

Enhancing Environmental Governance for Peace Building in Kenya

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Abstract

Peace is considered to be a necessary ingredient for sustainable development. However, the same can only be achieved and assured where all the needs of groups are taken care of and any dissatisfaction is addressed adequately. Most if not all of the socio-economic needs of a people largely rely on the status of the environment. It is therefore arguable that there is a link between the state of the environment and peace in any society. This paper critically discusses how peacebuilding efforts can benefit from enhancing and streamlining environmental governance as way of addressing some of the causative factors that may directly or indirectly contributed to instability in a society.

1. Introduction

The *2030 Agenda for Sustainable Development*¹ provides a global blueprint for dignity, peace and prosperity for people and the planet, now and in the future. Goal 16 thereof seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.² The *Agenda* also rightly points out that there can be no sustainable development without peace and no peace without sustainable development. One of the elements of sustainable development is effective environmental governance. The *Agenda* states that it recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions.³ The *Agenda* calls for further effective measures and actions to be taken, in conformity with international law, to remove the obstacles to the full realization of the right of self-determination of peoples living

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¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

² Goal 16,

³ Target 35, *Transforming our world: the 2030 Agenda for Sustainable Development*.

under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment.⁴

It is against this background that this paper discusses the fundamental principles underlying environmental governance and links the same to peacebuilding. The discussion is based on the hypothesis that there exists a link between the state of environmental governance and the peace building in any country.

The paper begins with a background on environmental governance that includes a definition of environmental governance and its underlying principles. The second part discusses the scope and elements of peacebuilding. The author then traces the link between the concept of environmental governance and peacebuilding. Lastly, the discourse ends with some recommendations on how the relationship between the two concepts can be exploited in order to build a lasting peaceful society as part of achieving the sustainable development agenda in the context of Kenya.

2. Environmental Governance: Theories and Conceptualisation

2.1 Theories and Conceptualisation of Environmental Governance

There exist different definitions of the term ‘governance’ by various scholars.

Governance has been defined as a system for shaping behaviour to socially useful ends, involving many participants serving various roles. Those involved in this system include government officials, legal authorities, self-governing organisations and non-government actors such as citizens, industry stakeholders, those being governed and those who are affected by governance.⁵

Some scholars have discussed the theory of governance under five broad propositions, which are considered to be complementary rather than contradictory. These five propositions are: Governance refers to a set of institutions and actors that occupy government bodies and “beyond” – that is, they are also from the private and the third sector; Governance identifies the

⁴ Ibid, Target 35.

⁵ Martin, P., Boer, B. and Slobodian, L., (Eds.), *Framework for Assessing and Improving Law for Sustainability* IUCN, Gland, Switzerland, 2016, xii + 126 pp at p. 1. Available at https://www.iucn.org/sites/dev/files/framework_for_assessing_and_improving_law_for_sustainability.pdf [Accessed on 16/5/2019].

blurring of boundaries and responsibilities for tackling social and economic issues; Governance identifies the power dependence involved in the relationships between institutions involved in collective actions; Governance is about autonomous self-governing networks of actors; and Governance recognizes the capacity to get things done which does not rest within the power of government to command or use its authority.⁶

Environmental Governance has been defined as the means by which society determines and acts on goals and priorities related to the management of natural resources. This includes the rules, both formal and informal, that govern human behavior in decision-making processes as well as the decisions themselves. Appropriate legal frameworks on the global, regional, national and local level are also considered to be a prerequisite for good environmental governance.⁷

‘Governance of natural resources’ has been used to mean the interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decisions are taken, and how citizens or other stakeholders have their say in the management of natural resources – including biodiversity conservation...⁸ The concept of ‘good governance’ includes accountability and is built on “fundamental human values and rights, including fairness, equity and meaningful engagement in and contribution to decision making.”⁹

It is thus arguable that environmental governance in any country is only as effective as the general governance framework in place. Environmental governance does not operate in a vacuum but also relies on the effectiveness of the general governance in a given country.

2.2 Role of Law in Environmental Governance and Management

The law is considered an essential tool for governance and management of natural resources. It contains anticipatory mechanisms to ensure that natural resources are properly distributed, conserved and protected well into the future. Since law is the key instrument for

⁶ Asaduzzaman, Mohammed & Virtanen, Petri, “Governance Theories and Models”, 2016, in A. Farazmand (ed.), *Global Encyclopedia of Public Administration, Public Policy, and Governance*, DOI 10.1007/978-3-319-31816-5_2612-1.

⁷ IUCN, Environmental Law: Governance and MEAs, available at <https://www.iucn.org/theme/environmental-law/our-work/governance-and-meas> [Accessed on 16/5/2019].

⁸ IUCN Resolution 3.012 on Governance of natural resources for conservation and sustainable development adopted in Bangkok, Thailand in 2004. Available at https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2004_RES_12_EN.pdf [Accessed on 16/5/2019].

