

Towards Effective Peacebuilding and Conflict Management in Kenya

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Abstract

Sustainable peace is considered to be an important ingredient of sustainable development and this is also acknowledged under Sustainable Development Goal (SDGs) 16 which calls for promotion of peaceful and inclusive societies. While Kenya has been making some notable steps towards peacebuilding and effective conflict management, the country is still awash with reports of both violent and non-violent conflicts, a hindrance to achievement of sustainable development. This paper critically discusses peacebuilding and conflict management in Kenya. It offers some recommendations on how the country can move closer to achieving sustainable peace for all citizens through effective peacebuilding and conflict management.

1. Introduction

Kenya's Vision 2030¹ is grounded on three development pillars namely: economic, social and political pillars.² The Social Pillar of the Vision 2030 seeks to invest in the people where it has been pointed out that 'Kenya's journey towards widespread prosperity also involves the building of a just and cohesive society that enjoys equitable social development in a clean and secure environment'.³ Notably, the Political pillar of Vision 2030 also envisions "a democratic political system that is issue based, people-centred, result-oriented and accountable to the public" and 'a country with a democratic system reflecting the aspirations and expectations of its people, in which equality is entrenched, irrespective of one's race, ethnicity, religion, gender or socio-economic status; a nation that not only respects but also harnesses the diversity of its people's values, traditions and aspirations for the benefit of all'.⁴

**PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. In Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; Advocate of the High Court of Kenya; Senior Lecturer at the University of Nairobi, School of Law; CASELAP [May, 2021].*

¹ Republic of Kenya, Vision 2030 (Government Printer, Nairobi, 2007) <<http://vision2030.go.ke/>> accessed 1 May 2021.

² 'About Vision 2030 | Kenya Vision 2030' <<http://vision2030.go.ke/about-vision-2030/>> accessed 1 May 2021.

³ 'Social Pillar | Kenya Vision 2030' <<http://vision2030.go.ke/social-pillar/>> accessed 1 May 2021.

⁴ 'Foundation for The Pillars | Kenya Vision 2030' <<https://vision2030.go.ke/enablers-and-macros/>> accessed 1 May 2021.

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It is worth pointing out the above inspirations are greatly linked to peacebuilding efforts, as also envisaged under United Nations 2030 Agenda for Sustainable Development (SDGs)⁵ which provides in its Preamble that ‘the State Parties were “determined to foster peaceful, just and inclusive societies which are free from fear and violence” as “there can be no sustainable development without peace and no peace without sustainable development”’.⁶ In addition, SDGs provide that “the new Agenda 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”.⁷ In line with the foregoing, SDG 16 is the substantive goal dedicated to peace and it provides that States should ‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’.⁸

While Kenya’s efforts towards realization of sustainable development Agenda as far as economic development and even some of the social aspirations are concerned are quite commendable,⁹ the same cannot be said about the social pillar, and particularly, peacebuilding efforts. For instance, it has been observed that ‘Kenya is a large multi-ethnic country, with over 40 different ethnic groups and many overlapping conflicts which range from high levels of sexual and gender-based violence and of intercommunal violence; low levels of persistent violence; cycles of election-related violence; and increasing numbers of terrorist attacks’.¹⁰ The high levels of violence in Kenya have been attributed to a range of factors including: ethnic intolerance; border conflicts; political party

⁵ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

⁶ Ibid, Preamble.

⁷ Ibid, para. 35.

⁸ Ibid, SDG 16.

⁹ ‘Kenya Making Steady Progress towards Attainment of SDGs, President Kenyatta Says | The Presidency’ <<https://www.president.go.ke/2019/09/25/kenya-making-steady-progress-towards-attainment-of-sdgs-president-kenyatta-says/>> accessed 1 May 2021; ‘Lessons From the South: Towards Sustainable Development a Green Economy in Kenya | Youthpolicy.Org’ <<https://www.youthpolicy.org/blog/sustainability/kenya-green-economy-transition/>> accessed 1 May 2021; James Macharia, ‘Sustainable Development in Kenya’ [2019] *Horizons: Journal of International Relations and Sustainable Development* 172; ‘Sustainable Development in Kenya’ (*CIRSD*) <<http://www.cirsd.org/en/horizons/horizons-winter-2019-issue-no-13/sustainable-development-in-kenya>> accessed 1 May 2021.

¹⁰ ‘Conflict Analysis of Kenya’ (*GSDRC*) <<https://gsdrc.org/publications/conflict-analysis-of-kenya/>> accessed 1 May 2021.

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zoning; competition over land and other resources; proliferation of small arms; weak security; and poverty, underdevelopment, and marginalisation.¹¹

Existing literature on causes of conflict has highlighted the fact that there is not a single developmental variable that causes conflict, but many variables that foster violence when combined in specific contexts and this may be in relation to issues such as:

Globalisation and the transformation of societies: The first stage of democratization, when pressure is exerted on authoritarian governments, is often accompanied by violence; Economic growth and income: Economic growth may increase the risk of armed conflict in very poor economies, but decrease this risk in richer economies; Poverty and inequality: A simple link between each of these factors and conflict has been questioned as each context involves specific, complex variables; Resources: Whether environmental conflict becomes violent depends largely on the government's environmental policy. The 'war economy' debate suggests that war may be seen as an alternative way of generating profit, power and protection; and aid: The aid system can inadvertently exacerbate conflict, as it did in Rwanda, where some have gone further to suggest that donors may use aid allocation as a political instrument.¹²

While conflict has been defined variously by different scholars, some of the most comprehensive definitions include: conflict is a struggle over values and claims to scarce status, power and resources in which the aims of the conflicting parties are to injure or eliminate their rivals; conflict is a particular relationship between states or rival factions within a state which implies subjective hostilities or tension manifested in subjective economic or military hostilities.¹³ While there are two broad categories of conflicts, that is, on the one hand, internal conflicts (or intra- states conflict) as one in which the governmental authorities of a state are opposed by groups within that state seeking to overthrow those authorities with force of arms or one in which armed violence occurs primarily within the borders of a single states, and on the other hand, international conflicts or interstate conflicts which is between two or more nations involving forces of more than one

¹¹ Ibid.

¹² Thania Paffenholz, '19 Understanding the Conflict–Development Nexus and the Contribution of Development Cooperation to Peacebuilding1' [2008] Handbook of conflict analysis and resolution 272<<https://gsdrc.org/document-library/understanding-the-conflict-development-nexus-and-the-contribution-of-development-cooperation-to-peacebuilding/>> accessed 3 May 2021.

¹³ AJ Olaosebikan, 'Conflicts in Africa: Meaning, Causes, Impact and Solution' (2010) 4 African Research Review 549, 550-551.

