

A Clarion call for Action: Realising True Sustainable Development

Kariuki Muigua, Ph.D.

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Kariuki Muigua*

Abstract

There has never been a more urgent time than now for the world to come together and work towards achieving sustainable development. This is due to the accelerated rate of environmental degradation and the rising levels of poverty among communities. Sustainable development seeks to adopt a three-pronged approach that seeks to balance environmental, social and economic needs of the society. This paper argues that there is a need for all stakeholders to rise and take their places towards achieving sustainable development. It also affirms that international cooperation is important in achieving sustainability.

1. Introduction

The United Nations 2030 Agenda for Sustainable Development¹ captures the global goals towards securing environmental, economic, social and political development and sustainability for the sake of current and future generations. Notably, this means that the goals call for action from various actors from the state agencies, private sector, communities, among others.

This paper seeks to explore the specific roles of each of these actors, overlapping areas and how they can all collaborate towards realisation of the sustainable development agenda. The paper also looks at the place of international actors in all these.

The discourse adopts a human rights based approach, ecosystem management approaches as well as other approaches envisaged under the Sustainable Development agenda, and the related topics thus feature prominently across the paper.

2. Background Information on Sustainable Development and the General Actors

The idea of sustainable development stretches back to traditional societies and ancient civilizations, predating the 1972 Stockholm Conference.² It aims to reduce pollution of the

**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, Faculty of Law [May 2023].*

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

² Per Judge Christopher Weeramantry in *Hungary v Slovakia*, 1997 WL 1168556 (I.C.J-1997).

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environment, the depletion of non-renewable resources, and environmental damage caused by anthropogenic activities.³ The *Brundtland Commission*⁴ defined sustainable development as, “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁵ Under section 2 of *Environmental Management and Co-ordination Act, 1999*⁶ (EMCA), sustainable development is defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems. Essentially, sustainable development seeks to address *intra-generational equity*, that is equity among present generations, and *inter-generational equity*, that is equity between generations.⁷

When referred to as Sustainable Human Development, Sustainable Development is also associated with the right to development, human rights, and good governance. Focus is placed on both tangible and immaterial aspects of human development, such as participation and rights, in order to achieve sustainable human development. Moreover, it aspires to a variety of objectives, including the eradication of poverty, the advancement of human rights, the promotion of equal opportunities, the preservation of the environment, and the evaluation of the effects of development efforts.⁸ Kenya’s Vision 2030 adopts sustainable human development as it seeks to address the economic, social and political pillars. It thus fosters both material factors and non-material factors.⁹ Sustainable Human Development is, therefore, inextricably linked to people’s livelihoods, and is thus requisite in moving towards environmental justice.

³ Cullet P., *Differential Treatment in International Environmental Law and its Contribution to the Evolution of International Law* (Aldershot: Ashgate, 2003), pp.8 -9.

⁴ The Brundtland Commission was established by the United Nations in 1983 to address the problem of deterioration of natural resources. Its mission was to unite countries to pursue sustainable development together. The Commission was named after its chairperson, Gro Harlem Brundtland, a former Prime Minister of Norway. It was officially dissolved in 1987 after releasing a report entitled *Our Common Future*, also known as the *Brundtland Report*. This report defined the meaning of the term Sustainable Development.

⁵ World Commission on Environment and Development, *Our Common Future*, GAOR, 42ndSess, Supp. No. 25, UN Doc. A/42/25 (1987), p.27; See also the Rio Declaration of 1992, UN Doc. A/CONF.151/26 (Vol. I).

⁶ Environmental Management and Co-ordination Act, No. 8 of 1999, Laws of Kenya.

⁷ Weiss, E.B., “In Fairness to Future Generations and Sustainable Development,” *American University International Law Review*, Vol.8, 1992.

⁸ See generally Amartya S., *Development as Freedom* (Anchor Books, New York, 1999), pp.35-53; See also UNDP, Human Development Report 2011, *The Real Wealth of Nations: Pathways to Human Development*, (Palgrave Macmillan Houndmills, Basingtoke, Hampshire, 2011), p. (i)-12. This report defines sustainable human development as the expansion of the substantive freedoms of people today while making reasonable efforts to avoid seriously compromising those of future generations.

⁹ Kenya Vision 2030, Government of Kenya, 2007.

