project, directly or indirectly are also too many. Hence, they can be referred as "third parties", namely the two regulatory bodies i.e. the Water Resource

Management Authority (WRMA) and NEMA, the Project funders and development partners such as the WB, the line ministries and national politicians² also make up this list (p. 33).

3.4 The Different Interests Surrounding the Project

As with many other cases involving the WB IP, the implementation of NCT1 involves different groups and agencies with varying functions and interests. Hence, the AWSB, the primary agency in charge of implementing the Project, is at the epicentre of the controversy and under a huge pressure by the national actors in Nairobi, to deliver the Project. This urgency according to Oates & Marani (2017), emanates from Nairobi's booming population and the worsening water problem, the city's economic and political importance, and its geographical location limiting its access to other water options. The authors also add, as water is, by law, a public good and not belong to any single actor, its development is seen as a national interest. Thus, maintaining the position that, the Project is technically sound, the AWSB consider the attempts to impede the Project's implementation as political. However, even though the AWSB presides over the building of infrastructures, to supply water to Nairobi, the responsibility to administer the city's dams and water distribution infrastructure lies with NCWSC, another interest group. Hence, as a WSP, the NCWSC is mandated to report to Nairobi city county government, but also to AWSB, since it has a tenancy agreement and pays fee to the AWSB and WRMA. The difficult position the NCWSC is found in, does not only arise from serving different masters with different interests, simultaneously, but also from the liability it has to provide water service for its customers (i.e. Nairobi residents), another interest group that pays tariffs and expects quality water service in return (Oates & Marani 2017 p. 33).

On the other hand, the other interest groups in MC, involve, those who feel their safeties would be threatened from the Project. In order to understand their rationale for objecting the project, it is better to investigate further the grounds underlining the position taken by these actors. Thus, I would rely on the analysis by Oates & Marani 2017, to discuss some of these grounds. According to them, like the NCWSC, the MC government has a responsibility to make certain that its residents (also voters) have access to reliable water service. In this regard, the legislator wing of MC government has been an outspoken critic of the NCT 1 Project. This, according to the authors could be explained for four major reasons which we will see in the following section (Oates & Marani 2017, p. 34).

² The interests of National politicians can be understood in the sense that, results of such huge infrastructure projects would have impacts on their political capital and carries reputational risks. Concerns in relation to loan repayment and returns on investment could also be mentioned here (Oates & Marani 2017, p. 33).

First, as far as the Project is concerned, consensus from MC has proved to be difficult to come by. Hence, the government questions its design, feasibility and sustainability and believes that, if implemented as planned, it would affect downstream farmers by depriving them the floodwaters and mineral rich alluvial soil they need for irrigation. According to the authors, this concern was also reflected by Mirira Water Users Association of Irrigators, in MC who submitted a petition to WRMA, to oppose application of AWSB for a permit. The NCT 1 also carries the risk of undermining future ambitions in the County, to expand irrigation and build small hydropower generation (Oates & Marani 2017, p. 34).

Secondly, other stakeholders within the larger Tana Basin, believe that Nairobi has failed to come up with demand-side innovations to alleviate the problem and discount the “scarcity of water” rhetoric being used to rationalize the inter-basin transfer. Their argument stems from the belief that, the NCWSC should introduce efficient ways of utilizing water and cut back wasting of this scarce resource. Hence, they argue that, beside repairing leakages along distribution lines, innovative techniques in water conservation and modern technologies need to be adapted. And cast their doubt regarding how long a complete overdependence on the Tana basin could last Nairobi in the future (ibid., p. 34).

The third point stakeholders in MC raise, which is also well reflected in the Requesters claim to the IP is, the fact that the planning process was conducted while side-lining the community. This according to them, was in clear violation of the national environmental legislations and the principle of public participation, a right preserved by the constitution. They say the process was flawed, as decisions were made for them in Nairobi with no consultations with MC stakeholders. They also confirmed that, it was after so much delay when the pressure from the County mounted, that they were finally invited and information regarding the studies and the Project design was shared. As Oates & Marani (2017) notes, the stakeholders confirmed, the reason why they were left out was because, there were people with a drive to short cut the process of Project implementation (p. 34). On the other hand, the AWSB contends these claims, saying the Project was in the pipeline for long and its planning dates back the formation of County Governments themselves. The lack of interest for community engagement can be clearly reflected in statements like *“The stakeholder landscape keeps changing and consultations are continuous. We need to move forward [with the project]. We can’t spend the next 20 years consulting. The water demands of Nairobi are growing fast!”* (ibid., p. 35).

The last point is pertinent to politics. The threat that the NCT1 Project could undermine water supplies downstream in MC, has captivated politicians’ attention. The issue has now become

an important political magnet to influence voters and rally them behind one's political campaign. Based on information obtained from an interview conducted by Oates & Marani (2017), *"there is a feeling that the next county election could be won or lost based on whether the project goes ahead, or whether it is contested"* (p.35). On the government side, it is possible to see that, mega water infrastructures like the NCT1, are part of the government's flagship projects to achieve its development objectives vis a vis Vision 2030, a blue print outlining the country's national development. Thus, because they have a strong political backing and are considered *"a national priority in Kenya, it can be difficult politically to discuss alternatives or to contest such projects"* (ibid., p. 8).