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state¹⁴, Kenya has often struggled with internal conflicts mainly relating to ethnic clashes influenced by ethnic diversity and the provision of public goods, natural resources scarcity or abundance as well as political influence,¹⁵ with a few international ones.¹⁶ The conflicts exacerbating situation has also been attributed to ‘weak or non-existent structures and institutions for conflict prevention and response’.¹⁷ This has often dragged the country in achieving its development goals and sustainability in all spheres of life.

It is against this background that this paper critically evaluates the peacebuilding efforts and conflict management initiatives in Kenya and makes recommendations on how the country can achieve its sustainable peace goals of “building 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”.¹⁸ The paper makes recommendations based on a conflict theory that advocates for non-violent and creative conflict resolution mechanisms.¹⁹

¹⁴ Ibid, 551.

¹⁵ Kenya Human Rights Commission, *Maasive Internal Displacements in Kenya Due to Politically Instigated Ethnic Clashes* (Kenya Human Rights Commission 2007); see also Eric Thomas Ogwora, ‘Electoral Bribery and Corruption: A Deterrent and a Game Changer towards Democratic Process and Fair Election in Kenya’ (2017) 1 *Journal of Popular Education in Africa*; Caroline Elkins, ‘What’s Tearing Kenya Apart? History, for One Thing’ [2008] *Washington Post*; Beneah M Mutsotso, ‘The Boundary Shifters of North Western Kenya’; Dominic Burbidge and Nic Cheeseman, ‘Trust, Ethnicity and Integrity in East Africa: Experimental Evidence from Kenya and Tanzania’ (2017) 2 *Journal of Race, Ethnicity and Politics* 88.

¹⁶ ‘Kenya Denies Role in Somalia’s Internal Conflict | Voice of America - English’ <<https://www.voanews.com/africa/kenya-denies-role-somalias-internal-conflict>> accessed 8 May 2021; Deutsche Welle (www.dw.com), ‘Stability at Risk as Somalia and Kenya Spat over Sea Border | DW | 15.03.2021’ (*DW.COM*) <<https://www.dw.com/en/kenya-somalia-border-dispute-threatens-stability/a-56879109>> accessed 8 May 2021; ‘Summaries | Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) | International Court of Justice’ <<https://www.icj-cij.org/en/case/161/summaries>> accessed 8 May 2021;

¹⁷ Lillian Mworira and J Ndiku, ‘Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies’, 163.

¹⁸ see para. 35, UN 2030 Agenda for Sustainable Development Goals.

¹⁹ Veronique Dudouet, ‘Nonviolent Resistance and Conflict Transformation in Power Asymmetries’ [2008] Berghof Center for Constructive Conflict Management; ‘Principles Of Conflict Resolution’ <<https://www.hawaii.edu/powerkills/TJP.CHAP10.HTM>> accessed 8 May 2021; ‘Theories of Conflict Resolution and Their Applicability: To Protracted Ethnic Conflicts on JSTOR’ <<https://www.jstor.org/stable/44481352?seq=1>> accessed 8 May 2021; Tukumbi Lumumba-Kasongo, ‘Contemporary Theories of Conflict and Their Social and Political Implications’ [2017] *Peace, Security and Post-Conflict Reconstruction in the Great lakes Region of Africa*. Oxford: African Book Collective 29.

2. Peacebuilding, Conflict Management and Development

Arguably, ‘development policies should be an integral part of the peacebuilding agenda’.²⁰ In relation to this, it has also been observed that ‘development has multiple dimensions from human rights to environmental sustainability, from economic growth to governance’.²¹ Also notable is the assertion that ‘the concept of security has gradually expanded from state security to human security and now includes a range of military as well as non-military threats that recognize no borders’.²²

As already pointed out, the United Nations 2030 Agenda for Sustainable Development (SDGs)²³ provides in its Preamble that ‘the State Parties were “determined to foster peaceful, just and inclusive societies which are free from fear and violence” as “there can be no sustainable development without peace and no peace without sustainable development”’.²⁴

Some scholars have argued that ‘comparative studies show that development and peacebuilding must be integrated (not just linked) at an early stage – for example by including the political context in development policy and practice in conflict-affected fragile states and by addressing the structural causes of conflict’.²⁵

Notably, development and more so, sustainable development, is a multifaceted concept that requires to achieve certain milestones in various sectors, such as social, political, environmental and economic spheres.²⁶ It is for this reason that ‘the heads of state established five fields of critical

²⁰ ‘Understanding the Conflict-Development Nexus and the Contribution of Development Cooperation to Peacebuilding’ (*GSDRC*) <<https://gsdrc.org/document-library/understanding-the-conflict-development-nexus-and-the-contribution-of-development-cooperation-to-peacebuilding/>> accessed 3 May 2021.

²¹ International Peace Academy, ‘The Security-Development Nexus: Research Findings and Policy Implications’ (International Peace Institute 2006), 3 <<https://www.jstor.org/stable/resrep09516>> accessed 3 May 2021.

²² *Ibid*, 3.

²³ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

²⁴ *Ibid*, Preamble.

²⁵ Thania Paffenholz, ‘19 Understanding the Conflict–Development Nexus and the Contribution of Development Cooperation to Peacebuilding 1’ [2008] Handbook of conflict analysis and resolution 272 <<https://gsdrc.org/document-library/understanding-the-conflict-development-nexus-and-the-contribution-of-development-cooperation-to-peacebuilding/>> accessed 3 May 2021.

²⁶ ‘Social Development for Sustainable Development | DISD’ <<https://www.un.org/development/desa/dspd/2030agenda-sdgs.html/>> accessed 8 May 2021; Rodrigo Goyannes Gusmão Caiado and others, ‘A Literature-Based Review on Potentials and Constraints in the Implementation of the Sustainable Development Goals’ (2018) 198 *Journal of cleaner production* 1276.

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importance, or the “five Ps” of the 2030 SDG Agenda, which are people, planet, prosperity, *peace* and partnerships (Emphasis added).²⁷

Reduction in poverty and concrete improvements in basic education, gender equality, and basic health, all underpinned by improved governance and environmental sustainability are seen as important in building sustainably peaceful and inclusive societies.²⁸ It has been argued that development and peacebuilding must be integrated (not just linked) at an early stage – for example by including the political context in development policy and practice in conflict-affected fragile states and by addressing the structural causes of conflict.²⁹ In addition, it has been acknowledged that strengthening state institutions and enhancing their capacity to provide security and development based on principles of good governance are essential for sound conflict management.³⁰ In the same way, an effective, credible, and accountable security sector can provide a safe and secure environment in which to entrench other programming initiatives, all embedded in a predictable legal environment supported by culturally appropriate rule of law programs.³¹

3. Peacebuilding and Conflict Management in Africa: Continental Status

There have been frequent conflicts across the African continent, which are fueled by various factors, including but not limited to natural resources, fight for political control, poverty, negative ethnicity, religion, environmental causes, and external influence, among others.³² It is also worth noting that some of the frequent ethnic conflicts have been attributed to the former colonial masters where, colonial authorities drew up local and national territorial boundaries in Africa based on a

²⁷ Rodrigo Goyannes Gusmão Caiado and others, ‘A Literature-Based Review on Potentials and Constraints in the Implementation of the Sustainable Development Goals’ (2018) 198 *Journal of cleaner production* 1276, 4.