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In the *Case Concerning the Gabčíkovo-Nagymoros Project*,¹⁰ ICJ Judge Weeramantry rightly opined that Sustainable Development reaffirms the need for both development and environmental protection, and that neither can be neglected at the expense of the other. He considered Sustainable Development to be a ‘*principle with normative value*’ demanding a balance between development and environmental protection, and as a principle of reconciliation in the context of conflicting human rights, that is the *human right to development* and the *human right to protection of the environment*. Sustainable Development reconciles these rights by ensuring that the right to development tolerates the ‘*reasonable demands of environmental protection*.’¹¹

SDG Goal 12.2 mandates that by 2030, all States should achieve the sustainable management and efficient use of natural resources in order to guarantee sustainable consumption and production patterns. The goal is to prevent the world from degrading, which includes doing so through sustainable production and consumption, managing its natural resources responsibly, and taking immediate action to combat climate change, so that it may satisfy the demands of both the present and future generations.¹²

Sustainable use refers to the need to reduce and eliminate unsustainable patterns of production and consumption.¹³ It is described as use that in any way and rate does not lead to long-term decline of biological diversity, thereby maintaining its potential to meet the needs of present and future generations.¹⁴ It requires that present use of the environment and natural resources does not compromise the ability of future generations to use these resources or degrade the carrying capacity of supporting ecosystems.¹⁵ It is a principle that is applied to determine the permissibility of natural resource exploitation¹⁶ and is central to the principle of sustainable

¹⁰ The Gabčíkovo–Nagymaros Project relates to a large damming project on the Danube River. This river is classified as an international waterway as it passes through or touches the borders of ten European countries before emptying into the Black Sea. The Project was specific to the part of the river passing through Hungary and Slovakia. It was initiated by the Budapest Treaty of 1977 between Slovakia and Hungary and aimed at preventing floods, improving river navigability and producing clean electricity for the two countries. Only a part of the project was completed in Slovakia, under the name Gabčíkovo Dam. Hungary suspended the Project in its territory and then later tried to terminate it citing environmental and economic concerns. Slovakia then proceeded with an alternative solution, called "Variant C", which involved diverting the river. These developments caused an international dispute between the two countries and they turned to the International Court of Justice for redress.

¹¹ Hungary v Slovakia, 1997 WL 1168556 (I.C.J-1997).

¹² Preamble, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1.

¹³ Principle 8 of the Rio Declaration.

¹⁴ Art.2, Convention on Biological Diversity.

¹⁵ S. 2 of Act, No. 8 of 1999.

¹⁶ See Birnie, P., Boyle, A. and Redgwell, C., *International Law and the Environment*, (3rd ed., Oxford 2009).

development.

In order to maintain strong sustainability as opposed to weak sustainability, governments and public bodies must assure sustainable usage. Strong sustainability recognises that the environment has benefits beyond economic potential. According to some observers, future generations shouldn't inherit a deteriorated ecosystem, regardless of how many other sources of income are available to them, because the environment provides services and benefits that cannot be replaced by wealth created by humans.¹⁷ Strong sustainability is preferable to weak sustainability for reasons such as 'non-substitutability',¹⁸ 'uncertainty'¹⁹ and 'irreversibility.'²⁰ Weak sustainability makes a wrong assumption that future generations will be adequately compensated for any loss of environmental amenity by having alternative sources of wealth creation.²¹

Sustainable use, therefore, puts fetters in the utilization of natural resources. For example, not all forms of resource use will be permissible since certain forms of exploitation may lead to destruction of environmental resources with no substitutes, thus limiting the enjoyment of these resources by future generations.²²

Public, private, and non-profit sectors can all be categorized as players who can support sustainable development.²³ Even throughout evaluation, sustainability is always being redefined and interpreted in new ways. Some scholars contend that in order to arrive at the basically normative concept of sustainable development, stakeholders' and citizens' perspectives must be taken into account while evaluating the application of international rules.²⁴

¹⁷ Beder, S., "Costing the Earth: Equity, Sustainable Development and Environmental Economics," *New Zealand Journal of Environmental Law*, Vol.4, 2000, pp.227-243.

¹⁸ Ibid. The argument is that there are many environmental assets for which there are no substitutes, such as the ozone layer, tropical forests, wetlands, etc.

¹⁹ Ibid. It has been said that scientific knowledge about the functions of natural systems and the possible consequences of depleting and degrading them is uncertain.

²⁰ Ibid. The depletion of natural capital can lead to irreversible losses such as species and habitats, which cannot be recreated using man-made resources.

²¹ Ibid.

²² Kuhlman T and Farrington J, 'What Is Sustainability?' (2010) 2 Sustainability 3436; Chu EW and Karr JR, 'Environmental Impact: Concept, Consequences, Measurement' [2017] Reference Module in Life Sciences B978; Freedman B, 'Chapter 12 ~ Resources and Sustainable Development' <<https://ecampusontario.pressbooks.pub/environmentalscience/chapter/chapter-12-resources-and-sustainable-development/>> accessed 19 April 2023.

²³ Nițoia P and Camară G, 'Roles of Actors in Promoting Sustainable Development' [2018] Present Environment and Sustainable Development 169.

²⁴ Pülzl H and Wydra D, 'The Evaluation of the Implementation of Sustainability Norms: An Exercise for Experts or Citizens?' (2011) 2 International Journal of Social Ecology and Sustainable Development (IJSESD) 31, 32.