⁹ Ibid.

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transforming societal goals and aspirations into practice, its role is vital in interweaving environmental interests into the scheme of economic development. Law sets substantive norms, establishes decision-making institutions and processes, and provides mechanisms for accountability and conflict-resolution.¹⁰

It has rightly been argued that law reflects the combined result of the many viewpoints, values, knowledge systems, information types, and power struggles that come into play in its making and is thus inherently integrative. Law reflects the values of society.¹¹

Law creates rights, duties, powers, establishes institutions and procedures, and the basic principles on how people are to interact with each other and with natural resources. Further, the economic and financial interests that drive most of the decisions concerning natural resources are also reflected in the law.¹²

It is noteworthy that environmentally relevant legal principles, rules and implementation arrangements come from diverse sources which include: state-created rules, including constitutions, statutes, regulations, and administrative rules and plans; judicial rules, which include judgments of courts and tribunals, and legally binding rulings of other authorities or agents of government; state-supported private rules – such as industry co-regulatory arrangements or private codes or standards – that are broadly consensual and based in law related to, inter alia, contract, property, civil rights, consumer protection, or financial regulation; international bilateral, or multilateral agreements, rules of international bodies, and other state endorsed international legal and administrative arrangements, encompassing both hard law (formally ratified as legally binding) and soft law (not ratified or not of a binding nature); general legal principles that are widely accepted in national or international jurisprudence, particularly as endorsed and clarified by judgments of international and national courts and tribunals; and rules emerging from specific communities, particularly indigenous or religious communities (sometimes referred to as customary law), which can be recognized by states through specific

¹⁰ Martin, P., Boer, B. and Slobodian, L., (Eds.), *Framework for Assessing and Improving Law for Sustainability* IUCN, Gland, Switzerland, 2016, at p. 1.

¹¹ Cosens, B.A., Craig, R.K., Hirsch, S.L., Arnold, C.A.T., Benson, M.H., DeCaro, D.A., Garmestani, A.S., Gosnell, H., Ruhl, J.B. and Schlager, E., "The role of law in adaptive governance," *Ecology and society: a journal of integrative science for resilience and sustainability* 22, no. 1 (2017): 1, p.1.

¹² Moore, P., *et al*, *Natural Resource Governance Trainers' Manual*, (IUCN, RECOFTC, SNV, Bangkok, Thailand, 2011), p. 119.

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laws, bills of rights or constitutional provisions, linking customary rules and norms to the authority and responsibility of the state.¹³

The system depends upon norms that may be translated into formal or informal rules, and upon organisations and institutional arrangements to implement these norms. Governance systems vary between communities, and change over time, and they intersect. Nation-state governance intersects with private sector approaches, such as voluntary commitments or supply chain standards, and with traditional and indigenous norms and practices for conserving and using the natural world.¹⁴

In Kenya, there are intricate and detailed frameworks and sectoral laws in place to ensure proper conservation and protection of natural resources.¹⁵

In addition to the statutory provisions on environmental law, constitutionalisation of environmental rights is now one of the universally accepted approaches to environmental conservation and management.¹⁶ It has become the norm worldwide for the duties of the state in respect of the environmental management and conservation to be spelt out in the Constitution. It is against this background that the Constitution of Kenya 2010 outlines the obligations of the State in respect of the environment as including the duty to: ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources¹⁷, and ensure the equitable sharing of the accruing benefits; work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya; protect and enhance intellectual property in, and

¹³ Martin, P., Boer, B. and Slobodian, L., (Eds.), *Framework for Assessing and Improving Law for Sustainability* IUCN, Gland, Switzerland, 2016, at p. 3.

¹⁴ *Ibid.*, at p. 1.

¹⁵ See Muigua, K., Kariuki, F., Wamukoya, D., *Natural Resources and Environmental Justice in Kenya*, Glenwood Publishers, Nairobi, 2015.

¹⁶ See generally, Boyd, D.R., 'The Effectiveness of Constitutional Environmental Rights,' *Yale UNITAR Workshop*, April 26/27, 2013, available at

<https://environment.yale.edu/content/documents/00003438/Boyd-Effectiveness-of-Constitutional-Environmental-Rights.docx?1389969747> [Accessed on 23/07/2016]; See also Daly, E. & May, J.R., 'Comparative environmental constitutionalism,' *Jindal Global Law Review*, April 2015, Volume 6, Issue 1, pp 9–30; See also, Mwenda, A. & Kibutu, T.N., 'Implications of the New Constitution on Environmental Management in Kenya,' *Law, Environment and Development Journal*, Vol. 8, No. 1, 2012, p. 78; See also Okidi. C.O., "Concept, Function and Structure of Environmental Law", in C.O Okidi, P. Kameri -Mbote and Migai Aketch (eds.), *Environmental Governance in Kenya; Implementing the Framework Law*, (East African Educational Publishers, 2008), pp. 142–182: 146.

