

Exploring Conflict Management in Environmental Matters



Kariuki Muigua

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in Environmental Matters**

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Chartered Arbitrator**

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Dedication

Dedicated
To those who seek Peace
To those who know
That Peace resides
in the mind
And that what one thinks
of most
is what they attract
And eventually become.

Dedicated to the idea that
A spark from that fire
That burns brightly in
your soul
Can change the world

And to those who have gone
through
Torture, pain
Storms and
Rain
To those who
Know that it is possible
To smile
And warm the soul

You have the power
To tread a new path
Walk a new road.
Or where there is none
To create a highway

Dedicated to those
who keep moving forward
Never ever giving up
Believing in themselves

And to the mother,
who said to her child
Today we sleep hungry and cold
But I have faith
That tomorrow will be warm
And there will be plenty
to replenish the body
mind and soul.

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They have supported me and ensured this publication sees the light of day.

I appreciate those who have shaped my thinking over the years; those who taught me that what we conceive in our minds, we can achieve; That luck can be created; That one can always start again in life; That we can realize our dreams.

Thank you to those sages who taught me that someone else's opinion of you does not have to become a reality. This idea, has had a profound effect on me.

I believe one can chart their own path and succeed. It is possible if one believes it in their mind. The battle is not with other people, it is in your mind and soul. It is possible to be a winner.

I am extremely grateful to the Nairobi Legal Awards (NLA) Trust who conferred me the Arbitrator of the year award 2021-2022 and to The Chartered Institute of Arbitrators for honouring me with the Inaugural Lifetime Achievement Award (2021). CIArb also gave me the "Publication of the year Award 2021."

The 3rd African Arbitration Awards held at Kigali Rwanda and hosted by Africa Arbitration Award 2022, awarded me the winner of the African Arbitrator of the Year 2022 beating other competitors from Egypt, Mauritius, Ethiopia, Nigeria and Kenya. I am humbled.

Finally, I extend my deepest gratitude to my family. They have been with me and we have walked this rough road together. My family keeps me going. They remind me that with faith we shall overcome.

And that God knows best.

Author's Note

Natural and environmental resources exploitation form the backbone of the economy and people's livelihoods, especially in a country like Kenya that is considered to be largely an agricultural based economy. This is because majority of communities rely on these resources as the source of food and for their general wellbeing. Industries also rely on these resources as their main source of raw materials.

The availability of these resources have been adversely affected by the ever growing populations, degradation and climate change, among others. There is a direct effect of this growing competition over these resources. Such competition comes with conflicts.

The effects of environmental related conflicts have been acknowledged in the 2030 Agenda for Sustainable Development Goals which point out that peacebuilding is an indispensable part of development and sustainability. This is due to the negative effects of conflict such as loss of lives and environmental degradation, among others. Sustainable Development Goal (SDG) 16 aims to address these conflicts because 'a major challenge to sustainable development still exists in the form of conflict, instability, shoddy institutions, and curtailed access to justice.' SDG 16 thus seeks to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.

This book is informed by the need to address these conflicts as part of efforts towards achieving sustainable development. The book offers a sound discussion on the main causes and manifestations of environmental and natural resource related conflicts. It also discusses the main institutions and approaches designed for management of these conflicts. It also looks at these conflicts in the context of Kenya where these conflicts closely hit home.

It is worth noting from the discourse in the book that these environmental conflicts are not linear in their origin as they are closely linked to other factors such as political, environmental and social causes. They are thus interdisciplinary in their origin and also follows that addressing them requires

inter- and multidisciplinary approaches and understanding if lasting solutions are to be achieved.

Sustainable development agenda is the current framework within which environmental debates revolve and thus, other cross-cutting themes such as climate change, human rights, gender, trade and public participation also form part of the book.

The book has suggested that if long lasting solutions are to be realised, then there is a need to not only invest in people's empowerment but also invest in research beyond the sustainability debates.

The book adds to the already existing debates in this area but also offers solutions within the unique context of Kenya which, as already pointed out, has had its fair share of environmental conflicts. The discussion also explores the global and regional approaches to environmental conflicts management. The author hopes that academics, students, researchers and decision-makers, among others, will find the book a useful addition to their collection of literature on conflict management.

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Agreement on Trade-Related Investment Measures", The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (World Trade Organization, Geneva, 1995), pp. 163-167.

List of Abbreviations

ADR	Alternative Dispute Resolution
CBD	Convention on Biological Diversity
COVID-19	Corona Virus Disease 2019
EITI	Extractive Industries Transparency Initiative
EMCA	Environmental Management and Coordination Act
ESG	Environmental Social and Governance
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
IEL	International Environmental Law
NEMA	National Environmental Management Authority
NET	National Environment Tribunal
RBAs	Rights-Based Approaches
Rio+20	the UN Conference on Sustainable Development
SDGs	Sustainable Development Goals
SLA	Sustainable Livelihoods Approach
TDR	Traditional Dispute Resolution
TDRMs	Traditional Dispute Resolution Mechanisms

UNDP

United Nations Development Programme

UNSCR

United Nations Security Council Resolution

CHAPTER ONE

Introduction to Conflict Management in Environmental Matters

1.1. Background information

This book is largely informed by the need to address the effect of conflicts on environmental matters and the resultant interactions between the two fields. Notably, the United Nations 2030 Agenda for Sustainable Development Goals (SDGs) acknowledges the place of peace in attaining not only environmental conservation but also the sustainable development goals. The book seeks to explore the link between conflict management and environmental management, the challenges arising therefrom and offers some viable recommendations on how the same can be addressed. The discourse adopts a human rights based approach as well as Sustainable Development agenda background, and the related topics will thus feature prominently across the book. This first chapter offers a general introduction and background information on conflict management in environmental matters. The chapter also provides a glimpse of the general thread that binds the rest of the discussion together to enable the reader follow and appreciate the same.