NGOs, workers' unions, local governments or "local authorities, business and industry, scientific and technological communities, children and youth, women, farmer(s), aboriginal peoples and communities, are among the nine primary players of Sustainable Development that the United Nations has identified. According to Rio Agenda 21, the degree of commitment and sincere participation of all social groups and the general public in decision-making will determine how effectively Sustainable Development is implemented.²⁵

3. Getting Private Actors and non-State Actors on Board

Since the 1980s, Sustainable Development has played a role in influencing local public policy. According to the World Commission on Environment and Development, sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."²⁶ Thus, the widespread adoption of public policy agendas, such as localizing the United Nations Sustainable Development Goals, and the thousands of local governments worldwide creating sustainability plans reflect the need for a collective effort to overcome the social, ecological, and economic difficulties inherent in achieving sustainability.²⁷

The 2030 Agenda for Sustainable Development was adopted by the United Nations in 2015 and includes 17 Goals (SDGs).²⁸ Conflict management and access to justice are considered to be an important element of Sustainable Development agenda.²⁹ For human civilization to continue, peace and harmony are necessary. According to the United Nations (2016), SDG 16 demands for equal access to information and judicial services while creating inclusive, peaceful societies with access to justice.³⁰

²⁵ Rafika, K., Rym, K., Souad, S.B. and Youcef, L., "A public actor awareness for sustainable development." *Procedia-Social and Behavioral Sciences* 216 (2016): 151-162, p. 154.

²⁶ MacDonald, A., Clarke, A., Ordonez-Ponce, E., Chai, Z. and Andreasen, J., 'Sustainability Managers: The Job Roles and Competencies of Building Sustainable Cities and Communities' (2020) 43 *Public Performance & Management Review* 1413, p.2.

²⁷ Ibid, p. 39.

²⁸ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

²⁹ Muigua, D., 'Understanding the Place of Conflict Management in Sustainable Development Agenda' (27 September 2022) <<https://papers.ssrn.com/abstract=4371703>> accessed 31 March 2023.

³⁰ Leal Filho, W., Tripathi, S.K., Andrade Guerra, J.B.S.O.D., Giné-Garriga, R., Orlovic Lovren, V. and Willats, J., 'Using the Sustainable Development Goals towards a Better Understanding of Sustainability Challenges' (2019) 26 *International Journal of Sustainable Development & World Ecology* 179.

Arguably, commercial and business activities contribute a great deal to climate change and other ills that lead to environmental degradation.³¹

While the environmental effects of these economic activities are often mitigated through Corporate Social Responsibility (CSR) activities, these may not at times be sufficient in tackling the resultant increased rates of degradation. Indeed, many of the top scientists in the world believe that human-caused climate change is the "defining issue of our time." Many people now prefer to use the term "Climate Crisis" to emphasise how quickly and severely the world's climate is changing and how urgently we need to take action to create a sustainable future.³² According to the Intergovernmental Panel on Climate Change (IPCC), global CO₂ emissions must decrease over the next ten years to around half of 2010 levels and achieve net zero by 2050. According to the IPCC, in order to keep global warming to 1.5 °C, all facets of society would need to undergo quick, significant, and unheard-of adjustments.³³ In addition to climate change, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) of the United Nations found equally alarming results in its 2019 assessment report on biodiversity and ecosystem services.³⁴

4. The Place of International Cooperation towards Achieving Sustainability

The place of international law in achieving sustainability is well recognised as was pointed out by Kenyan courts in the case of *Amina Said Abdalla & 2 others v County Government of Kilifi & 2 others* [2017] eKLR³⁵, that 'the Environmental Law is principally concerned with ensuring the sustainable utilization of natural resources according to a number of fundamental principles developed over the years through both municipal and international processes'.³⁶ At the international level, these principles include, *inter alia*, the international cooperation in management of natural resources and common but differentiated responsibilities.³

³¹ 'Trade and the Environment - OECD' <<https://www.oecd.org/trade/topics/trade-and-the-environment/>> accessed 1 April 2023.

³² McGregor D, Whitaker S and Sritharan M, 'Indigenous Environmental Justice and Sustainability' (2020) 43 Current Opinion in Environmental Sustainability 35, p.35.

³³ Ibid, p.35.

³⁴ Ibid, p.35.

³⁵ *Amina Said Abdalla & 2 others v County Government of Kilifi & 2 others* [2017] eKLR, ELC Case No. 283 OF 2016.

³⁶ Ibid, para. 17.