²⁸ Bernard Wood, ‘Development Dimensions of Conflict Prevention and Peace-Building’ [2001] UNDP. (June).

²⁹ Thania Paffenholz, ‘19 Understanding the Conflict–Development Nexus and the Contribution of Development Cooperation to Peacebuilding1’ [2008] *Handbook of conflict analysis and resolution* 272.

³⁰ Flavius Stan, ‘The Security-Development Nexus: Conflict, Peace and Security in the 21st Century’ (*International Peace Institute*, 14 October 2004) <<https://www.ipinst.org/2004/10/the-security-development-nexus-conflict-peace-and-security-in-the-21st-century>> accessed 8 May 2021.

³¹ *Ibid.*

³² ‘The Environmental Challenges in Sub Saharan Africa’ <<http://web.mit.edu/africantech/www/articles/EnvChall.htm>> accessed 8 May 2021; Macartan Humphreys, ‘Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms’ (2005) 49 *Journal of conflict resolution* 508; AJ Olaosebikan, ‘Conflicts in Africa: Meaning, Causes, Impact and Solution’ (2010) 4 *African Research Review* 549; Huma Haider, *Conflict analysis of North Eastern Kenya. K4D Emerging Issues Report36*. Brighton, UK: Institute of Development Studies, 15 <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15570/EIR%2036_Conflict_analysis_of_North_Eastern_Kenya.pdf?sequence=1&isAllowed=y> accessed 8 May 2021.

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rather simplistic understanding of the nature of ethnic communities, thus forcing into political entity people who lived apart, separating people who lived together undermining the natural process of state creation and nation building.³³ This has arguably been a major source of conflict among communities in some African countries, such as Nigeria.³⁴

The African Union observes that ‘in 2013, during the 50th Anniversary of the OAU/AU, African Heads of State and Government made a Solemn Declaration committing to tackle head-on the scourge of violent conflict in Africa and pronounced their firm determination to achieve the noble goal of a conflict-free Africa, thereby making peace a reality for African people, ridding the continent of wars, violent conflicts, human rights violations, humanitarian crises as well as preventing genocide’.³⁵

African Union’s *Agenda 2063*, Africa's blueprint and master plan for transforming Africa into the global powerhouse of the future³⁶, seeks to achieve a peaceful and secure Africa.³⁷

It is noteworthy that the continent will not make any tangible progress in peacebuilding unless individual states commit to work towards achieving sustainable peace in their territories.

4. Peacebuilding and Conflict Management in Kenya: Towards Effective Peacebuilding and Conflict Management

4.1. Addressing Poverty, Ethnic and Social stratification

As already pointed, some of the conflicts in Kenya have been attributed to ethnic clashes as well as poverty and marginalisation of some parts of the country by successive governments.³⁸ It has been observed that ‘the politicized nature of ethnicity in Kenya, and the fact that both elections

³³ Lillian Mworira and J Ndiku, ‘Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies’, 162.

³⁴ Ibid, 162-163; see also Simone Datzberger, ‘Civil Society as a Postcolonial Project: Challenging Normative Notions in Post-Conflict Sub-Saharan Africa’, *Negotiating Normativity* (Springer 2016).

³⁵ African Union, ‘Silencing the Guns: Creating Conducive Conditions for Africa’s Development’ (*The East African*) <<https://www.theeastafrican.co.ke/tea/sponsored/silencing-the-guns-creating-conducive-conditions-for-africa-s-development-1435754>> accessed 8 May 2021.

³⁶ ‘Agenda 2063: The Africa We Want. | African Union’ <<https://au.int/en/agenda2063/overview>> accessed 8 May 2021.

³⁷ African Union, *Agenda 2063*, 2 < https://au.int/sites/default/files/documents/33126-doc-03_popular_version.pdf> accessed 8 May 2021.

³⁸ Friedrich Elbert Stiftung, ‘Regional Disparities and Marginalisation in Kenya’ [2012] Nairobi: Elite PrePress; Emma Elfversson, ‘Patterns and Drivers of Communal Conflict in Kenya’ in Steven Ratuva (ed), *The Palgrave Handbook of Ethnicity* (Springer 2019) <https://doi.org/10.1007/978-981-13-2898-5_50> accessed 8 May 2021.

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and land tenure are closely associated with ethnic identity, are highlighted as key factors explaining the prevalence of violent communal conflict', with the four main drivers of conflict being: electoral politics, cattle raiding, local resources, and boundaries and local authority.³⁹ Some conflicts among neighbouring communities in Kenya such as the Turkana and Pokot who have had periodic conflicts have been attributed to scarcity and competition over pasture and water as well as border disputes, and often compounded by the minimum routine interaction and communication between the two communities.⁴⁰

Poverty is a major contributing factor to insecurity and instability especially in the rural areas where communities mainly rely on scarce land based natural resources which are affected by climate change and population growth, among others. It has been observed that 'rural poverty can be caused by a combination of: living and farming in unfavourable conditions (climate, soils, access to markets, small land holdings); lack of resource access rights, legal protection or recognition; lack of ecosystem services (provisioning, regulating, cultural/spiritual, regenerative); lack of income opportunities (on- or off-farm) in local economies; and lack of investment in the (few) opportunities that exist for market-based ventures.⁴¹

Social stratification in any society may lead to bottled up anger and bitterness which is a recipe for violent and non-violent conflicts.⁴² Despite the constitutional guarantee on freedom from non-discrimination⁴³, protection of the minority and marginalised groups including women through affirmative action,⁴⁴ it is a documented fact that inequalities are manifest in Kenya's economic,

³⁹ Emma Elfversson, 'Patterns and Drivers of Communal Conflict in Kenya' in Steven Ratuva (ed), *The Palgrave Handbook of Ethnicity* (Springer 2019) <https://doi.org/10.1007/978-981-13-2898-5_50> accessed 8 May 2021; Anne R Gakuria, 'Natural Resource Based Conflict among Pastoralist Communities in Kenya' (PhD Thesis, University of Nairobi 2013); Lillian Mworira and J Ndiku, 'Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies'.

⁴⁰ Lillian Mworira and J Ndiku, 'Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies', 163.

⁴¹ Meine van Noordwijk, 'Integrated Natural Resource Management as Pathway to Poverty Reduction: Innovating Practices, Institutions and Policies' (2019) 172 *Agricultural Systems* 60, 61.

⁴² Ben Fine, *Theories of Social Capital: Researchers Behaving Badly* (Pluto press 2010); Philip Arestis, Aurelie Charles and Giuseppe Fontana, 'Power, Intergroup Conflicts and Social Stratification in the United States: What Has the Global Crisis Taught Us?' (2015) 73 *Review of Social Economy* 370.