The discourse on conflict management and the environment in Kenya has come a long way. Various authors have voiced their opinions on the debates based on the developing international jurisprudence and the evolving domestic laws. This book explores various themes that are closely related environment and conflict management including but not limited to: Access to Justice; Alternative Dispute Resolution; Alternative Dispute Resolution and Access to Justice; Sustainable Development; Environment; and Democracy/Environmental Democracy.

1.2. Overview of Environmental Conflicts

The Environmental Management and Coordination Act (EMCA) defines “environment” thus:

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“Environment” includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and built environment.¹

Dictionaries define “environment” as, “the objects or the region surrounding anything”² Environment has also been defined as:

The whole complex of climatic, adaptive and biotic factors that act upon an organism or an ecological community and ultimately determine its form or survival; the aggregate of social and cultural conditions that influence the life of an individual or a community.³

Accordingly, the term would seem to encompass both the features and the products of the natural world and human civilization. As such, the environment is broader than but includes “nature” which is concerned only with features of the world itself.⁴ The parameters of the term “environment” as defined in the Kenyan law are wide and include both the natural and built environment.

The environment-conflict nexus is a subset of "environmental security," which examines whether or not conventional ideas of security (which emphasize using military force to counter military threats) should be modified to include risks posed by population growth and declining levels of environmental goods and services.⁵ In order to organize risks and resolve them in a systemic

¹ Environmental (Management and Coordination) Act, No. 8 of 1999 Section 2; See also Regulation 2 of the Environmental (Impact Assessment and Audit) Regulations 2003.

² Compact Oxford Dictionary, 2nd Ed (Oxford University Press, London, 1991), p 523.

³ Webster's New World Dictionary 3rd ed (Cleveland College, Cleveland, 1998) p.454; See P.W. Birnie and A.E Boyle, *International Law and The Environment*, 2nd Ed, (Oxford, Oxford University Press, 2002) p.3.

⁴ Sands, P., *Principles of International Environmental Law*, 2nd Ed. (Cambridge University Press, Cambridge 2003), p.15.

⁵ Schwartz, D., "Environmental conditions, resources, and conflicts: An introductory overview and data collection." (1999), p.6.

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environment that is becoming more interconnected and ecologically deteriorated, environmental security is a conceptual paradigm that departs from conventional paradigms of international relations. Environmental issues like global pollution, regional water scarcity, food shortages, population growth, ecosystem degradation, and other ecological factors are viewed in this paradigm as the independent variables that lead to the dependent variables of political unpredictability, economic volatility, social competition, crisis, conflict, and war.⁶

Conflicts are fundamental to all social relations and interactions because they are primarily about competing aspirations and interests between two or more people.⁷ While conflict is typically associated with violence, the threat of violence, or disruptive (non-violent) disputes, this perception of conflict as negative is not always helpful because in non-violent settings, it can often be seen as a force for positive social change, with its presence being a visible demonstration of society adapting to a new political, economic, or physical environment.⁸

The emphasis on the environment and conflict refers to the numerous effects that humans have on the earth's natural resource base and processes, as well as how natural occurrences, processes, and even environmental protection may affect human existence.⁹ Notably, distinction has been made between conflicts over non-renewable resources such as mineral oil which are normally referred to as "resource conflicts" as distinct from "environmental conflicts"

⁶ Wilner, A.S., "The environment-conflict nexus: Developing consensus on theory and methodology." *International Journal* 62, no. 1 (2007): 169-188, p.171.

⁷ Frerks, G., König, R. S., & Ypeij, A., "Rethinking Gender and Conflict: Discourses, Embodiments and Symbolic Practices," In *Gender and Conflict*, pp. 1-17, Routledge, 2016, at p.1.

⁸ Warner, M., "Conflict management in community-based natural resource projects: experiences from Fiji and Papua New Guinea." (2000), p.9.

Available at

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.168.4002&rep=rep1&type=pdf>
accessed 5 May 2022.

⁹ U Bob and S Bronkhorst, 'Environmental Conflicts: Key Issues and Management Implications' (2011) 10 *African Journal on Conflict Resolution* 10 <<http://www.ajol.info/index.php/ajcr/article/view/63307>> accessed 5 May 2022.

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over renewable resources.¹⁰ It has also been pointed out that due to the realignment of the political and economic forces, socio-environmental conflicts arise when diverse players with divergent interests and values compete for access to and control of natural resources.¹¹ The term “environmental conflict” is not a dictionary word and hence lacks a common meaning. While few writers have grappled with the meaning of it, some have attempted to demonstrate the links between environment and conflict, various environmental dimensions, including scarcity and abundance, improvement and degradation, production and marketing, and benefits sharing that underlie the various conflicts within the different conflict systems.¹² It has been observed that according to actual data spanning all categories, emerging countries appear to be the source of the great majority of environmental conflicts.¹³ This may be attributed to the fact that in most of these third world countries, majority of the poor rely on the environment for their livelihoods. Environmental conflicts are thus a social issue that cannot be ignored as their effect affect many areas of a society.