International collaboration is now required in the management of natural resources as more nations embrace globalization and the resulting struggle over resources, particularly those that are transboundary in nature, to spur economic growth. This is because some environmental issues, like climate change, that result from poor management of natural resources are themselves global in scope, necessitating the work and collaboration of all states to address them. This collaboration primarily involves bilateral, transnational, multilateral, and corporate sector relationships.³⁷

4.2. International Cooperation in Management of Natural Resources

In international law, the obligation to collaborate is firmly established. "States must collaborate in a spirit of global partnership to conserve, maintain, and restore the health and integrity of the earth's environment," the Rio Declaration's Principle 7's opening sentence reads. According to Principle 14, States shall work together effectively to deter or prohibit the relocation and transfer of any activities or chemicals that seriously degrade the environment or are determined to be detrimental to human health. This Principle has not received much attention in Kenyan natural resources legislation. Nonetheless, EMCA acknowledges this Principle as one of the guiding principles for managing natural resources that are shared by one or more states.³⁸

This idea is particularly important when it comes to cross-border trading across countries and regions. For instance, the United Nations Conference on Sustainable Development, also known as Rio+20, calls on nations to collaborate in developing well-designed and managed tourism in order to significantly contribute to the three pillars of sustainable development, with close ties to other sectors, and with the potential to create decent jobs and expand trade opportunities.³⁹

The *2030 Agenda on SDGs* also affirms that international trade is an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development.⁴⁰ As such, it seeks to continue to promote a universal, rules-based, open,

³⁷ Nkonya, E.M., Cenacchi, N. and Ringler, C., International cooperation for sustainable land and water management, *SOLAW Background Thematic Report - TR16*.

³⁸ EMCA, No. 8 of 1999, S. 3 (5) (c).

³⁹ United Nations, *The Future We Want*, A/RES/66/288, Sixty-sixth session Agenda item 19, Resolution adopted by the General Assembly on 27 July 2012, para. 130. Art. 1.11 of the RIO+20 Report, requires State parties to strengthen international cooperation to address the persistent challenges related to sustainable development for all, in particular in developing countries.

⁴⁰ 'Trading Into Sustainable Development: Trade, Market Access, and the Sustainable Development Goals' (2016) <https://unctad.org/system/files/official-document/ditctab2015d3_en.pdf> accessed 19 April 2023.

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transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization, as well as meaningful trade liberalization. It also calls upon all members of the World Trade Organization to redouble their efforts to promptly conclude the negotiations on the Doha Development Agenda.⁴¹

Achieving food security, creating decent employment opportunities for the unemployed, fostering technology transfer⁴², ensuring national economic security, and supporting infrastructure development, not only for transporting goods to and from ports but also for the provision of basic services like health, education, water, sanitation, and energy, are all possible thanks to fair international trade.⁴³ This is crucial for achieving SDG Goal 8, which aims to promote full and productive employment, sustained, inclusive, and sustainable economic growth, and decent work for everyone.

Participating in international trade can increase the economic space required to generate new job opportunities, encourage resource efficiency, increase access to food, energy, and essential services, and enhance the managerial, entrepreneurial, and productive capabilities necessary for economic diversification, growth, and development.⁴⁴

With international collaboration for the realisation of the Sustainable Development agenda, this may be accomplished successfully.⁴⁵

The SDG Goal 17—to strengthen implementation mechanisms and re-energize the international cooperation for sustainable development—also reflects this. This is intended, among other things, through enhancing domestic capacity for tax and other revenue collection, especially

⁴¹ SDG 17.

⁴² Art. 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that: “The protection and enforcement of intellectual property should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

⁴³ Galmes G, ‘Trade as an enabler of sustainable development and poverty eradication,’ in United Nations, *The Road from Rio+20: Towards Sustainable Development Goals*, Issue 4, September 2014, p. 10. UNCTAD/DITC/TED/2014/1<<https://www.tralac.org/images/docs/6328/ch-3-trade-as-an-enabler-of-sustainable-development.pdf>> [Accessed on 8/1/2019].

⁴⁴ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016), p. 244.

⁴⁵ Principle 5 of the *Rio Declaration* calls on all States and all people to cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world; See also World Commission on Environment and Development, *Our Common Future: Report of the World Commission on Environment and Development*, 1987, A/42/427.

through international assistance to poor nations.⁴⁶ Goal 17.6, which aims to improve North-South, South-South, and triangular regional and international cooperation on and access to science, technology, and innovation as well as enhance knowledge sharing on mutually agreed terms, includes improved coordination among existing mechanisms, particularly at the UN level, as well as through a global technology facilitation mechanism. This goal also promotes international cooperation. Enhancing international support for the implementation of efficient and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-South, South-South, and triangular cooperation, is another important aspect of international cooperation for capacity building.⁴⁷

Notably, the 2030 Agenda on Sustainable Development strongly advises against adopting and enforcing any unilateral economic, financial, or trade measures that are in violation of international law and the United Nations Charter and that would hinder the full realisation of economic and social development, especially in developing nations.⁴⁸

4.3. Common but Differentiated Responsibilities

The idea of the "shared heritage of mankind" is claimed to have given rise to the idea of "common but differentiated responsibility," which is also a manifestation of general principles of justice in international law.⁴⁹ Governments must work together in a spirit of international collaboration to preserve, protect, and restore the health and integrity of the earth's environment, according to Principle 7 of the Rio Declaration. It continues by stating that States have similar but distinct obligations in light of the various ways in which environmental deterioration throughout the world is caused.⁵⁰

This idea is included in several international legal documents, such as the Rio Declaration and the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC).