¹⁷ The Constitution interprets "natural resources" to mean the physical non-human factors and components, whether renewable or non-renewable, including—sunlight; surface and groundwater; forests, biodiversity and genetic resources; and rocks, minerals, fossil fuels and other sources of energy (Art. 260).

indigenous knowledge of, biodiversity¹⁸ and the genetic resources of the communities; encourage public participation in the management, protection and conservation of the environment; protect genetic resources and biological diversity¹⁹; establish systems of environmental impact assessment, environmental audit and monitoring of the environment; eliminate processes and activities that are likely to endanger the environment; and utilise the environment and natural resources for the benefit of the people of Kenya.²⁰

The key weaknesses that have made the law seem not to be playing its intended role in natural resources management are the complex institutional set ups, differing and overlapping mandates and organizational cultures of state agencies created to manage natural resources. Laws also provide for differing management and enforcement methods over similar resources thus creating conflict between agencies, as well as, between agencies and communities living with the resources.²¹

What is required is a strengthened framework law that gives proper attention to all sectors of natural resources as well as inclusive of all stakeholders for effective management.

3. Peace Building : Meaning and Scope

3.1 Meaning and Scope of Peace Building

The term peace is related to the well-being of any person. It is a generally accepted value. In most cultures it is a type of desideratum linked to harmony, tranquillity, cooperation, alliance,

¹⁸ Generally, biodiversity is defined to include the variability among living organisms, from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Art. 2, United Nations Environment Programme, 1760 UNTS 79; 31 ILM 818 (1992); The Convention on Biological Diversity, adopted during the Earth Summit in Rio de Janeiro, promotes biodiversity, sustainable use, and the sharing of benefits arising out of the utilization of genetic resources. The Convention provides for national reporting of efforts to implement the provisions of the Convention).

¹⁹ The Convention on Biological Diversity (CBD) adopted at the Earth Summit in Rio de Janeiro, Brazil, is a global convention which aims to achieve three objectives: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of benefits from the use of genetic resources. Kenya is a signatory to this Convention and it is therefore bound by its provisions in promoting the realisation of the three objectives.

²⁰ Constitution of Kenya, Art. 69(1).

²¹ See Muigua, K., Kariuki, F., Wamukoya, D., *Natural Resources and Environmental Justice in Kenya*, Glenwood Publishers, Nairobi, 2015.

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well-being, and agreement.’²² Notably, ‘peace is not just the absence of violence, it is much more.’²³

Peace may be classified into positive peace or negative peace. Negative peace is the absence of violence or the fear of violence while positive peace is the attitudes, institutions and structures, that when strengthened, lead to peaceful societies.²⁴

Positive peace is considered as a true, lasting, and sustainable peace built on justice for all peoples. Efforts to achieve positive peace emphasize: establishing peace through world order by supporting international law, compliance with multilateral treaties, use of international courts, and nonviolent resolution of disputes, participation in international organizations, trade, and communication, establishing social equality and justice, economic equity, ecological balance; protecting citizens from attack, and meeting basic human needs, establishing a civil peace that provides the constitutional and legal means necessary to settle differences nonviolently, eliminating indirect violence, that shortens the life span of people, sustains unequal life chances, or reduces quality of life for any citizen, practising conflict resolution as a foundation for building peaceful interpersonal relationships. The concept of positive peace involves the elimination of the root causes of war, violence, and injustice and the conscious attempt to build a society that reflects these commitments. Positive peace assumes an interconnectedness of all life.²⁵

In a negative peace situation, it may not see conflict out in the open, but the tension is boiling just beneath the surface because the conflict was never reconciled. Efforts to achieve negative peace emphasize: managing interpersonal and organizational conflict in order to control, contain, and reduce actual and potential violence, reducing the incidence of war by eliminating the extreme dangers of the war system and limiting war through international crisis management, preventing war through strategic deterrence and arms control. The concept of negative peace

²² Spring, Ú.O., "Peace and Environment: Towards a Sustainable Peace as Seen from the South." In *Globalization and Environmental Challenges*, Springer, Berlin, Heidelberg, 2008, pp. 113-126.

²³ Galtung, J., "Violence, peace, and peace research," *Journal of peace research*, Vol. 6, no. 3 (1969): 167-191.

²⁴ Herath, O., "A critical analysis of Positive and Negative Peace," (2016), p.106. Available at <http://repository.kln.ac.lk/bitstream/handle/123456789/12056/journal1%20%281%29.104-107.pdf?sequence=1&isAllowed=y> [Accessed on 16/5/2019].

²⁵ Herath, O., "A critical analysis of Positive and Negative Peace," (2016), p.106.

addresses immediate symptoms, the conditions of war, and the use and effects of force and weapons.’²⁶

The scope and context of this paper is limited to discussing the connection between positive peace and environmental management and how effective environmental governance can be used as one of the tools geared towards achieving positive peace. Negative peace is just to be treated as a byproduct of the efforts aimed at positive peace.