1.3. Why Resolve Environmental Conflicts?

Today, environmental conflicts mainly have to do with the interaction between the use of and access to natural resources and factors of human development factors such as population growth and socio- economic advancement.¹⁴ This means that environmental conflicts now, more than ever, impact on use of and access to, and by extension management of natural resources. Environmental conflicts also, indirectly and directly, are connected

¹⁰ Mason, S.A. and Spillman, K.R., "Environmental conflicts and regional conflict management," *Welfare economics and sustainable development* 2 (2009): 114-143.

¹¹ Carina Llosa, 'Socio-Environmental Conflicts as Social Cohesion Thermometers: A Case Study' (2019) 2 *Tapuya: Latin American Science, Technology and Society* 237 <<https://doi.org/10.1080/25729861.2018.1554344>> accessed 11 August 2022.

¹² Collins H. Khal, *States Scarcity and Civil Strife in the Developing World*, Princeton University Press, Princeton (New Jersey), 2006.

¹³ Daniel S., *Environmental Conditions, Resources, and Conflicts: An Introductory Overview and Data Collection* (United Nations Environment Programme 1999).

¹⁴ Klaus Toepfer, "Forward", in Daniel Schwartz & Ashbindu Singh, *Environmental conditions, resources and conflicts: An introductory overview and data collection* (UNEP, New York, 1999). p.4.

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to and/or impact human development factors and especially the quest for social-economic development. For instance, most environmental conflicts are as a result of unsustainable use of natural resources in social-economic development activities of the human populations.¹⁵

Given the imperative nature of social-economic development and its dependency on use and access of natural resources, environmental conflicts resulting from unsustainable use and inequitable access of environmental resources need to be resolved, if not for anything else, in the interest of attaining sustainable development.¹⁶

In order to promote peace and security among communities and nations, the environmental security strategy includes the resolution of environmental conflicts as a key component.¹⁷ Environmental security approach generally advocates adaptation of traditional notions of security (which emphasize countering military threats with military power) to include threats posed by population growth and diminishing quantity and quality of environmental goods and services.¹⁸ In essence, this approach makes resolution of environmental conflicts more than just a matter between the parties involved given the likelihood of resolution thereof being a key to national or international peace and security. The term "environmental security" refers to a group of problems that deal with the role that the natural world and its

¹⁵ Examples here include conflicts over extraction of mineral resources which meet opposition because the investors have no adequate mitigation plan in place to reclaim the mined land or a good compensation package for the inhabitants of the subject land. A further example is conflict over human settlement where due to increase in population, human settlement encroaches on vital environmental resources.

¹⁶ Ochieng, C. M., "Toolkit and guidance for preventing and managing land and natural resources conflict: Conflict prevention in resource-rich economies." (2011); Roberts, E. and Finnegan, L., *Building Peace around water, land and food: Policy and practice for preventing conflict*. Quaker United Nations Office, 2013; McCarthy JE, 'Resolving Environmental Conflicts' (ACS Publications, 12 August 2002) <<https://pubs.acs.org/doi/pdf/10.1021/es60112a600>> accessed 30 August 2022.

¹⁷Dresse, A.; Fischhendler, I.; Nielsen, J. Ø.; Zikos, D. Environmental Peacebuilding: Towards a Theoretical Framework. *Cooperation and Conflict* **2019**, 54 (1), 99–119. <https://doi.org/10.1177/0010836718808331>.

¹⁸ Daniel Schwartz & Ashbindu Singh, *Environmental conditions, resources and conflicts: An introductory overview and data collection* (UNEP, New York, 1999).

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resources can play in promoting peace and security. These problems include environmental causes and drivers of conflict, environmental impacts of conflict, environmental recovery, and post-conflict peacebuilding. Security and instability have much broader implications than only violent conflict or the lack of it, including the foundations of healthy, sustainable livelihoods.¹⁹

Environmental conflicts have the potential to destroy the world if they are not controlled. Access to water, oil, food crops, and minerals has led to wars between nations. In fact, preserving a healthy ecosystem and properly resolving environmental problems may be essential to achieving world peace in the future.²⁰ In a foreword to a report on Environmental Conditions, Resources and Conflicts, the author emphasizes this point. According to some commentators, "it is clear that the opportunity for the humankind to combat international and intra-national conflict must be seen in the light of the connection between environmental conditions and resources".²¹ The primary channels for obtaining environmental justice are conflict resolution procedures.

There is little doubt that one of the cornerstones of environmental democracy, which is essential for achieving sustainable development in any nation, is

¹⁹ Advisory Panel, "Environmental security: dimensions and priorities." (2018). <<https://www.thegef.org/sites/default/files/publications/Environmental%20Security%20and%20the%20GEF%20-%20final1.pdf>> accessed 30 August 2022.

²⁰ United Nations, 'International Day for Preventing the Exploitation of the Environment in War and Armed Conflict' (United Nations) <https://www.un.org/en/observances/environment-in-war-protection-day> accessed 31 August 2022; EW Chu and JR Karr, 'Environmental Impact: Concept, Consequences, Measurement' [2017] Reference Module in Life Sciences B978 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7157458/>> accessed 31 August 2022; Macartan Humphreys, 'Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms' (2005) 49 *Journal of Conflict Resolution* 508 <<http://journals.sagepub.com/doi/10.1177/0022002705277545>> accessed 31 August 2022; U Bob and S Bronkhorst, 'Environmental Conflicts: Key Issues and Management Implications' (2011) 10 *African Journal on Conflict Resolution* <<http://www.ajol.info/index.php/ajcr/article/view/63307>> accessed 31 August 2022.