⁴⁶ SDG Goal 17.1.

⁴⁷ SDG Goal 17.9.

⁴⁸ A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development.

⁴⁹ The Principle of Common but Differentiated Responsibilities: Origins and Scope, For the World Summit on Sustainable Development, 2002, Johannesburg, 26 August, *A Centre for International Sustainable Development Law (CISDL) Legal Brief*, p. 1.

⁵⁰ Tokuç A, 'Rio Declaration on Environment and Development (UN)' in Samuel O Idowu and others (eds), *Encyclopedia of Corporate Social Responsibility* (Springer 2013) <https://doi.org/10.1007/978-3-642-28036-8_19> accessed 19 April 2023.

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According to the UNFCCC, Parties must act "on the basis of equality and in accordance with their common but differentiated responsibilities and respective capabilities" in order to preserve the climate system.⁵¹

The member states that have polluted the most must shoulder the bulk of the burden for minimising the impacts of that pollution. In order to provide fairness to developing and Least Developed States, who have made smaller contributions to climate change and global warming, differentiated responsibility is particularly crucial. Depending on how much emissions each State produces, each has a different level of accountability. For instance, compared to a small developing State, large growing economies would have a greater need to manage and conserve the environment.⁵²

The notion of "common but differentiated responsibility" is a means to take into consideration the diverse conditions, especially in regards to each state's role to the development of environmental issues and its capacity to avoid, minimise, or regulate them.⁵³ The goal is to promote equity and participation for everyone.⁵⁴ This principle is crucial for achieving the Agenda 2030 Sustainable Development Goals (SDGs), which include, among other things, the notion of common but differentiated responsibilities outlined in principle 7 of the Rio Declaration on Environment and Development. SDG Goal 10(a) aims to, among other things, implement the principle of special and differentiated treatment for developing countries, particularly least developed countries, in conformity with World Trade Organization agreements in order to minimise inequality within and between nations.⁵⁵

5. Concluding Remarks

Unquestionably, the human rights approach is at the core of the 2030 Agenda for Sustainable Development. In order for the world to continue to serve the requirements of the present and future generations, everyone has a responsibility to prevent it from degrading, especially via sustainable production and consumption, the management of its natural resources, and urgent action on climate

⁵¹ Art.3 of the UNFCCC.

⁵² 'Smallest Footprints, Largest Impacts: Least Developed Countries Need a Just Sustainable Transition | UNCTAD' <<https://unctad.org/topic/least-developed-countries/chart-october-2021>> accessed 19 April 2023.

⁵³ Kurukulasuriya, L. and Robinson, N.A., "UNEP Training Manual on International Environmental Law." *Nairobi: United Nations Environment Programme* (2006).

⁵⁴ Ibid.

⁵⁵ Hub ISK, 'Guest Article: Common But Differentiated Governance: Making the SDGs Work | SDG Knowledge Hub | IISD' <<http://sdg.iisd.org/commentary/guest-articles/common-but-differentiated-governance-making-the-sdgs-work/>> accessed 19 April 2023.

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change. Sustainable Development must take into account the relationship between human rights and environmental protection. Sustainable Development is contingent upon upholding peoples' rights to a secure environment where they can thrive.⁵⁶

The Sustainable Development Goals (SDGs) also envisions a world where democracy, good governance, and the rule of law are essential for Sustainable Development, which includes inclusive and sustained economic growth, social development, environmental protection, and the eradication of poverty and hunger.⁵⁷ In this sense, "steering"—which comprises both procedures and institutions—is referred to as "governance" since it entails a certain amount of power. Process refers to how choices are made on priorities, how disagreements are handled, if at all, and how coordination of people's actions with regard to resource usage is made simpler. The structural part, on the other hand, deals with the organisation and 'management' of these operations.⁵⁸

Addressing conflict of whatever nature is part of the social aspects of sustainability that must be put into consideration if Sustainable Development agenda is to be achieved. Thus, the Sustainable Development agenda advocates for an integrated approach to tackling environmental management challenges as well as social problems affecting the society.⁵⁹ The Organisation for Economic Co-operation and Development(OECD) calls for an integrated approach to the implementation of Sustainable Development and argues that many SDGs are interconnected with each other; an integrated approach implies managing trade-offs and maximising synergies across targets.⁶⁰ The fundamental action principle of Sustainable Development is integrated decision-making, which is the process of taking environmental, social, and economic goals and issues into consideration when making decisions.⁶¹

Sustainable Development's environmental component must be considered in its economic, social, and governance facets. This is due to the fact that fostering sustainable economic growth depends

⁵⁶ Choondassery Y, 'Rights-Based Approach: The Hub of Sustainable Development' (2017) 8 Discourse and Communication for Sustainable Education.

⁵⁷ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* | Department of Economic and Social Affairs' <<https://sdgs.un.org/2030agenda>> accessed 1 April 2023.