Peacebuilding is about dealing with the reasons why people fight in the first place and supporting societies to manage their differences and conflicts without resorting to violence. It involves a broad range of measures, which can take place before, during and after conflict. They aim to prevent the outbreak, escalation, continuation and recurrence of conflict.²⁷ Peacebuilding approaches can also be geared towards either ‘positive’ or ‘negative’ peace.²⁸

3.2 Role of Law in Peace Building

Conflict is grounded in social, structural, cultural, political and economic factors as seen from the foregoing pillars, since depreciation in one increases chances of conflict in a particular society.²⁹

Some scholars have also argued that peaceful nations are better equipped through their attitudes, institutions and structures to respond to external shocks. This can be seen with internal peace correlating strongly to measures of inter-group cohesion and civic activism, which are key proxies that indicate the ability of societies to resolve internal political, economic, and cultural conflicts as well as being able to respond to external shocks.³⁰

²⁶ Ibid., pp.106-107.

²⁷ International Alert, “What is Peace Building?” Available at <https://www.international-alert.org/what-we-do/what-is-peacebuilding> [17/5/2019].

²⁸ Ibid.

²⁹ Maiese, M., ‘Social Structural Change,’ in G. Burgess & H. Burgess (eds), *Beyond Intractability*, (Conflict Information Consortium, University of Colorado, Boulder, July 2003), available at <http://www.beyondintractability.org/essay/social-structural-changes> [Accessed on 17/05/2019]; See also Maiese, M., ‘Causes of Disputes and Conflicts,’ in G. Burgess & H. Burgess (eds), *Beyond Intractability*, (Conflict Information Consortium, University of Colorado, Boulder, October, 2003), available at <http://www.beyondintractability.org/essay/underlying-causes> [Accessed on 16/5/2019].

³⁰ Institute for Economics and Peace, ‘Pillars of Peace: Understanding the key attitudes and institutions that underpin peaceful societies,’ IEP Report 22, p. 5. Available at <https://www.files.ethz.ch/isn/169569/Pillars%20of%20Peace%20Report%20IEP.pdf>

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Peace is statistically associated with better business environments, higher per capita income, higher educational attainment and stronger social cohesion.³¹ Better community relationships tend to encourage greater levels of peace, by discouraging the formation of tensions and reducing chances of tensions devolving into conflict.³²

Some of the factors that contribute to peace, the absence of which can potentially lead to conflict, are when: everyone lives in safety, without fear or threat of violence, and no form of violence is tolerated in law or in practice; everyone is equal before the law, the systems for justice are trusted, and fair and effective laws protect people's rights; everyone is able to participate in shaping political decisions and the government is accountable to the people; everyone has fair and equal access to the basic needs for their wellbeing – such as food, clean water, shelter, education, healthcare and a decent living environment; and everyone has an equal opportunity to work and make a living, regardless of gender, ethnicity or any other aspect of identity.³³

Peacebuilding approaches and methods are geared towards ensuring people are safe from harm, have access to law and justice, are included in the political decisions that affect them, have access to better economic opportunities, and enjoy better livelihoods.³⁴

It is thus arguable that while the law may have in place structures directly meant to bring about negative peace by stopping violence through various mechanisms, all the legal structures meant to address the socio-economic factors listed above have a bearing on achievement of positive peace. It has rightly been argued that many root causes and drivers of conflict such as discrimination and marginalization, unequal distribution of public goods and services, corruption, impunity and lack of accountability stem from or are exacerbated by the absence of the rule of law.³⁵

Also notable is the assertion that peacebuilding is done collaboratively, at local, national, regional and international levels. Individuals, communities, civil society organisations,

³¹ Ibid, p. 2.

³² Ibid, p. 6.

³³ International Alert, "What is Peace Building?" Available at <https://www.international-alert.org/what-we-do/what-is-peacebuilding> [17/5/2019].

³⁴ Ibid.

³⁵ IDLO, "Sustaining Peace, Building Justice: Discussion Note," available at <https://www.idlo.int/system/files/event-documents/IDLO%20IN%20-%20Sustaining%20Peace-Building%20Justice%20NO%20CONTACTS.PDF> [Accessed on 17/5/2019].

governments, regional bodies and the private sector all play a role in building peace. Peacebuilding is also a long-term process, as it involves changes in attitudes and behaviour, and institutional norms.³⁶ The law can be useful in contributing to the change in institutional norms as well as shaping the changes in attitudes and behaviour.

The rule of law is seen as a framework for the peaceful management of conflict because of its defining features: laws establishing the operating rules of society and therefore providing reliability, justice and stability in the society; norms defining appropriate societal behaviour; institutions able to resolve conflicts, enforce laws, and regulate the political and judicial system; laws and mechanisms protecting citizens' rights.³⁷

It is thus worth noting that this makes the law an important ingredient in the process of peace building, whether positive peace or negative peace.