⁴³ Article 27, Constitution of Kenya 2010.

⁴⁴ *Article 11 recognizes culture as the foundation of the nation and obliges the state to promote all forms of cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage. The state is also obliged to recognize the role of indigenous technologies in the development of the nation.*

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social and political arenas.⁴⁵ It has rightly been observed that ‘a degree of equality in social, political, economic and cultural rights is essential for rebuilding the trust between the state and society and among social groups.’⁴⁶ It has also been suggested that there is a correlation between more inclusive and open models of negotiations and a higher likelihood that the outcome agreements will hold and prevent a relapse into conflict.⁴⁷

Under the Constitution of Kenya 2010, the devolved system of governance was meant to, *inter alia*, promote democratic and accountable exercise of power, and foster national unity by recognising diversity; give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; recognise the right of communities to manage their own affairs and to further their

Article 56. Minorities and marginalised groups

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) participate and are represented in governance and other spheres of life;*
- (b) are provided special opportunities in educational and economic fields;*
- (c) are provided special opportunities for access to employment;*
- (d) develop their cultural values, languages and practices; and*
- (e) have reasonable access to water, health services and infrastructure.*

100. Promotion of representation of marginalised groups

Parliament shall enact legislation to promote the representation in Parliament of—

- (a) women;*
- (b) persons with disabilities;*
- (c) youth;*
- (d) ethnic and other minorities; and*
- (e) marginalised communities.*

177. Membership of county assembly

(1) A county assembly consists of—

- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament;*

Article 204. Equalisation Fund

(1) There is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

(2) The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

⁴⁵ Jeremiah Owiti, ‘Political Drivers of Inequality in Kenya’ (2014) 57 Development 547, 548.

⁴⁶ Hanny Cueva Beteta, Colleen Russo and Stephanie Ziebell, *Women’s Participation in Peace Negotiations: Connections between Presence and Influence* (New York: UN Women 2010), 3.

⁴⁷ *Ibid*, 3.

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development; facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya, Nairobi; and enhance checks and balances and the separation of powers.⁴⁸ While devolution has achieved commendable steps towards attaining equality and equity within the rural Kenya⁴⁹, the poverty levels and social, political and economic inequalities in the country are still high.⁵⁰ Rampant corruption and misallocation of political and economic resources in Kenya and especially at the county levels of governance may be some of the main factors that may be contributing to the slow pace of poverty alleviation despite the proximity of the rural areas to the devolved governance.⁵¹

There is need for stakeholders to go back to the drawing board on why devolution was introduced by the drafters of the Constitution while also ensuring that the national values and principles of governance are applied and upheld at both levels of governance, and these include: a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; (c) good governance, integrity, transparency and accountability; and (d) sustainable development.⁵² Chapter six of the Constitution on leadership and integrity, Chapter Twelve on Public Finance, Values and principles of public service under Chapter Thirteen of the Constitution on Public service, *Leadership and Integrity Act*, 2012⁵³ should also be strictly enforced to ensure that there is real development at the grassroots in efforts to eradicate abject poverty. This will also potentially address the concerns on ethnic, nepotism and favouritism during employment of devolved governments' staff.⁵⁴

⁴⁸ George Nyabuga, 'Devolved Power: A Critical Interrogation of the Place, Roles and Obligations of the Media at the Grassroots in Kenya' (2017) 42 Africa Development / Afrique et Développement 105, 107.

⁴⁹ Michelle D'Arcy, 'Kenya Illustrates Both the Promise as Well as the Pitfalls of Devolution' (*The Conversation*) <<http://theconversation.com/kenya-illustrates-both-the-promise-as-well-as-the-pitfalls-of-devolution-96729>> accessed 8 May 2021.

⁵⁰ Brendon J Cannon and Jacob Haji Ali, 'Devolution in Kenya Four Years On: A Review of Implementation and Effects in Mandera County' (2018) 8 African Conflict and Peacebuilding Review 1.

⁵¹ Brendon J Cannon and Jacob Haji Ali, 'Devolution in Kenya Four Years On: A Review of Implementation and Effects in Mandera County' (2018) 8 African Conflict and Peacebuilding Review 1; George Nyabuga, 'Devolved Power: A Critical Interrogation of the Place, Roles and Obligations of the Media at the Grassroots in Kenya' (2017) 42 Africa Development / Afrique et Développement 105.

⁵² Article 10, Constitution of Kenya 2010.

⁵³ Leadership and Integrity Act, No 19 of 2012, Laws of Kenya.

⁵⁴ Paul Olendo Ombanda, 'Nepotism and Job Performance in the Private and Public Organizations in Kenya' (2018) 8 International Journal of Scientific and Research Publications 474; see also Kefa Ruto Plimo, 'Assessing Determinants of Effective Human Resource Functions Devolution in County Government of West Pokot, Kenya'

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Some commentators have also explored the role of culture in causing ethnic conflicts especially within the North-Western region of Kenya, where cattle rustling between the Nilotic communities is the main cause of conflicts.⁵⁵ For instance, it has been argued that ‘cattle rustling is a cultural aspect of the Pokot founded on their myth of origin and a belief that all cattle belong to them’.⁵⁶ While Article 11 of the Constitution of Kenya 2010 recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation, the practice of such cultural activities should not violate constitutional provisions especially on the Bill of Rights. Arguably, there is a need for the stakeholders in peacebuilding to address this notion through education as an empowerment tool for more people within the community (both formal and informal education) as well as creating opportunities for alternative sources of livelihoods for these communities to supplement their income and hence have a sense of security as far as their livelihoods are concerned.

Notably, Peace Education Programme at primary and secondary schools’ levels of study was introduced in 2008 whose overall goal was to promote peaceful co-existence among members of the school community hence contributing to peace and national cohesion in the country; and enhance the capacity of the education sector to promote peaceful coexistence through conflict sensitive policies and programming.⁵⁷ The specific objectives of the programme include:

To promote conflict sensitive policies and programmes within the education sector; to create awareness among learners on the causes of conflict and how to constructively resolve them in their daily lives; to prepare learners to become good citizens in their communities, nation and the world and to equip them with skills that promote peace and human dignity at all levels of interaction; to use the classroom as a springboard through which global values of positive inter-dependence,

(PhD Thesis, COHRED-JKUAT 2017); Buagu Musazi Says, ‘Ethnic Favouritism in Kenya and Uganda’s Public Sector’ (*Africa at LSE*, 1 August 2019) <<https://blogs.lse.ac.uk/africaatlse/2019/08/01/has-ethnic-favouritism-in-public-sector-hiring-in-kenya-and-uganda-been-exaggerated/>> accessed 8 May 2021; Mr Njagi Ireri and Wario Guyo, ‘The Influence of the County Public Service Board (CPSB), on the Devolved Human Resources Governance in Kenya’ (2018) 8 *International Journal of Humanities and Social Science*; Hamun A Jubase, ‘Challenges of Human Resource Management in Wajir Public Service Board’ (PhD Thesis, University of Nairobi 2018).