²¹ Mumma, A., 'Environmental Law in Kenya', *A paper presented at the ICJ (K) members conference on "New Frontiers in the Law", held at Nyali Beach Hotel, 11th to 14th, March 1999*, p. 6.

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access to environmental justice.²² Environmental democracy is a reflection of the increasing recognition that environmental issues must be addressed by all, or at-least a majority of those affected by their outcome, not just by the minority comprising the governments and leading private-sector actors.²³ In other words, Environmental democracy encapsulates the idea that everyone has an equal right to participate in environmental governance, including the general public, community organisations, activists, business executives, employees, governments, academics, and other experts.²⁴ It implies that everyone has the right to freely participate in environmental decision-making just as they do in other topics of public concern, such as education, health care, finance, and governance..²⁵

The procedure for resolving environmental conflicts is a result of the right to seek environmental justice and, consequently, environmental democracy. Since it provides a way for the general people to protest the execution of environmental laws and regulations, the right to seek justice is essential..²⁶ Because it gives citizens the ability to seek judicial review to correct such denial and/or deprivation, access to justice is also the most effective remedy when public engagement in environmental issues has been improperly

²² CEPAL, NU, "Access to information, participation and justice in environmental matters in Latin America and the Caribbean: situation, outlook and examples of good practice." (2014); Carl Bruch, *Environmental Rule of Law: First Global Report* (United Nations Environment Programme 2019); CEPAL, NU. "Ensuring environmental access rights in the Caribbean: Analysis of selected case law." (2018) https://repositorio.cepal.org/bitstream/handle/11362/43549/4/S1800510_en.pdf > accessed 31 August 2022.

²³ Mumma, A., "Environmental Law in Kenya", *A paper presented at the ICJ (K) members conference on "New Frontiers in the Law", held at Nyali Beach Hotel, March 11th to 14th, 1999*, p. 6.

²⁴ 'Environmental Democracy? Does Anyone Really Care?' (E-International Relations, 26 October 2012)

<<https://www.e-ir.info/2012/10/26/environmental-democracy-does-anyone-really-care/>> accessed 31 August 2022;

²⁵ *Ibid*; CEPAL, NU. "Access to information, participation and justice in environmental matters in Latin America and the Caribbean: Towards achievement of the 2030 Agenda for Sustainable Development." (2018).

²⁶ *Ibid*.

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withheld or is incomplete.²⁷ The *Rio Declaration* in principle 10 emphasizes the importance of public participation in environmental management through access to justice thus:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.... Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.²⁸

Under Principle 10 of the Rio Declaration, the member states are obligated to facilitate the rights of access to information, public participation in decision making and access to justice in environmental matters. The provision of effective avenues for resolution of environmental conflicts is thus far the most practical way of ensuring access to justice, and by extension adhering to public participation principle.²⁹

Environmental conflicts have attendant costs and often erupt into disputes, violence, war, and destruction. Firstly, environmental conflicts occasion human costs epitomized by loss of life as a result of violent conflicts, displacements and reduction of individuals' abilities to earn a living among others. Secondly, conflicts have economic costs both as direct consequences of violence and as foregone choices in order to fund the conflict. Conflicts also reduce tourism including eco-tourism which is one of the main sources of

²⁷ See Akech JM, "Land, the Environment and the Courts in Kenya." (2006). Available at https://landportal.org/sites/landportal.info/files/land_env_background_paper.pdf Accessed on 20 August 2022; McAllister, S.T., "The Convention on access to information, public participation in decision-making, and access to justice in environmental matters." *Colo. J. Int'l Env'tl. L. & Pol'y* 10 (1999): 187; Toth, B., "Public Participation and Democracy in Practice-Aarhus Convention Principles as Democratic Institution Building in The Developing World." *J. Land Resources & Env'tl. L.* 30 (2010): 295.

²⁸ United Nations Conference on *Environment and development, Rio Declaration on Environment and Development, Rio de Janeiro, Brazil, 1992*. Available at: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163&l=en> <Accessed on 26 August 2022.

²⁹ 'UNEP Implementing Principle 10 of the Rio Declaration' (UNEP, 14 July 2017) <<http://www.unep.org/news-and-stories/story/unep-implementing-principle-10-rio-declaration>> accessed 31 August 2022.

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capital for environmental conservation projects. Also, conflicts often produce significant environmental degradation and depletion.³⁰

Environmental protection is difficult to defend when there are other pressing issues as a result of the conflict. As a result, increased resource exploitation may cause serious environmental harm. The employment of weapons during battles, such as ammunition and chemical or biological weapons also causes long-term harm to and contamination of natural resources, such as land and water. The primary basis for resolving environmental issues is the reduction and/or elimination of these costs.³¹ The environment itself always comes out on top when environmental conflicts are successfully resolved. Environmental conflicts typically revolve around preventing environmental resources from being utilised irresponsibly and causing environmental harm.³²

One of the key advantages of resolving environmental conflicts is that it indicates that the issue of access to or use of natural resources is evaluated on the basis of sustainability.³³ Effective conflict resolution affects the achievement of sustainable use of and access to environmental resources and encourages fair use of natural resources, which is therefore secured for both

³⁰ Daniel S., *Environmental Conditions, Resources, and Conflicts: An Introductory Overview and Data Collection* (United Nations Environment Programme 1999).