4. Nexus between Environmental Governance and Peace Building

Debates about the relationship between the environment and peace building focus on how environmental problems, like resource scarcity and climate change, are likely to create or exacerbate conflict. Some scholars have opined that the environmental governance of a system based on participation, accountability, and equity ensures the broad political social and economic issues of the marginalized sections of the society are addressed.³⁸

Environmental scarcities have had great adverse effects on populations, including violent conflicts in many parts of the developing world.³⁹ These conflicts are especially expected to be

³⁶ International Alert, "What is Peace Building?" Available at <https://www.international-alert.org/what-we-do/what-is-peacebuilding> [17/5/2019].

³⁷ Peace Building Initiative, "Introduction: Justice, Rule of Law & Peacebuilding Processes, 2009" available at <http://www.peacebuildinginitiative.org/indexe33f.html?pageId=1844> [Accessed on 17/5/2019].

³⁸ Nafees, A., "The Role of Civil Society Institutions in Environmental Governance in India: Post-colonial Context and Human Rights Challenges in the Environmental Justice," *International Journal of Legal Studies and Research*, Special Issue-June 2018, pp. 16-39, at p. 16.

³⁹ Homer-Dixon, T.F., "Environmental scarcities and violent conflict: evidence from cases," *International security* 19, No. 1 (1994): 5-40 at p. 6.

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more devastating in poor societies since they are less able to buffer themselves from environmental scarcities and the social crises they cause.⁴⁰

The role of natural resources in conflict has also been a focus of many authors. The two approaches that have been proposed to explain the role of natural resources in conflict include scarcity (sometimes called the neo-Malthusian view) and abundance.⁴¹ Under the scarcity theory, it is argued that rapid population growth, environmental degradation, resource depletion, and unequal resource access combine to exacerbate poverty and income inequality in many of the world's least developed countries, and such deprivations are easily translated into grievances, increasing the risks of rebellion and societal conflict."⁴² An example of areas experiencing scarcity problems in Kenya is Turkana County which has been documented as one of the Counties with the highest level of poverty in Kenya⁴³, and with the distrust between local communities around the region against each other⁴⁴ leading to constant conflicts as well as cross border conflicts.⁴⁵ The conflict is largely attributed to livestock rustling, harsh climate and boundary dispute. Ironically, it is the richest region in Kenya where oil deposits were to be taken into account. A degraded environment leads to a scramble for scarce resources and may culminate in poverty and even conflict.⁴⁶

Those who view abundance as a problem argue that it is resource abundance, rather than scarcity, that is the bigger threat to create conflict, often referred to as the "resource curse"—

⁴⁰ Ibid., p.6.

⁴¹ United States Institute of Peace, *Natural Resources, Conflict, and Conflict Resolution*, A Study Guide Series on Peace and Conflict For Independent Learners and Classroom Instructors, 2007, p.8.

⁴² Ibid., p.8.

⁴³ *Turkana County –United Nations Joint Programme 2015-2018*, (Executive Office, Turkana County Government, Lodwar, Turkana UN Resident Coordinator Office, Nairobi, Kenya), p. 4. Available at <https://info.undp.org/docs/pdc/Documents/KEN/ProDoc%20Turkana-UN%20Joint%20Programme%20final%205th%20%20March%202015-binder%20%282%29.pdf> [Accessed on 17/5/2019].

⁴⁴ Bollig, M., "Ethnic Conflicts in North-West Kenya: Pokot-Turkana Raiding 1969—1984." *Zeitschrift Für Ethnologie* 115 (1990), pp. 73-90. <http://www.jstor.org/stable/25842144>. [Accessed on 17/5/2019].

⁴⁵ Johannes, E.M., et al, 'Oil discovery in Turkana County, Kenya: a source of conflict or development?' *African Geographical Review*, Vol. 34, No.2, 2015, pp.142-164, p. 142.

⁴⁶ 'Wangari Maathai-an excerpt from the Nobel Peace Prize winner's Acceptance Speech,' *Earth Island Journal*. Available at http://www.earthisland.org/journal/index.php/eij/article/wangari_maathai_an_excerpt_from_the_nobel_peace_prize_winners_acceptance_sp/ [Accessed on 17/5/2019].

corruption, economic stagnation, and violent conflict over access to revenues.⁴⁷ For instance, it has been pointed out that for many resource rich developing countries, there have been cases of low economic growth, environmental degradation, deepening poverty and, in some cases, violent conflict.⁴⁸ For instance, extractive industries, particularly in sub-Saharan Africa, have been marked with increasing levels of political, social, technical and environmental risk.⁴⁹ This has been the case in countries like Sudan, Democratic Republic of Congo⁵⁰ and Nigeria where there have been eruption of internal armed conflict as a result of their rich natural resources. Conflict also often produces significant environmental degradation.⁵¹