⁵⁵ David M Kimaiyo, ‘Women Involvement in Cattle Rustling between the Marakwet and the Pokot Communities of North-Western Kenya’ (Thesis, University of Nairobi 2016) <<http://erepository.uonbi.ac.ke/handle/11295/97405>> accessed 8 May 2021.

⁵⁶ Daniel Nganga, ‘Culture as the Cause of Conflict: A Case Study in West Pokot District, Kenya’ (2012) 6 *Journal of Peace and Justice* 51; see also Mutsotso, B. M., Kimaiyo, D., & Gaciuki, P., "The centrality of cattle in the social organization of the East Pokot pastoralists of North Western Kenya." *European Scientific Journal* 10, no. 8 (2014).

⁵⁷ Kangethe, Mary Wanjiru. "The peace education programme in Kenya." *The Global Campaign for Peace Education* 121 (2015).

social justice and participation in decision-making are learned and practiced; and to foster positive images that lead to respect for diversity to enable young people learn to live peacefully in diverse communities in the world.⁵⁸

This may be a good step towards restoring and achieving lasting and sustainable peace and cohesion among the warring communities and the country in general.

4.2. Joint and Participatory Efforts in Peacebuilding and Conflict Management

Peacebuilding for achievement of sustainable peace as a prerequisite for realising the sustainable development is an imperative that requires the concerted efforts of all groups of people in society.⁵⁹ It is important for State organs to acknowledge that peacebuilding and conflict management is and should be a joint effort involving all stakeholders. As a such, their greatest efforts should be towards empowering the other relevant stakeholders to build capacity for sustainability. Within most indigenous communities, elders still play a vital role in conflict management and should thus be involved in peacebuilding efforts and conflict management. For instance, within Somali people of North Eastern Kenya, it has been observed that ‘traditional elders’ roles include negotiating application of customary law –an important source of conflict management, conflict resolution and enforcement of peace agreements’.⁶⁰ However, elders can and have indeed been used to mobilize communities along ethnic lines and this can be a threat to sustainable peace.⁶¹ As such, it is suggested that the Government should work closely with the elected elders as well as religious leaders and positively empower them to ensure that they are only used as agents of peace and not divisive politics.

While it is widely acknowledged that violent conflict affects men and women in different ways, women and children are arguably the greatest victims in conflict situations.⁶² The disproportional

⁵⁸ Ibid.

⁵⁹ Office for ECOSOC Support and Coordination United Nations, *Achieving Sustainable Development and Promoting Development Cooperation: Dialogues at the Economic and Social Council* (UN 2008); ‘5 – Quest for Sustainable Peace and Development under Militarized Security Approaches’ (2030 Spotlight) <<https://www.2030spotlight.org/en/book/1730/chapter/5-quest-sustainable-peace-and-development-under-militarized-security-approaches>> accessed 9 May 2021.

⁶⁰ Huma Haider, Conflict analysis of North Eastern Kenya. K4D Emerging Issues Report36.Brighton, UK: Institute of Development Studies, 16.

⁶¹ Ibid, 16.

⁶² ‘Gender in Fragile and Conflict-Affected Environments’ (GSDRC) <<https://gsdrc.org/topic-guides/gender/gender-in-fragile-and-conflict-affected-environments/>> accessed 8 May 2021.

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burden borne by women is often attributed to the inequalities that exist between men and women in social, economic and political spheres.⁶³ Notably, Kenya ranks 109 out of 153 countries in the Global Gender Gap Report 2020, with a score of with significant inequalities between males and females in education attainment, health outcomes, representation in parliament, and labour force participation.⁶⁴ Arguably, these factors predispose women to greater losses and suffering during conflicts. They also make them vulnerable to recruitment to armed gangs such as Al-Shabaab which has been attacking Kenya frequently in the last several years. For instance, it has been observed that Al-Shabaab has been actively (and forcibly) recruiting women in Kenya, including through social media, religious indoctrination in schools, marriage, employment incentives, and abduction.⁶⁵ Just like men, their support for the terrorist group is informed by: ideology, grievances over socio-political and economic circumstances, among others, with economic pressures being an especially strong motive for women.⁶⁶

Considering that women have needs just like men which, if not met, may make women be used as tools off propagating violence and hatred, often to their detriment, women are regularly considered and should indeed be among the greatest stakeholders in peacebuilding and conflict management if sustainable peace is to be achieved.⁶⁷ Despite this, statistics from many countries around the globe show that the number of women in decision-making positions remains relatively small.⁶⁸ It has also been observed that the underrepresentation of women at the peace table is much more pronounced compared to other public decision-making roles, where though women are still underrepresented the gap has been steadily narrowing.⁶⁹ Ironically, this persists despite the fact

⁶³ Iffat Idris, *Gender, countering violent extremism and women, peace and security in Kenya*. K4D Factsheet. Brighton, UK: Institute of Development Studies <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15832/K4D_Factsheet_Kenya_2.4.pdf?sequence=1&isAllowed=y> accessed 8 May 2021.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Clare Castillejo, 'Building a State That Works for Women: Integrating Gender in to Post-Conflict State Building' [2011] Documentos de Trabajo FRIDE 1; 'Why Women Should Have a Greater Role in Peacebuilding' (*World Economic Forum*) <<https://www.weforum.org/agenda/2015/05/why-women-should-have-a-greater-role-in-peacebuilding/>> accessed 8 May 2021.

⁶⁸ 'Why Women Should Have a Greater Role in Peacebuilding' (*World Economic Forum*) <<https://www.weforum.org/agenda/2015/05/why-women-should-have-a-greater-role-in-peacebuilding/>> accessed 8 May 2021; 'Facts and Figures: Women's Leadership and Political Participation | What We Do' (*UN Women*) <<https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>> accessed 8 May 2021.

⁶⁹ Hanny Cueva Beteta, Colleen Russo and Stephanie Ziebell, *Women's Participation in Peace Negotiations: Connections between Presence and Influence* (New York: UN Women 2010), 3.