⁵⁸ Vatn, Arild, Environmental governance: institutions, policies and actions, Edward Elgar Publishing, 2015, p. 133.

⁵⁹ See Hussein Abaza and Andrea Baranzini, *Implementing Sustainable Development: Integrated Assessment and Participatory Decision-Making Processes* (Edward Elgar Publishing 2002).

⁶⁰ Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (*Assembly of European Regions, 4 March 2019*) <<https://aer.eu/integrated-approach-sdgs/>> accessed 1 April 2023.

⁶¹ Dernbach, J.C. and Mintz, J.A., "Environmental laws and sustainability: an introduction. Sustainability, 3 (3), 531-540." (2011), 532.

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on environmental protection, as the natural environment supports economic activity both directly and indirectly through ecosystem services like carbon sequestration, water purification, managing flood risks, and nutrient cycling.⁶²

The SDGs are global, multifaceted, and ambitious, and it is arguable that in order to fulfil them, we need an integrated framework that encourages a growth path that protects the environment and whose benefits are shared by everyone, not just by the fortunate few.⁶³ Thus, the idea of Sustainable Development forces us to reconsider how we interact with the world and how we anticipate that governments would implement policies that promote that worldview.⁶⁴

Corporations, through following Environment Social and Governance (ESG) frameworks or guidelines, can also play a huge role in promoting sustainability within the localities that they operate in and the country at large. ESG Reporting should be encouraged and used as a tool of promoting sustainability within the companies, communities and country. Under this, organisations make it part of their operational procedures to report publicly on their economic, environmental, and/or social impacts, and hence its contributions – positive or negative – towards the goal of Sustainable Development.⁶⁵ As the business community seeks to invest in various sectors, there is a need for them to take into account ESG requirements under SDGs. The law (government) and other policy makers should work towards supporting businesses in their efforts to transition to more sustainable business models, through using various legal, policy and other effective incentives. The law should move towards ensuring that non-financial reporting on ESG becomes the standard mode of operation for ease of enforcing such principles as “the polluter pays principle”, among others. This is especially important as it has been pointed out that ‘previous

⁶² *UN Environment*, ‘GOAL 8: Decent Work and Economic Growth’ (UNEP - UN Environment Programme, 2 June 2021) <<http://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-8>> accessed 1 April 2023.

⁶³ Ramos, G., "The Sustainable Development Goals: A duty and an opportunity." (2016): 17-21, in Love, P. (ed.), *Debate the Issues: New Approaches to Economic Challenges*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264264687-3-en>. 1 April 2023.

⁶⁴ *Ibid.*

⁶⁵ ‘(10) Global ESG Disclosure Regulations: From Awareness to Practice towards Sustainability | LinkedIn’ <<https://www.linkedin.com/pulse/global-esg-disclosure-regulations-from-awareness-dr-mahendra/>> accessed 1 April 2023; Boffo R and Patalano R, ‘ESG Investing: Practices, Progress and Challenges’ [2020] Editions OCDE, Paris; ‘What ESG Reporting Is and How to Do It | A MovingWorlds Guide’ (*MovingWorlds.org*) <<https://movingworlds.org/esg-reporting-guide>> accessed 1 April 2023; PricewaterhouseCoopers, ‘ESG Reporting and Preparation of a Sustainability Report’ (*PwC*, 26 January 2021) <<https://www.pwc.com/sk/en/environmental-social-and-corporate-governance-esg/esg-reporting.html>> accessed 1 April 2023.

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literature, which attempted to investigate the link between sustainability and investment performance, found that a critical barrier to ESG integration is that investors lack reliable and non-manipulated information', at least in other jurisdictions, practices which may also take place in Kenya.⁶⁶ While it may not be disputed that institutional investors vary in their approaches to integrating ESG factors into their investment decisions, the end game should at least show some tangible and verifiable positive results.⁶⁷

It has also been suggested that businesses and companies should embrace technology and innovation in engineering and product development as well as with regard to management structures and entrepreneurship, which will arguably continue to be crucial to overall sustainability strategy. Doing more with less may be a challenge that technology may help solve since it can reduce the strict ecological limitations while also relieving political and economic pressures (thereby allowing space and opportunity for more sustainability solutions from all quarters).⁶⁸

There is a need to adopt innovative governance approaches which integrate economic, social development and sustainable development principles at multiple levels of social organization in addressing the serious challenges facing our globe and achievement of the 2030 Agenda on Sustainable Development Goals.⁶⁹

The Human Rights Based Approach(HRBA) places the most marginalised and discriminated among those who are living in multidimensional poverty and oppression at the centre of development cooperation. The strategy identifies the individuals and institutions in charge of upholding, defending, and enforcing those human rights with the goal of empowering people who are oppressed and living in poverty to take action to escape their circumstances.⁷⁰ This is because the HRBA always includes the following provisions: empowerment of women, men, girls, boys, and non-binary people living in poverty and oppression — the rights holders — with, for instance,

⁶⁶ Roy, P.P., Rao, S., Marshall, A.P. and Thapa, C., 'Mandatory Corporate Social Responsibility and Foreign Institutional Investor Preferences' (2020).