Apart from the adverse effect of the conflict on the environment, the illegal trade of minerals bars communities from benefiting from its resources.⁵² Communities expect that availability of environmental goods and services in their region will improve their livelihoods by ‘real’ development, which may not always be the case.⁵³ Poor and low economic development⁵⁴ and consequently, failed economies result in conflicts,⁵⁵ as a result of environmental and natural resources’ bad governance or mismanagement.⁵⁶ Skewed distribution of benefits from natural

⁴⁷ United States Institute of Peace, *Natural Resources, Conflict, and Conflict Resolution*, A Study Guide Series on Peace and Conflict For Independent Learners and Classroom Instructors, 2007, p.8.

⁴⁸ Alstine, J.V., et al, Resource Governance Dynamics: The Challenge Of ‘New Oil’ In Uganda, *Resources Policy*, Vol. 40, 2014, pp.48–58, p. 48.

⁴⁹ Ibid, p. 48; see also Lohde, L.A., *The Art and Science of Benefit Sharing in the Natural Resource Sector*, (International Finance Corporation, February 2015), p. 55. Available at <https://commdev.org/wp-content/uploads/2015/07/IFC-Art-and-Science-of-Benefits-Sharing-Final.pdf>

⁵⁰ Samndong, R.A. & Nhantumbo, I., *Natural resources governance in the Democratic Republic of Congo: Breaking sector walls for sustainable land use investments*, (International Institute for Environment and Development Country Report, February 2015), p. 11. Available at <http://pubs.iied.org/pdfs/13578IIED.pdf> [Accessed on 17/5/2019].

⁵¹ Ballet, J., et al, ‘Social Capital and Natural Resource Management: A Critical Perspective,’ *The Journal of Environment & Development*, Vol. 16, No. 4, December 2007, pp. 355-374, p. 367.

⁵² See ‘Diamonds in Sierra Leone, A Resource Curse?’ available at <http://erd.eui.eu/media/wilson.pdf> [Accessed on 17/5/2019]; Kinniburgh, C., ‘Beyond “Conflict Minerals”: The Congo’s Resource Curse Lives On,’ *Dissent Magazine*, Spring 2014, available at <https://www.dissentmagazine.org/article/beyond-conflict-minerals-the-congos-resource-curse-lives-on> [Accessed on 12/08/2018]; Free the Slaves, ‘Congo’s Mining Slaves: Enslavement at South Kivu Mining Sites,’ *Investigative Field Report*, June 2013. Available at <https://www.freetheslaves.net/wp-content/uploads/2015/03/Congos-Mining-Slaves-web-130622.pdf> [Accessed on 17/5/2019].

⁵³ Sigam, C. & Garcia, L., *Extractive Industries: Optimizing Value Retention in Host Countries*, (UNCTAD, 2012). Available at http://unctad.xiii.org/en/SessionDocument/suc2012d1_en.pdf [Accessed on 12/08/2018].

⁵⁴ See Billion, P., *Wars of Plunder: Conflicts, Profits and Politics*, (New York: Columbia University Press, 2012).

⁵⁵ Maphosa, S.B., *Natural Resources and Conflict: Unlocking the Economic dimension of peace-building in Africa*. ASIA Policy brief Number 74, 2012.

⁵⁶ Billion, P., *Wars of Plunder: Conflicts, Profits and Politics*. (New York: Columbia University Press, 2012.); See also Wiebelt, M., et al, ‘Managing Future Oil Revenues in Uganda for Agricultural Development and Poverty Reduction: A CGE Analysis of Challenges and Options,’ (Kiel Working Paper No. 1696, May 2011). Available at <https://www.ifw-members.ifw-kiel.de/publications/managing-future-oil-revenues-in-uganda-for-agricultural->

resources and other environmental goods may fuel social exclusion and conflict, threatening sustainability.⁵⁷

As far as the abundance theory is concerned, rent-seeking models assume that resource rents can be easily appropriated hence encouraging bribes, distorted public policies and diversion of public towards favour seeking and corruption,⁵⁸ which is a threat to protected human security.⁵⁹

Natural and environmental resources exploitation is capable of degenerating into a war. Effective governance of these resources is thus necessary for security and peace. Competition for scarce resources as well as inequality in access to accruing environmental benefits both have the effect of heightened animosity and potential cause for violence.⁶⁰

It is thus evident that any peacebuilding efforts that do not factor in streamlining environmental and natural resources governance are bound to fail as they would not capture the very basic needs of the communities in question: satisfaction of their socio-economic needs with minimal or no struggle.

5. Building Lasting Peace through Effective Environmental Governance

The 2030 SDGs Agenda maintains that while the causes of conflict vary widely, the effects of climate change only exacerbate them. Climate-related events such as drought threaten food and water supplies, increase competition for these and other natural resources and create civil unrest, potentially adding fuel to the already-disastrous consequences of conflict. Thus, investing in good governance, improving the living conditions of people, reducing inequality and

development-and-poverty-reduction-a-cge-analysis-of-challenges-and-options/kap-1696.pdf [Accessed on 17/5/2019].