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that women have been closing the gap in professions and roles that typically dominate peace talks: politician, lawyer, diplomat and member of a party to armed conflict.⁷⁰

The United Nations Security Council *Resolution 1325* (2000)⁷¹ in its Preamble reaffirms the important role of women in the prevention and resolution of conflicts and in peace-building, and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.⁷² Kenya's *National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions*⁷³ (KNAP) was titled 'Kuhusisha Wanawake ni Kudumisha Amani' ('to involve women is to sustain peace') and acknowledges the changing nature of insecurity and incorporates a human security approach whose focus is on the protection of individual citizens. In addition, this broader paradigm of human security was meant to expand the meaning of security to include secure livelihoods, environmental protection, and access to resources.⁷⁴ The *Action Plan* also recognizes that security threats include social, economic, and environmental factors and women's vulnerability is exacerbated by unequal access to resources, services, and opportunities.⁷⁵ The Kenya National Action Plan was to be executed over a three-year period (2016–2018) and was meant to provide a comprehensive approach to the implementation of UNSCR 1325, and also enhance coordination among the relevant actors, raise awareness among stakeholders, and increase accountability among actors responsible for its implementation.⁷⁶ The KNAP also aimed to mainstream UNSCR 1325 into national conflict resolution, conflict prevention, peace promotion, and peacebuilding strategies contained in prior agreements, including the 2008 National Accord and its implementing agreements, the National Peace Policy, and relevant gender policies, among others.⁷⁷ KNAP I mainly focused on equal protection of individual citizens and endeavoured to better understand and *address the root causes of socio-economic and political inequalities*

⁷⁰ Ibid, 3.

⁷¹ UN Security Council, *Security Council resolution 1325 (2000) [on women and peace and security]*, 31 October 2000, S/RES/1325 (2000).

⁷² Ibid, Preamble.

⁷³ Republic of Kenya, *National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions*, 2016–2018 < <http://peacewomen.org/sites/default/files/Kenya%20NAP-with-cover-final.pdf> > accessed 8 May 2021.

⁷⁴ Ibid, 11-12.

⁷⁵ Ibid, 12.

⁷⁶ Ibid, 13.

⁷⁷ Ibid, 14.

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around peace and security issues, designed around four pillars: Participation and Promotion, Prevention, Protection, and Relief and Recovery (Emphasis added).⁷⁸

The second *Kenya National Action Plan for the Advancement of United Nations Security Council Resolution 1325 on Women, Peace and Security 2020–2024*⁷⁹ which was launched in May 2020 focuses on key objectives, priority actions, expected outcomes, and interventions/responsibilities of relevant actors and stakeholders and also provides clear indicators, monitoring and evaluation benchmarks, and projected targets. It is also based on the above 4 pillars.⁸⁰ The KNAP II is a commendable step towards enhancing empowerment and greater participation of women in development and in peace, security, and disaster management.

Women can participate in peace processes as: mediators or as members of mediation teams; delegates of the negotiating parties; all-female negotiating parties representing a women's agenda; signatories; representatives of women's civil society with an observer role; witnesses; in a parallel forum or movement; gender advisers to mediators, facilitators or delegates; or as members of technical committees, or a separate table or working group devoted to gender issues.⁸¹

It has been argued that while the full impact of women's participation on peace and security outcomes remains poorly understood, existing data shows how women's inclusion helps prevent conflict, create peace, and sustain security after war ends.⁸² Women's empowerment and gender equality are also associated with peace and stability in society.⁸³ Women's participation in peace talks is also associated with the following advantages: Women promote dialogue and build trust as conflict parties may see women as less threatening because they are typically acting outside of formal power structures and are not commonly assumed to be mobilizing fighting forces; Women

⁷⁸ Ibid.

⁷⁹ Republic of Kenya, *Kenya National Action Plan for the Advancement of United Nations Security Council Resolution 1325 on Women, Peace and Security 2020–2024* < <http://peacewomen.org/sites/default/files/KNAP-II-digital-30-Apr.pdf>> accessed 8 May 2021.

⁸⁰ Ibid, 14.

⁸¹ Hanny Cueva Beteta, Colleen Russo and Stephanie Ziebell, *Women's Participation in Peace Negotiations: Connections between Presence and Influence* (New York: UN Women 2010), 5-10.

⁸² Marie O'Reilly, 'Why Women?' [2015] *Inclusive Security* 1, 3< <https://www.almendron.com/tribuna/wp-content/uploads/2019/02/why-women-report-2017.pdf>> accessed 8 May 2021.

⁸³ Ibid, 4.

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bridge divides and mobilize coalitions; Women raise issues that are vital for peace; and women prioritize gender equality.⁸⁴

It is, therefore, important to ensure that women are empowered and included in peacebuilding and conflict management in Kenya⁸⁵, as a step towards building peaceful, cohesive and inclusive societies as part of the bigger sustainable development agenda.⁸⁶

The civil society as well as the private sector also have a role to play in peacebuilding and conflict management in Kenya. A past report focusing on the role of the private sector in peacebuilding within the context of Kenya's 2013 election cycle observed that 'the private sector undertook a sustained, systematic, and comprehensive peacebuilding campaign that almost certainly contributed to the peaceful nature of the electoral process', where the 'private-sector engagement influenced key political actors, spread messages of peace across the country, brought together disparate sectors of Kenyan society, prevented incitement, and ensured a return to normalcy as challenges to electoral results worked their way through the courts'.⁸⁷ The report also documented the fact that 'the motivations for business involvement included a desire to never go back to the dark days of 2007–08; a deep concern for the people with whom they did business; an acceptance of their mandate, especially in regard to providing uninterrupted service; the allure of, and pressure to exercise, the formidable power of a united business front; and, the fact that remaining aloof to developments that have an impact on their continued existence is bad for the sector'.⁸⁸

⁸⁴ Ibid, 7-9.

⁸⁵ 'How Women in Kenya Mobilised for Peace after Surviving Violence - Kenya' (*ReliefWeb*) <<https://reliefweb.int/report/kenya/how-women-kenya-mobilised-peace-after-surviving-violence>> accessed 8 May 2021.

⁸⁶ Kariuki Muigua, 'Mainstreaming the Role of Women in Peacemaking and Environmental Management in Kenya' (2020) *Journal of cmsd* Volume 4(5) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3834364> accessed 8 May 2021; Katie Zanoni, 'Kenyan Girls as Agents of Peace: Enhancing the Capacity of Future Women Peacebuilders' (2017) 12 *Research in Comparative and International Education* 110; Irene Cherotich Loyatum, 'The Role of Women in Peace Building in Conflicting Society: The Case of West Pokot County, Kenya, 2000-2018' (PhD Thesis, United States International University-Africa 2019); Jeanne Izabiliza, 'The Role of Women in Reconstruction: Experience of Rwanda' [2003] Source unknown.

⁸⁷ Victor Owuor and Scott Wisor, 'The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle' [2014] Broomfield, CO: One Earth Future Foundation' <<https://www.oefresearch.org/sites/default/files/documents/publications/kenyaprivatesectorreport-digital.pdf>> accessed 3 May 2021.

⁸⁸ Ibid, 26.