³¹ Elizabeth Mrema, Carl Bruch and Jordan Diamond, *Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law* (UNEP 2009); 'How Does War Damage the Environment?' (CEOBS, 4 June 2020) <<https://ceobs.org/how-does-war-damage-the-environment/>> accessed 31 August 2022; Shelton, D., *International environmental law*. Brill, 2021.

³² Schwartz, D., "Environmental conditions, resources, and conflicts: An introductory overview and data collection." (1999); United Nations Environment Programme and UN Department of Political Affairs, "Natural Resources and Conflict: A Guide for Mediation Practitioners." (2015).

³³ OECD, "The economic significance of natural resources: key points for reformers in Eastern Europe, Caucasus and Central Asia." (2011) <https://www.oecd.org/env/outreach/2011_AB_Economic%20significance%20of%20NR%20in%20EECCA_ENG.pdf> accessed 31 August 2022; 'The Sustainable Use of Natural Resources: The Governance Challenge' (International Institute for Sustainable Development) <<https://www.iisd.org/articles/deep-dive/sustainable-use-natural-resources-governance-challenge>> accessed 31 August 2022.

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the current and future generations. In other words, resolving environmental conflicts results in equity between and among generations while using natural resources for socioeconomic development activities.³⁴ Since communities rely largely on natural resources for their livelihoods, environmental conflicts are delicate since they relate to people's way of life. As a result, a large number of environmental conflicts have to do with the provision of necessities like food, water, and shelter.³⁵ For instance, an unresolved wildlife/human conflict may mean that human beings continue to be killed and their crops spoilt by animals leading to misery and human suffering.³⁶ Similarly, the question of whether a person or community will live to see the next week may well depend on whether they can have access to clean water, pasture for their animals and food for themselves.³⁷

Thus, resolving environmental conflicts is essential for the parties' continued existence since it sustains and restores the connections between the various users of environmental resources and/or the users and the resources themselves. The security of continuous access to and use of the natural resources required for human life from generation to generation is also

³⁴ Armin Grunwald, 'Conflict-Resolution in the Context of Sustainable Development: Naturalistic versus Culturalistic Approaches' in Ignacio Aystaran, Gerhard Banse and Oliver Parodi (eds), *Sustainable Development: Relationships to Culture, Knowledge and Ethics* (KIT Scientific Publishing 2019) <<http://books.openedition.org/ksp/4308>> accessed 31 August 2022.

³⁵ 'Indigenous Peoples and the Nature They Protect' (UNEP, 8 June 2020) <<http://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect>> accessed 31 August 2022; USAID, Y, "Issues in Poverty Reduction and Natural Resource Management." *Washington, DC: United States Agency for International Development* (2006).

³⁶ AJ Dickman, 'Complexities of Conflict: The Importance of Considering Social Factors for Effectively Resolving Human-Wildlife Conflict: Social Factors Affecting Human-Wildlife Conflict Resolution' (2010) 13 *Animal Conservation* 458 <<https://onlinelibrary.wiley.com/doi/10.1111/j.1469-1795.2010.00368.x>> accessed 31 August 2022.

³⁷ United Nations, *Water for people, water for life: The United Nations world water development report; a joint report by the twenty-three UN agencies concerned with freshwater*. Unesco Publ., 2003.

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guaranteed by the resolution of environmental conflicts.³⁸ There is a need to enhance the conflict resolution mechanisms already existing for the sake of better environmental governance and sustainable development. The challenges facing the current mechanism and the opportunities for positive change should be examined. It is therefore vital that we look at the existing mechanisms bearing in mind the necessity of resolving environmental conflicts expeditiously, generally and more specifically, in Kenya.

Conflicts involving the environment are crucial to resolve because they require the creation and application of environmental laws, rules, and policies, which otherwise consume a lot of resources.³⁹

The contribution from the conflict resolution forums is strong in that it aids in "declaring the entire the scenario of law on the topic." This is essential because just because Parliament hasn't passed a particular legislation on a subject or there isn't a rule or policy expressly addressing it doesn't mean it should be exempt from environmental law and regulation.⁴⁰

It is the responsibility of the forum that is settling a conflict on the issue to interpret the unclear legislation, rule, or policy and assist in clarifying or redefining its applicability and significance. Resolution of environmental conflicts is therefore warranted since it guarantees that environmental laws, rules, guidelines, and policies are developed, improved, and interpreted in

³⁸ Ratner, Blake D., S. T. A. P. Contributors, Ralph Sims, Michael Stocking, Ferenc Toth, Rosina Bierbaum, Secretariat Contributors, Virginia Gorsevski, and Christopher Whaley. "Environmental security: dimensions and priorities."

<<https://www.stapgef.org/sites/default/files/documents/Environmental%20Security%20and%20the%20GEF%20-%20final1.pdf>> accessed 31 August 2022.

³⁹Carl Bruch, "Regional opportunities for improving environmental governance through access information, public participation and access to justice." In a paper delivered at the 8th Session of the African Ministerial Conference on Environment (AMCEN), held in Abuja, Nigeria, on 3-6 April 2000, pp. 3-6. 2000.

< https://pdf.usaid.gov/pdf_docs/Pnacy895.pdf > Accessed on 20 August 2022.

⁴⁰ Jackton. B. Ojwang, "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007).