⁵⁷ Saboe, N.T., 'Benefit Sharing Among Local Resource Users: The Role of Property Rights,' *World Development*, Vol. 72, pp. 408–418, 2015, p. 408.

⁵⁸ Tsani, S., 'Natural resources, governance and institutional quality: The role of resource funds,' *Resources Policy*, 38(2013), pp.181–195, p. 184.

⁵⁹ Alao, A., *Natural Resource Management and Human Security in Africa*, in Abass, A., *Protecting Human Security in Africa* (ISBN-13: 9780199578986, Oxford University Press, 2010); Lawson, T. R. & Greestein, J., 'Beating the resource Curse in Africa: A global Effort,' *Africa in Fact*, August 2012. Available at <http://www.cfr.org/africa-sub-saharan/beating-resource-curse-africa-global-effort/p28780> [Accessed on 17/5/2019].

⁶⁰ See Muigua, K., Kariuki, F., Wamukoya, D., *Natural Resources and Environmental Justice in Kenya*, Glenwood Publishers, Nairobi, 2015.

strengthening the capacities of communities can help build resilience to the threat of conflict and maintain peace in the event of a violent shock or long-term stressor.⁶¹

The Constitution of Kenya, 2010 provides for both the state and personal obligations in respect of the environment.⁶² This provision emphasizes the need for incorporation of good governance practices in the management of natural resources. These good governance practices should demonstrate democracy in terms of accountability and transparency. The Constitution requires the State to encourage public participation in the management, protection and conservation of the environment; and utilisation of the environment and natural resources for the benefit of the people of Kenya.⁶³

It has rightly been pointed out that law is a necessary part of the solution to sustainability challenges. However, while it is not the whole solution – that encompasses a complex system of social, economic and political processes and relationships – but it is an essential component. To achieve sustainability goals, appropriate and well-implemented legal frameworks and tools must be in place. And, importantly, they must be effective. It is not enough that laws are enacted, or even that they are fully implemented – they must work.⁶⁴

This section offers some recommendations that go beyond the law in enhancing environmental governance as one of the prerequisites for successful peace building in the country.

5.1 Use of Alternative Dispute Resolution Mechanisms to Enhance Public Participation in Environmental Conflict management

The Constitution of Kenya, 2010 provides that one of the functions of the National Land Commission is to encourage the application of traditional dispute resolution mechanisms in land conflicts.⁶⁵ This is further cemented by Article 159(2) of the Constitution which provides that

⁶¹ United Nations, *The Sustainable Development Goals Report, 2018*, p.15. Available at <https://unstats.un.org/sdgs/files/report/2018/TheSustainableDevelopmentGoalsReport2018-EN.pdf> [Accessed on 17/5/2019].

⁶² Art. 69.

⁶³ Art. 69(1) (d).

⁶⁴ Martin, P., Boer, B. and Slobodian, L., (Eds.), *Framework for Assessing and Improving Law for Sustainability* IUCN, Gland, Switzerland, 2016, at p.ix.

⁶⁵ Art.67 (2) (f).

one of the guiding principles of the judiciary in exercise of its judicial authority will be to promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms, subject to clause(3).The *Environment and Land Court Act*, 2011 provides under section 20(2) thereof, that nothing in the Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2) (c) of the Constitution.

Subsection (2) thereof further provides that where alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court should stay proceedings until such condition is fulfilled.

ADR mechanisms such as negotiation, mediation and conciliation have the potential to create forums for engaging the various stakeholders in environmental matters and subsequently address any underlying tension or feelings of marginalization. This can go a long way in creating more peaceful societies.

5.2 Inclusive and Participatory Approaches to Environmental Governance

The *UN Conference on Environment and Development, Agenda 21*⁶⁶ under chapter 23 calls for full public participation by all social groups, including women, youth, indigenous people and local communities in policy-making and decision-making. It is in recognition of the fact that unless all these groups are equitably and meaningfully involved in the decision making policies, especially those on sustainable development, then the Government efforts would either fail or prove inadequate.

Further, Principle 10 of the *Rio Declaration* states that environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual should have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.

⁶⁶ United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992.

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Kenya's approach to environmental governance has largely been sectoral and informed by the command and control approach.