⁶⁷ OECD, *OECD Business and Finance Outlook 2020: Sustainable and Resilient Finance* (OECD 2020) <https://www.oecd-ilibrary.org/finance-and-investment/oecd-business-and-finance-outlook-2020_eb61fd29-en> accessed 1 April 2023.

⁶⁸ Clune WH and Zehnder AJB, 'The Three Pillars of Sustainability Framework: Approaches for Laws and Governance' (2018) 9 *Journal of Environmental Protection* 211.

⁶⁹ Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996), p.89.

⁷⁰ Cybercom, 'Human Rights Based Approach' (*Sida*) <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>> accessed 19 April 2023.

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hope, assertiveness, knowledge, skills, tools, networks, communication channels, and access to justice to enable them to assert their rights both individually and collectively; and capacity development of those with obligations to respect, protect, promote, and fulfil human rights — the duty bearers — through, among other things, education.⁷¹

Realizing true Sustainable Development is an ideal whose time is now.

References

‘(10) Global ESG Disclosure Regulations: From Awareness to Practice towards Sustainability | LinkedIn’ <<https://www.linkedin.com/pulse/global-esg-disclosure-regulations-from-awareness-dr-mahendra/>> accessed 1 April 2023.

‘Smallest Footprints, Largest Impacts: Least Developed Countries Need a Just Sustainable Transition | UNCTAD’ <<https://unctad.org/topic/least-developed-countries/chart-october-2021>> accessed 19 April 2023.

‘Trade and the Environment - OECD’ <<https://www.oecd.org/trade/topics/trade-and-the-environment/>> accessed 1 April 2023.

‘Trading Into Sustainable Development: Trade, Market Access, and the Sustainable Development Goals’ (2016) <https://unctad.org/system/files/official-document/ditctab2015d3_en.pdf> accessed 19 April 2023.

Amartya S., *Development as Freedom* (Anchor Books, New York, 1999), pp.35-53.

Amina Said Abdalla & 2 others v County Government of Kilifi & 2 others [2017] eKLR, ELC Case No. 283 OF 2016.

Beder, S., “Costing the Earth: Equity, Sustainable Development and Environmental Economics,” *New Zealand Journal of Environmental Law*, Vol.4, 2000, pp.227-243.

Birnie, P., Boyle, A. and Redgwell, C., *International Law and the Environment*, (3rd ed., Oxford 2009).

⁷¹ Ibid.

A Clarion call for Action: Realising True Sustainable Development

Boffo R and Patalano R, 'ESG Investing: Practices, Progress and Challenges' [2020] Editions OCDE, Paris; 'What ESG Reporting Is and How to Do It | A MovingWorlds Guide' (*MovingWorlds.org*) <<https://movingworlds.org/esg-reporting-guide>> accessed 1 April 2023.

Choondassery Y, 'Rights-Based Approach: The Hub of Sustainable Development' (2017) 8 Discourse and Communication for Sustainable Education.

Chu EW and Karr JR, 'Environmental Impact: Concept, Consequences, Measurement' [2017] Reference Module in Life Sciences B978.

Clune WH and Zehnder AJB, 'The Three Pillars of Sustainability Framework: Approaches for Laws and Governance' (2018) 9 Journal of Environmental Protection 211.

Cullet P., *Differential Treatment in International Environmental Law and its Contribution to the Evolution of International Law* (Aldershot: Ashgate, 2003).

Cybercom, 'Human Rights Based Approach' (*Sida*) <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>> accessed 19 April 2023.

Dernbach, J.C. and Mintz, J.A., "Environmental laws and sustainability: an introduction. Sustainability, 3 (3), 531-540." (2011).

Environmental Management and Co-ordination Act, No. 8 of 1999, Laws of Kenya.

Freedman B, 'Chapter 12 ~ Resources and Sustainable Development' <<https://ecampusontario.pressbooks.pub/environmentalscience/chapter/chapter-12-resources-and-sustainable-development/>> accessed 19 April 2023.

Galmes G, 'Trade as an enabler of sustainable development and poverty eradication,' in United Nations, *The Road from Rio+20: Towards Sustainable Development Goals*, Issue 4, September 2014.

Hub ISK, 'Guest Article: Common But Differentiated Governance: Making the SDGs Work | SDG Knowledge Hub | IISD' <<http://sdg.iisd.org/commentary/guest-articles/common-but-differentiated-governance-making-the-sdgs-work/>> accessed 19 April 2023.

Hungary v Slovakia, 1997 WL 1168556 (I.C.J-1997).

A Clarion call for Action: Realising True Sustainable Development

Hussein Abaza and Andrea Baranzini, *Implementing Sustainable Development: Integrated Assessment and Participatory Decision-Making Processes* (Edward Elgar Publishing 2002).