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accordance with the current environmental circumstances.⁴¹

Lastly, the process of resolution of environmental conflicts helps in early identification and confrontation of environmental problems.⁴² The environmental disputes finding their way into the conflict resolution framework are critical pointers of the areas that need attention in environmental management and coordination hence the need for their adequate documentation and statistical analysis. The monitoring of the disputes engaging environmental conflicts bodies in the country is an important tool in environmental planning which helps in reducing the reaction time to environmental problems by the relevant authorities.⁴³

1.4 Conclusion

This chapter has offered an overview of conflict management in environmental matters. It also offers justification as to why environmental conflicts are sensitive and ought to be resolved as soon as possible and using the most efficient mechanisms available. Some authors have insisted that when it comes to conflict management, the emphasis is on the adage that it must be in all parties' interests to avoid disputes by managing conflict in such a way that disputes do not arise; this sometimes is described as dispute avoidance.⁴⁴ Environmental conflict management is predicated on the need to avoid disputes and conflict.⁴⁵ All the parties in dispute take measures, either by themselves or with help of a third party, to ensure that disputes do not arise. In other words, conflict management measures are taken to ensure

⁴¹ UN Environment, 'Environmental Rule of Law' (UNEP - UN Environment Programme, 5 October 2017) <<http://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>> accessed 31 August 2022; Annika K Nilsson, *Enforcing Environmental Responsibilities: A Comparative Study of Environmental Administrative Law* (Acta Universitatis Upsaliensis 2011).

⁴² Carl Bruch, "Regional opportunities for improving environmental governance through access information, public participation and access to justice."

⁴³ Ibid.

⁴⁴ Fenn, F., "Introduction to Civil and Commercial Mediation", *Chartered Institute of Arbitrators Workbook on Mediation*, (CIARB London, 2002), pg. 9.

⁴⁵ Carpenter, S.L. and Kennedy, W.J., "Environmental conflict management: New ways to solve problems." *Mountain Research and Development* (1981): 65-70.

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that conflicts do not degenerate to disputes and may in that context be described as dispute avoidance. However, where dispute avoidance is not immediately achieved or possible, the goal of conflict management becomes to provide interventions that make the conflicts more beneficial and less damaging to the parties.⁴⁶ In a free society, conflict is a necessary ingredient. Everyone is free to vie for advantages. Conflict in a democracy leads to the development of new norms, institutions, and interpersonal patterns. In the quest for justice, conflict could also be required.⁴⁷

In other words, environmental conflict management involves attempts to keep a conflict from getting worse. It involves the use of skills to control the intensity of a conflict and its effects through facilitation, negotiation, and other kinds of intervention and institutional measures, as well as diplomacy.⁴⁸ In contrast to conflict resolution, environmental dispute settlement typically does not address the underlying causes of the issue. It is for this reason and the fact that environmental conflicts are sensitive and affect a great deal of human livelihoods that this book advocates for resolution of environmental conflicts as opposed to environmental settlement. The next chapter discusses the main causes and manifestations of environmental conflicts.

⁴⁶ Ajayi, A.T. and Buhari, L.O., "Methods of conflict resolution in African traditional society." *African research review* 8, no. 2 (2014): 138-157.

⁴⁷ Carpenter, S.L. and Kennedy, W.J., "Environmental conflict management: New ways to solve problems." *Mountain Research and Development* (1981): 65-70, p.65.

⁴⁸ Fisher, J., "Managing environmental conflict." *The handbook of conflict resolution: theory and practice* (2014): 3.

CHAPTER TWO

Environmental Conflicts: Causes and Manifestations

2.1. Introduction

The relationship between the environment and conflicts has been described as varied and complex, with causes of environmental conflicts varying across the globe and their manifestations varying significantly, such as control over essential environmental resources such as fossil fuels to struggles over natural resources at the community and/or household level, where conflicts can manifest in a variety of ways – from outright wars and even genocide to disagreements over natural resources.¹ Conflict is exacerbated by poverty and by political, social, and economic inequality among groups; addressing these issues can lower the probability of these conflicts.² This chapter discusses environmental conflicts where it looks at their causes and the various ways in which they manifest.

2.2. Manifestations of Environmental Conflicts

Environmental aspects of conflict and the relevance of environmental concerns in connection to conflict has been the subject of research since the early 1970s and have remained one of the most prominent research topics to this day.³ Conflicts of interest are primarily divided into two categories: those relating to access to environmental resources as a source of livelihoods and as the foundation for economic activity and those relating to what are known as side

¹ U Bob and S Bronkhorst, 'Environmental Conflicts: Key Issues and Management Implications' (2011) *10 African Journal on Conflict Resolution* 10

<http://www.ajol.info/index.php/ajcr/article/view/63307> accessed 5 May 2022.

² Stewart F, 'Root Causes of Violent Conflict in Developing Countries' (2002) 324 *BMJ: British Medical Journal* 342.

³ Hardt, Judith Nora, and Jürgen Scheffran. "Environmental peacebuilding and climate change: peace and conflict studies at the edge of transformation." *Toda Peace Institute* 68 (2019): 1-20, at p.4.

effects of economic activity.⁴ Conflict, in whatever shape it takes, is likely to have a number of consequences (though at various geographical scales), including physical injury to persons and the natural resource base, as well as an influence on productivity levels and overall economic growth.⁵ Environmental change might also lead to the progressive poverty of societies in both the North and the South, escalating class and ethnic divisions, undermining liberal governments, and instigating insurgencies.⁶ This section highlights the various ways in which environmental conflicts manifest.