On the other hand, it is interesting to note the contrasting views the opposition holds, regarding the Project. Despite the position of the GoK, politicians both at national and county level have intervened to voice their concern regarding the Project. In this respect, it is possible to observe that there is little interest from MC political actors in sharing their resource without their demands being met first. In one of the meetings, the County leaders had with officials of the MWI, who were trying to convince them about the benefits of the Project, one of the MPs told the officials that, they would not allow giving "their water" to Nairobi, while his constituents are sentenced to suffer from water shortages as "their resource" is being forcefully taken away for free. Likewise, in compliance with the MP, the Governor of the County said, his County demands that, it gets its fair share from any revenue collected by taking the rivers to Nairobi, just as Turkana (the oil rich County) residents receive shares from the oil profits extracted from their County (Gachane 2018).

The other actors chiming in this fierce debate are national politicians. According to the Daily Nation 2018, even though its work started in 2015, the construction came under the public limelight in 2016, when the leader of the country's largest opposition alliance, the Coalition for Reforms and Democracy (CORD), Raila Odinga issued his caveat on the Project, saying it would cause a devastating impact on the environment. He described the NCT1 as "tunnel of death" and it would turn seven counties into deserts (Njeru 2018). Further directing his sharp criticism against the project, Mr. Odinga said, *"The secrecy surrounding this project is by design. Even the Jubilee government knows it's a bad project"*. The CORD chief also noted that, the NCT1 which is part of government's Vision 2030, has never been brought before the parliament and MPs have not discussed the issue, before the government decided to go ahead with construction. According to him this is *"unconstitutional, criminal and blatant abuse of power and grievous derogation of the rights of people affected"*. Mr. Odinga also said, even

though his party understands that Nairobi needs water, other sustainable ways of solving the problem could have been sought instead (Agutu & Olick 2016).

3.5 Accountability in political theory

As Pereira & et al expound, the concept of accountability, as an element of democracy, requires political actors to conduct their business with full sense of accountability and responsiveness. While accountability entails the disclosure of information for one's constituents, responsiveness implies the will of these constituents are taken seriously and well reflected, in the ways in which, the political agents holding offices in a state bureaucracy function. Thus, accountable governments, institutions and agencies are transparent and responsive to citizens (Pereira & et al 2017, p. 4).

It is possible to make inference from this concept to look the political actors in Kenya, who are involved in the implementation of the NCT1 Project, through the lenses of these fundamental principles of democracies. In this regard, the secrecy surrounding the comprehensive environmental and social impacts of the Project and the non-participatory nature of the planning process, especially in the earlier phases of the Project, has been the main concern, the constituents i.e. MC residents indicated, in their Request to the IP. This is a claim disputed by the AWSB, the agency in charge of implementation of the project. Yet, the agency maintains that it was acting in a transparent manner and that it has ensured the affected communities were part of the process and an IPE were constituted. Nevertheless, the Requesters confirmed that such invitations came very late, when their opposition grew and became too loud to ignore. Here it can be noted that, if conducted in a timely manner, this could have provided an opportunity to devise mitigation measure at least acceptable to the communities' demands. As the Requesters pointed out, even after the late invitation, the project implementing agency have chosen to act in a cunning manner, cherry picking the audience groups it wants to involve i.e. the uniformed residents from the least impacted areas. Hence, as implied in the Request, residents downstream to the east of the tunnel, who are likely to experience the most adverse effects, have never been made aware of the Project, even after the construction commenced. On the other hand, both the AWSB and WB Management dismiss the allegations, maintaining that they were increasingly becoming more responsive to the demands of communities and progress has been made in ensuring transparency mechanisms. However, as we have seen in the previous chapters, unsatisfied with the established national mechanisms, hoping to get answers for their concerns, the Requesters have turned their face to what they believe is more accountable and responsive mechanism, the World Bank IP that finally concluded the Request does not warrant an investigation.

4. Conclusion

Kenya has been facing water scarcity for many decades. As a result, the country has been hit with, drought induced natural disasters. Coupled with its rapidly growing population, the crisis has added a further strain on the delivery of this scarce resource. Hence, its capital, Nairobi was no exception to the water problem. To reckon with the problem, the GoK has taken several steps over the years. Infrastructural development, introduction of new policies and enactment of laws were part of these efforts. The AWSB, one of the eight WSBs constituted following the new Water Act in 2001, is the responsible government agency to meet the water demands of the capital city and its environs. The World Bank first through WaSSIP and later through WaSSIP AF, together with the French development agency has provided financial assistance to support efforts of the national government. WaSSIP AF, whose first component include the construction of the NCT1 in MC, adjacent to the city of Nairobi, has been a bone of contention since its launch in 2015, between residents of the County, who felt their livelihood would be at risk and the project implementing agency i.e. AWSB and the WB who would like to see project completion without a delay. After several failed attempts to reconcile their difference with the AWSB and WB Management, dissatisfied residents, turned to the WB IP by making Request for an investigation to be carried out on the matters. Even though the IP registered the case for its compliance with the eligibility criteria, as it is noted in the paper, a later review of the case resulted in its dismissal from being recommended for an investigation. Justifying this decision, according to the IP were, the confidence building measures being taken by the AWSB and the WB Management to pay heed to concerns of the affected communities reflected in the Request and the commitment being demonstrated through adjustments and modifications introduced to Project since its launch, so that any environmental and social impacts are being/would be averted if not reduced. Though information is not available regarding the status of the Requesters following the IP's decision, according to Kenyan local media, the case has continued to be as controversial as ever, as politicians both at national and local level are continuing to voice the dissatisfaction of the affected communities.

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