Kenya Vision 2030, Government of Kenya, 2007.

Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996).

Kuhlman T and Farrington J, 'What Is Sustainability?' (2010) 2 *Sustainability* 3436.

Kurukulasuriya, L. and Robinson, N.A., "UNEP Training Manual on International Environmental Law." *Nairobi: United Nations Environment Programme* (2006).

Leal Filho, W., Tripathi, S.K., Andrade Guerra, J.B.S.O.D., Giné-Garriga, R., Orlovic Lovren, V. and Willats, J., 'Using the Sustainable Development Goals towards a Better Understanding of Sustainability Challenges' (2019) 26 *International Journal of Sustainable Development & World Ecology* 179.

MacDonald, A., Clarke, A., Ordonez-Ponce, E., Chai, Z. and Andreasen, J., 'Sustainability Managers: The Job Roles and Competencies of Building Sustainable Cities and Communities' (2020) 43 *Public Performance & Management Review* 1413.

McGregor D, Whitaker S and Sritharan M, 'Indigenous Environmental Justice and Sustainability' (2020) 43 *Current Opinion in Environmental Sustainability* 35.

Muigua, D., 'Understanding the Place of Conflict Management in Sustainable Development Agenda' (27 September 2022) <<https://papers.ssrn.com/abstract=4371703>> accessed 31 March 2023.

Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016).

Nițoaia P and Camară G, 'Roles of Actors in Promoting Sustainable Development' [2018] *Present Environment and Sustainable Development* 169.

Nkonya, E.M., Cenacchi, N. and Ringler, C., International cooperation for sustainable land and water management, *SOLAW Background Thematic Report - TR16*.

A Clarion call for Action: Realising True Sustainable Development

OECD, *OECD Business and Finance Outlook 2020: Sustainable and Resilient Finance* (OECD 2020) <https://www.oecd-ilibrary.org/finance-and-investment/oecd-business-and-finance-outlook-2020_eb61fd29-en> accessed 1 April 2023.

PricewaterhouseCoopers, 'ESG Reporting and Preparation of a Sustainability Report' (PwC, 26 January 2021) <<https://www.pwc.com/sk/en/environmental-social-and-corporate-governance-esg/esg-reporting.html>> accessed 1 April 2023.

Pülzl H and Wydra D, 'The Evaluation of the Implementation of Sustainability Norms: An Exercise for Experts or Citizens?' (2011) 2 *International Journal of Social Ecology and Sustainable Development (IJSESD)* 31.

Rafika, K., Rym, K., Souad, S.B. and Youcef, L., "A public actor awareness for sustainable development." *Procedia-Social and Behavioral Sciences* 216 (2016): 151-162.

Ramos, G., "The Sustainable Development Goals: A duty and an opportunity." (2016): 17-21, in Love, P. (ed.), *Debate the Issues: New Approaches to Economic Challenges*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264264687-3-en>. 1 April 2023.

Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (*Assembly of European Regions, 4 March 2019*) <<https://aer.eu/integrated-approach-sdgs/>> accessed 1 April 2023.

Roy, P.P., Rao, S., Marshall, A.P. and Thapa, C., 'Mandatory Corporate Social Responsibility and Foreign Institutional Investor Preferences' (2020).

The Principle of Common but Differentiated Responsibilities: Origins and Scope, For the World Summit on Sustainable Development, 2002, Johannesburg, 26 August, *A Centre for International Sustainable Development Law (CISDL) Legal Brief*.

Tokuç A, 'Rio Declaration on Environment and Development (UN)' in Samuel O Idowu and others (eds), *Encyclopedia of Corporate Social Responsibility* (Springer 2013) <https://doi.org/10.1007/978-3-642-28036-8_19> accessed 19 April 2023.

UN Environment, 'GOAL 8: Decent Work and Economic Growth' (UNEP - UN Environment Programme, 2 June 2021) <<http://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-8>> accessed 1 April 2023.

A Clarion call for Action: Realising True Sustainable Development

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

UNDP, Human Development Report 2011, *The Real Wealth of Nations: Pathways to Human Development*, (Palgrave Macmillan Houndmills, Basingtoke, Hampshire, 2011).

United Nations, Rio Declaration of 1992, UN Doc. A/CONF.151/26 (Vol. I).

United Nations, *The Future We Want*, A/RES/66/288, Sixty-sixth session Agenda item 19, Resolution adopted by the General Assembly on 27 July 2012, para. 130.

United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* | Department of Economic and Social Affairs' <<https://sdgs.un.org/2030agenda>> accessed 1 April 2023.

Vatn, Arild, *Environmental governance: institutions, policies and actions*, Edward Elgar Publishing, 2015.

Weiss, E.B., "In Fairness to Future Generations and Sustainable Development," *American University International Law Review*, Vol.8, 1992.

World Commission on Environment and Development, *Our Common Future*, GAOR, 42ndSess, Supp. No. 25, UN Doc, A/42/25 (1987).