2.2.1. Conflicts Relating to Access to Environmental Resources

Environmental scarcities of arable land and water are progressively causing poverty, resulting in the loss of livelihoods.⁷ Environmental conflicts are characterized by high levels of societal and ecological complexity and vulnerability, with some studies asserting that society and ecology engage in reciprocal feedbacks, a process known as "resource capture and ecological marginalization," as aptly captured in the following words:

Resource capture occurs when the degradation and depletion of a renewable resource (a decrease in supply) interacts with population growth (an increase in demand) to encourage powerful groups within a society to shift resource access (that is, to change the resource's distribution) in their favour.

These groups tighten their grip on the increasingly scarce resource and use this control to boost their wealth and power. Resource capture intensifies scarcity for poorer and weaker groups in society. Ecological

⁴ Chapter One, Vatn, Arild. *Environmental governance: institutions, policies and actions*. Edward Elgar Publishing, 2015, at p.2.

⁵ U Bob and S Bronkhorst, 'Environmental Conflicts: Key Issues and Management Implications' (2011) 10 *African Journal on Conflict Resolution* 10 <<http://www.ajol.info/index.php/ajcr/article/view/63307>> accessed 5 May 2022.

⁶ Thomas F Homer-Dixon, 'On the Threshold: Environmental Changes as Causes of Acute Conflict' (1991) 16 *International Security* 76, 78 <<https://www.jstor.org/stable/2539061?origin=crossref>> accessed 5 May 2022.

⁷ Ohlsson, L., *Livelihood Conflicts: Linking Poverty and Environment as Causes of Conflict* (Swedish International Development Cooperation Agency (Sida) 2000).

marginalization occurs when unequal resource access (skewed distribution) combines with population growth (an increase in demand) to cause long-term migrations of people to ecologically fragile regions...High population densities in these regions, combined with a lack of knowledge and capital to protect the local ecosystem, cause severe resource degradation (a decrease in supply).⁸

Environmental resources have long been seen as a good predictor of the affluence of people who could make use of them. Therefore, access to non-renewable resources has historically been intimately related to development, and wars have arisen as nations have fought to protect or obtain control of these resources.⁹ It is argued that strategies aiming at granting the poor more "environmental entitlement" (improved access and social justice) are necessary for the prevention of environmental conflict.¹⁰ Arguably, no conflict management mechanism can work without first securing access rights to environmental resources for communities.

2.2.2 Conflicts Relating to Side Effects of Economic Activity

While access to natural resources and assets is important for achieving livelihood security, especially in poor communities and households that rely on natural assets for daily survival and livelihoods, livelihood activities have been shown to degrade the natural resource base, contributing to desertification, deforestation, soil erosion, declining water tables, and other types of environmental damage – that in turn affect livelihoods.¹¹ Furthermore, in vulnerable environments with limited resources, the lack of alternatives

⁸ Ahmed, F., "Approaches to and tools for managing environmental conflicts in coastal zones in Africa: Challenges and prospects in relation to Integrated Coastal Zone Management (ICZM)," *African Journal on Conflict Resolution* 10, no. 2 (2010), p.32.

⁹ Schwartz, D., "Environmental conditions, resources, and conflicts: An introductory overview and data collection." (1999), p.4

<https://na.unep.net/siouxfalls/publications/Conflicts.pdf> accessed 5 May 2022.

¹⁰ Ahmed, F., "Approaches to and tools for managing environmental conflicts in coastal zones in Africa: Challenges and prospects in relation to Integrated Coastal Zone Management (ICZM)," *African Journal on Conflict Resolution* 10, no. 2 (2010), p.33.

¹¹ U Bob and S Bronkhorst, 'Environmental Conflicts: Key Issues and Management Implications' (2011) *10 African Journal on Conflict Resolution* 13

<http://www.ajol.info/index.php/ajcr/article/view/63307> accessed 5 May 2022.

leads to greater environmental degradation, which leads to increased poverty and danger, contributing to what is known as the poverty trap.¹²

The plunder of Earth's natural resources by humankind is resulting in not just biodiversity loss but also significant changes in biodiversity distribution, composition, and abundance.¹³

Exploitation of natural resources has ramifications that go beyond the intended outcome, such as loss of biodiversity and pollution, which alter possibilities for others through altering the landscape and ecosystem dynamics, among other things.¹⁴

It is indeed these types of conflicts that have inspired the growth and development of environmental justice as a way of securing the environmental rights of affected communities.

2.3. Types of Environmental Conflicts

Environmental conflicts can take the form of political, social, economic, ethnic, religious, or territorial conflicts, or conflicts over resources or national interests, or any other type of conflict triggered by environmental degradation and characterized by the primary importance of environmental degradation in one or more of the following fields: 1) exploitation of renewable resources; 2) overstress on the environment's sink capacity (pollution); 3) depletion of living space.¹⁵ This section highlights some of the key types of environmental conflicts.

¹² *Ibid*, 13.

¹³ Henrique Miguel Pereira, Laetitia Marie Navarro and Inês Santos Martins, 'Global Biodiversity Change: The Bad, the Good, and the Unknown' (2012) *37 Annual Review of Environment and Resources* 25, 26 <<https://www.annualreviews.org/doi/10.1146/annurev-environ-042911-093511>> accessed 4 May 2022.

¹⁴ Chapter One, Vatn, Arild. *Environmental governance: institutions, policies and actions*. Edward Elgar Publishing, 2015, at p.2.