4.3. Addressing the Weak or Non-Existent Structures and Institutions for Peacebuilding, Conflict Prevention and Response

SDG 16 calls on State Parties to promote just, peaceful and inclusive societies. The associated relevant Targets require States to, *inter alia*: promote the rule of law at the national and international levels and ensure equal access to justice for all; by 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime; develop effective, accountable and transparent institutions at all levels; ensure responsive, inclusive, participatory and representative decision-making at all levels; broaden and strengthen the participation of developing countries in the institutions of global governance; ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements; strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime; and promote and enforce non-discriminatory laws and policies for sustainable development.⁸⁹ SDG 16 is premised on the fact that ‘sustainable development cannot be achieved without peace, stability, human rights and effective governance, based on the rule of law’.⁹⁰

It is worth pointing out that while some conflicts call for use of formal systems such as national courts to deal with them, especially where criminal activities are concerned, there is a need to explore and exploit non-violent and/or non-confrontational approaches, in the spirit of the 2010 Constitution of Kenya which ‘encourages of communities to settle land disputes through recognised local community initiatives consistent with this Constitution’⁹¹, and requires that ‘in exercising judicial authority, the courts and tribunals should be guided by, *inter alia*, the principles of alternative forms of dispute resolution including reconciliation, mediation,

⁸⁹ Martin, ‘Peace, Justice and Strong Institutions’ (*United Nations Sustainable Development*) <<https://www.un.org/sustainabledevelopment/peace-justice/>> accessed 8 May 2021.

⁹⁰ ‘Sustainable Development Goals | United Nations Development Programme’ <<https://www.undp.org/sustainable-development-goals#peace-justice-and-strong-institutions>> accessed 8 May 2021.

⁹¹ See Articles 60(1)(g) & 67(2)(f), Constitution of Kenya 2010.

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arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3).⁹²

The drafters of the *National Land Policy 2009*⁹³ as well as the 2010 Constitution of Kenya also acknowledged that to address some of the protracted conflicts that have afflicted some parts of Kenya, there was a need to address what is popularly referred to as present or historical land injustices. The National Land Commission⁹⁴ and the Environment and Land Court⁹⁵ are the two main institutions that are charged with addressing this problem. It is important that land issues are addressed in ways that fully address the underlying issues that have often resulted in conflicts. This is because secure rights to land are important to the development of economic activities, capital accumulation, food security, and a wide variety of other socioeconomic benefits, all important for assurance of peace.⁹⁶

Indeed, in recognition of the important role that these Alternative Dispute Resolution (ADR) and Traditional Dispute Resolution Mechanisms (TDRMs) can play in not only addressing internal conflicts but also doing so in ways that enhance sustainable peace rather than dividing people further as would be the case with adversarial court mechanisms⁹⁷, Kenya's Judiciary has been

⁹² Article 159(2) (c) & (3), Constitution of Kenya 2010; 159 (3): Traditional dispute resolution mechanisms shall not be used in a way that—(a) contravenes the Bill of Rights;(b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law; Nairobi Centre for International Arbitration, *Alternative Dispute Resolution Policy*, Draft October 2019< <https://www.ncia.or.ke/wp-content/uploads/2019/10/DRAFT-NATIONAL-ADR-POLICY.pdf>> accessed 8 May 2021; *Mediation Bill, 2020*, Kenya Gazette Supplement No. 92 (National Assembly Bills No. 17).

⁹³ Republic of Kenya, *Sessional Paper No. 3 of 2009 on National Land Policy*, August, 2009 (Government Printer, Nairobi, 2009), para. 3.6.2.

⁹⁴ Article 67 (2)(e), Constitution of Kenya 2010; see also National Land Commission Act, No. 5 of 2012, Laws of Kenya. Revised Edition 2016 [2015], sec. 15; see also *National Land Commission Citation. (Investigation of Historical Land Injustices) Regulations, 2017*, Legal Notice No. 258, Kenya Gazette Supplement No. 154, 6th October, 2017, Laws of Kenya.

⁹⁵ Environment and Land Court Act, No. 19 of 2011, Laws of Kenya. Notably, Regulation 29 of the NLC (Investigation of Historical Injustices) Regulations 2017 stipulates as follows:

“A person aggrieved by the decision of the Commission may, within twenty-eight days of the publication of the decisions, appeal to the Court.”

Regulation 3 of the NLC (Investigation of Historical Injustices) Regulations 2017 defines "Court" to *mean the Environment and Land Court established under the Environment and Land Court Act, 2011 and includes other courts having jurisdiction on matters relating to land.*

⁹⁶ Unruh, Jon. "Land rights and peacebuilding: challenges and responses for the international community." *International Journal of Peace Studies* (2010): 89-125, 89.

⁹⁷ Tanja Chopra, 'Reconciling Society and the Judiciary in Northern Kenya' [2008] Justice for the Poor and Legal Resources Foundation Trust Research Report.

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making strides towards promoting and encouraging their use in the country, while working closely with other stakeholders in the sector.⁹⁸ This is because, more often than not, the court process fails to address the underlying real issues that brought the conflict in the first place.⁹⁹ This has been attributed to the fact that since the official law is based on a different understanding of justice, it is rarely effective in creating stability and societies are, therefore, more interested in solving conflicts through informal means - although they may ask the police to trace their cattle and the local administration to help in negotiating peace.¹⁰⁰ Arguably, local leaders prefer to deal with the conflicts of their communities as they are convinced that they have better solutions than the state can provide.¹⁰¹ In *Geoffrey Muthinja Kabiru & 2 Others -vs- Samuel Munga Henry & 1756 Others* (2015) eKLR, the Court of Appeal stated as follows regarding use of ADR and TDRMs:-

"It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts...This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution."...

Use of ADR and TDRM mechanisms in addressing ethnic tensions and other intergroup conflicts in Kenya has a potential to bring the country closer to attaining sustainable peace as a step towards

⁹⁸ 'List of MAC Accredited Mediators as at 1st January 2021 – The Judiciary of Kenya' <<https://www.judiciary.go.ke/download/list-of-mac-accredited-mediators-as-at-1st-january-2021/>> accessed 8 May 2021; see also 'State of the Judiciary and the Administration of Justice Annual Report 2019 – 2020 – The Judiciary of Kenya' <<https://www.judiciary.go.ke/download/state-of-the-judiciary-and-the-administration-of-justice-annual-report-2019-2020/>> accessed 8 May 2021; 'Inside the Judiciary Magazine, Edition No. 15 – The Judiciary of Kenya' <<https://www.judiciary.go.ke/download/inside-the-judiciary-magazine-edition-no-15/>> accessed 8 May 2021; 'Court Annexed Mediation Virtual Dispute Resolution – The Judiciary of Kenya' <<https://www.judiciary.go.ke/download/court-annexed-mediation-virtual-dispute-resolution/>> accessed 8 May 2021; 'Judiciary Strategic Plan 2019 -2023 – The Judiciary of Kenya' <<https://www.judiciary.go.ke/download/judiciary-strategic-plan-2019-2023/>> accessed 8 May 2021; Nairobi Centre for International Arbitration, *Alternative Dispute Resolution Policy*, Draft October 2019< <https://www.ncia.or.ke/wp-content/uploads/2019/10/DRAFT-NATIONAL-ADR-POLICY.pdf>> accessed 8 May 2021; *Mediation Bill, 2020*, Kenya Gazette Supplement No. 92 (National Assembly Bills No. 17).