The Preamble to the Constitution of Kenya captures the need for concerted efforts of all, in the duty to conserve and sustainably manage the environment, since the same does not only lie against the State but also every individual person.⁶⁷ In relation to the foregoing obligations, the Constitution places a duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.⁶⁸ Art. 69(2) of the Constitution of Kenya places a duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

The Constitution also provides for active involvement of communities in sustainable environmental and natural resources matters through seeking court's intervention. Citizenry have a right of ensuring that their rights in relation to the environment are not violated, by way of litigation.⁶⁹ The Constitution also recognises the right of every person to a clean and healthy environment.⁷⁰

Active participation of citizens (both gender) makes them appreciate and support government efforts and also take part in conservation measures. However, there has not been meaningful participation of the public in environmental and natural resource management matters, since majority of the sectoral laws only provide for public participation as a mere

⁶⁷ We, the people of Kenya—.....Respectful of the environment, which is our heritage, and determined to sustain it for the benefit of future generations...Committed to nurturing and protecting the well-being of the individual, the family, communities and the nation:....

⁶⁸ Constitution of Kenya, Art. 69(2).

⁶⁹ Art. 22(1) provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened; Art. 70(1) provides that if a person alleges that a right to a clean and healthy environment recognised and protected under Art. 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter. Furthermore, on application under clause (1), the court may make any order, or give any directions, it considers appropriate— to prevent, stop or discontinue any act or omission that is harmful to the environment; to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or to provide compensation for any victim of a violation of the right to a clean and healthy environment (Art. 70(2). For the purposes of this Art., an applicant does not have to demonstrate that any person has incurred loss or suffered injury (Art. 70(3). The right to seek legal redress is also guaranteed under s. 3(3) of the Environmental Management and Co-ordination Act, No. 8 of 1999.

⁷⁰ Art. 42. This right includes the right— to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Art. 69; and to have obligations relating to the environment fulfilled under Art. 70

formality, and not as an empowerment tool as envisaged in international human rights instruments.⁷¹

Governance structures for all sectors, including environmental sector, should be built around the national values and principles of governance as enunciated in the Constitution of Kenya, and particularly those of *inter alia*—sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; good governance, integrity, transparency and accountability; and sustainable development.⁷²

As already pointed, people who feel meaningfully engaged in governance matters are more likely to appreciate the process and also keep peace even when resources are scarce. Local people should be actively engaged in governance matters especially those that directly affect their livelihoods. It has rightly been observed that given that local institutions, systems and processes represent for most people the daily interface between state and society, local governance is a critical arena for these efforts. Inclusive and accountable local governance can help restore social cohesion in divided communities, facilitate participation in public life, distribute resources and opportunities equitably, safeguard minority rights, and test new forms of decision-making that blend formal and informal processes of representation and participation.⁷³

5.3 Inclusive Education for Sustainable Societies

Education has a great role to play in peace building efforts and effective environmental both of which are important components of sustainable development. This realisation forms the basis of SDG Goal 4 which provides that State Parties should ensure inclusive and equitable quality

⁷¹ See Principle 10 of the *Rio Declaration*, which affirms that environmental issues are best handled with participation of all concerned citizens, at the relevant level. The *Aarhus Convention* also establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Convention provides for *inter alia*: the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"); the right to participate in environmental decision-making ("public participation in environmental decision-making"); and the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice") (*Aarhus Convention*, Art. 4, 5, 6 & 9 respectively. Although the *Aarhus Convention* is a European region legal instrument, its provisions have gained international recognition and approval especially considering the fact that it reflects Principle 10 of the Rio Declaration on Environment and Development); See also *Access to Information Act, 2016* which deals with disclosure of information including information on dangers of public health, safety and the environment.

⁷² *Ibid*, Art. 10(2).

⁷³ United Nations Development Programme, *Local Governance In Fragile And Conflict-Affected Settings: Building A Resilient Foundation For Peace And Development*, A UNDP how-to guide, 2016.

education and promote lifelong learning opportunities for all. They are to ensure that by 2030, all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development.⁷⁴

Education will thus be useful in creating just and sustainable societies. Environmental education and peacebuilding should also be expressly included in the curricula at every stage of learning.

6. Conclusion

Peace building in any country is desirable and so is effective environmental and natural resources governance. The two concepts are arguably joint at the hip and both are at the core of the 2030 Agenda on sustainable development. This paper has discussed the various ways that the two are related and demonstrated how they cannot be treated as mutually exclusive if any efforts towards achieving either are to bear any fruits. While putting in place, any peace building policies, policy makers and other stakeholders ought to have the bigger picture in mind-effective environmental and natural resources governance must first be achieved as these resources are central in realisation of socio-economic rights of citizens. When these rights are largely achieved for all in any country, then it becomes easier to talk about and also achieve peace.

There is need to move away from the command and control models of environmental governance and embrace participatory approaches that not only put into consideration the needs of the community and societies in general but also take into their account their views in order to effectively address any underlying issues of marginalisation. It is such issues, when left unaddressed, which may result in conflict.

Enhancing Environmental governance for peacebuilding in Kenya is a necessity that cannot be ignored in the quest for sustainable development.

⁷⁴ Goal 4.7, *Transforming our world: the 2030 Agenda for Sustainable Development*.

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