⁹⁹ Tanja Chopra, 'Reconciling Society and the Judiciary in Northern Kenya' [2008] Justice for the Poor and Legal Resources Foundation Trust Research Report, 21< <http://documents1.worldbank.org/curated/en/590971468272735172/pdf/716920ESW0P1110ry0in0Northern0Kenya.pdf>> accessed 8 May 2021.

¹⁰⁰ Ibid, 21.

¹⁰¹ Ibid, 21.

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achieving SDG 16.¹⁰² Indeed, the Draft *Alternative Dispute Resolution Policy*, 2019 has acknowledged that ‘ADR, through its reconciliatory and non-adversarial nature is a major contributor to peace and cohesion in the country.’¹⁰³ It also acknowledges that ‘the rule of law is essential for democracy and economic growth and is the backbone of human rights, peace, security, and development’.¹⁰⁴

The importance of these mechanisms is also acknowledged in Kenya’s *National Policy on Peacebuilding and Conflict Management, 2011*¹⁰⁵ which calls for capacity building through, *inter alia*, training various stakeholders in relevant areas such as alternative conflict resolution mechanisms.¹⁰⁶

It has been argued that where there have been harsh and violent conflicts, there is usually firstly the temporary management of the conflict; which typically involves negotiation, mediation and arbitration, and rests on leaders and elites, although it still requires support by the general population, while secondly, deeper, level involves reconciliation which requires change in the societal repertoire shared by society members.¹⁰⁷ This is because reconciliation involves the formation or restoration of genuine peaceful relationships between societies and that this requires extensive changes in the socio-psychological repertoire of group members in both societies.¹⁰⁸ In addition, reconciliation is associated with socio-psychological processes consisting of changes of motivations, goals, beliefs, attitudes and emotions by the majority of society members.¹⁰⁹ This is the kind of approach that is recommended for such conflicts as the one involving Pokot and Turkana communities, among others. It is, however, acknowledged this should be accompanied with poverty eradication projects by the State since poverty and limited sources of livelihood can

¹⁰² K Muigua, ‘Institutionalising Traditional Dispute Resolution Mechanisms and Other Community Justice Systems’ [2017] Nairobi: Published online < <http://kmco.co.ke/wp-content/uploads/2018/08/Institutionalising-Traditional-Dispute-Resolution-Mechanisms-and-other-Community-Justice-Systems-25th-April-2017.pdf>> accessed 8 May 2021.

¹⁰³ Nairobi Centre for International Arbitration, *Alternative Dispute Resolution Policy*, Draft October 2019, 4.

¹⁰⁴ *Ibid*, 8.

¹⁰⁵ Republic of Kenya, *Kenya: National Policy on Peacebuilding and Conflict Management, 2011*, 11 December 2011 < <https://www.refworld.org/pdfid/5a7ad25f4.pdf>> accessed 8 May 2021.

¹⁰⁶ *Ibid*, see Chapter Five.

¹⁰⁷ Daniel Bar-Tal, ‘Reconciliation as a Foundation of Culture of Peace’, *Handbook on building cultures of peace* (Springer 2009), 363.

¹⁰⁸ *Ibid*, 365.

¹⁰⁹ *Ibid*, 365.

aggravate competition for scarce natural resources thereby contributing to instability.¹¹⁰ The State's involvement in addressing natural resources scarcity through climate change mitigation measures as well as adopting a participatory approach to resource management can potentially help in alleviating poverty and consequently address the insecurities that these communities face as far as food security and access to resources are concerned.¹¹¹ County peace committees should be empowered through capacity building because, as some commentators have argued, County governments have better local knowledge and are likely to enjoy greater local legitimacy thus placing them at a better position to address conflicts and promote peace, in partnership with the National Government.¹¹²

Based on the foregoing, it is thus important for the State to continually promote and strengthen the use of local leadership and community peace groups in efforts to reach sustainable peace solutions in Kenya.¹¹³

5. Conclusion

As already acknowledged, peace and development are interlinked and one may not take place in the absence of the other. As Kenya strives towards achieving sustainable development agenda, this paper has argued that the stakeholders must first work towards building sustainable peace and enhancing conflict management capacity of the various relevant stakeholders in the peace sector. Unless the underlying factors that result in conflicts are fully addressed, the dream of sustainable

¹¹⁰ Noro Aina Andrimihaja, Matthias Cinyabuguma and Shanta Devarajan, 'Stop Conflict, Reduce Fragility and End Poverty: Doing Things Differently in Fragile and Conflict-Affected Situations'; Olsson, Lennart, Maggie Opondo, Petra Tschakert, Arun Agrawal, and Siri EH Eriksen. "Livelihoods and poverty." (2014); 'Poverty and Conflict' (GSDRC) <<https://gsdrc.org/professional-dev/poverty-and-conflict/>> accessed 8 May 2021; Jonathan Goodhand, 'Violent Conflict, Poverty and Chronic Poverty' [2001] Chronic Poverty Research Centre Working Paper.

¹¹¹ Meine van Noordwijk, 'Integrated Natural Resource Management as Pathway to Poverty Reduction: Innovating Practices, Institutions and Policies' (2019) 172 *Agricultural Systems* 60.

¹¹² Huma Haider, Conflict analysis of North Eastern Kenya. K4D Emerging Issues Report36. Brighton, UK: Institute of Development Studies
<https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15570/EIR%2036_Conflict_analysis_of_North_Eastern_Kenya.pdf?sequence=1&isAllowed=y> accessed 8 May 2021.

¹¹³ David Pottebaum and Christopher Lee, 'In Control of Their Future: Community-Led Reconciliation and Recovery', *World Bank workshop "Moving out of Poverty in Conflict-Affected Areas"*, available at (2007); Ervin Staub, 'Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory' (2006) 27 *Political psychology* 867; Michael Wessells, 'Community Reconciliation and Post-Conflict Reconstruction for Peace', *Handbook on building cultures of peace* (Springer 2009); Daniel Bar-Tal, 'Reconciliation as a Foundation of Culture of Peace', *Handbook on building cultures of peace* (Springer 2009); Nyambura Githaiga, 'When Institutionalisation Threatens Peacebuilding: The Case of Kenya's Infrastructure for Peace' (2020) 15 *Journal of Peacebuilding & Development* 316.

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peace will remain a mirage. Similarly, without peace, realisation of sustainable development goals in the country, alongside other development goals such as the Vision 2030 will arguably remain a pipe dream. Working Towards Effective Peacebuilding and Conflict Management in Kenya is a necessary step in the quest for Sustainable Development.

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