¹⁵ Mason, Simon A., and K. R. Spillman. "Environmental conflicts and regional conflict management." *Welfare Economics and sustainable Development 2* (2009): 114-143, at 116.

2.3.1 Biodiversity conflicts

Conflicts between biodiversity conservation and other human activities can arise in every area and have a significant influence on socioeconomic and ecological aspects.¹⁶ Managing conflicts between groups of people is inevitably a part of protecting biodiversity and natural resources. Conservation initiatives must master the art of avoiding and resolving conflicts over protected areas, animals, and access to natural resources if they are to endure the added stresses and effects of climate change and the pandemic.¹⁷

Some of the most critical biodiversity conflicts are highlighted below.

2.3.2 Land and Water Conflicts

It has been noted that Sub-Saharan Africa has a history of land dispossession and contestation, resulting in various types of inequalities and a skewed distribution of land resources, all of which have had a significant impact on the socioeconomic and political situations of many groups of people.¹⁸ It has also been contended that although many of the issues surrounding land issues and conflicts are not new, they continue to evolve and become increasingly complex and embedded, making it difficult to deal with them and calling into question the legitimacy of conflict intervention and prevention methods; the way in which these issues are addressed frequently fails to consider their major - and thus potentially recurring - causes.¹⁹ Water resources are also depleting due to pollution and resource depletion, while demand for water is

¹⁶ Young, J.C., Marzano, M., White, R.M., McCracken, D.I., Redpath, S.M., Carss, D.N., Quine, C.P. and Watt, A.D., 'The Emergence of Biodiversity Conflicts from Biodiversity Impacts: Characteristics and Management Strategies' (2010) *19 Biodiversity and Conservation* 3973 <<https://doi.org/10.1007/s10531-010-9941-7>> accessed 2 June 2022.

¹⁷ Crowdcast Inc, "'Conflict Resolution for the Future of Biodiversity Conservation" with Dr Alexandra Zimmermann' (Crowdcast) <<https://www.crowdcast.io/e/conflict-resolution-for-the-future-of-biodiversity>> accessed 19 August 2022.

¹⁸ Bob U, "Land-related conflicts in sub-Saharan Africa." *African Journal on conflict resolution* 10, no. 2 (2010).

¹⁹ Anseeuw W and Alden C, *The Struggle over Land in Africa: Conflicts, Politics & Change* (HSRC Press 2015) <<https://repository.hsrb.ac.za/handle/20.500.11910/4404>> accessed 1 June 2022.

fast growing due to population increase, industry, mechanisation, and urbanisation.²⁰

In Addition to the foregoing, it has been pointed out that when it comes to land concerns, African countries confront an extra important difficulty, such as combating widespread land grabbing, which is becoming more common across the continent and is generally carried out by the economically most powerful groups, including government officials and politicians.²¹ Land in Africa is never just a commodity or a means of sustenance; it has so many additional connotations, combining being a factor of production with its position as family or communal property, a capital asset, and a source of cultural identity and/or citizenship.²²

Land-related conflicts and disputes occur at all levels: Conflicts between neighbours over field borders; conflicts between men, women, and generations over land rights; conflicts between pastoralists and farmers; conflicts between states and indigenous peoples; conflicts between businesses and local residents over mineral and other resource rights.²³

The indigenous peoples' entitlement to their land is the main source of violent disputes. A lack of access to productive lands and a limited right to their natural resources may be as a result of the improper implementation of national legal frameworks, which can also cause lengthy and complicated land-titling and demarcation procedures, the fragmentation and loss of traditional land, discrepancies between the amounts of land titled to indigenous peoples and the land concessions granted to large-scale businesses, and other issues. The denial of this right has an impact on indigenous peoples' economic and sociocultural well-being because of their close link with their

²⁰ Ashton, P. and Turton, A., "Transboundary water resource management in southern Africa: opportunities, challenges and lessons learned." *Wirkus, L (2005): 5-32, at 5.*

²¹ Lund C, Odgaard R and Sjaastad E, *Land Rights and Land Conflicts in Africa: A Review of Issues and Experiences (JSTOR 2006), 4.*

²² *Ibid.*

²³ Lund C, Odgaard R and Sjaastad E, *Land Rights and Land Conflicts in Africa: A Review of Issues and Experiences (JSTOR 2006), 5.*

lands and natural resources and their reliance on them for both their spiritual and physical existence as a people.²⁴

Water is widely recognised as the most important natural resource, supporting and preserving biological diversity as well as social and economic development.²⁵ The sustainability of water resources is threatened by certain natural phenomena and human factors which include, inter alia: the multiplicity of trans-boundary water basins; Extreme spatial and temporal variability of climate and rainfall, coupled with climate change; Growing water scarcity, shrinking of some water bodies, and desertification; Inappropriate governance and institutional arrangements in managing national and transnational water basins; Depletion of water resources through pollution, environmental degradation, and deforestation; Failure to invest adequately in resource assessment, protection and development; Unsustainable financing of investments in water supply and sanitation.²⁶

Water is not only a fundamental requirement, but it is also at the heart of sustainable development and is critical for poverty reduction. Health, agriculture, energy, and biodiversity are all dependent on water.²⁷ Although it is obvious that water resources should be divided among many users, accessible water sources are rare and finite, and the number of consumers continues to grow. As a result, the only way to ensure that no one's interests are harmed is to collaborate and negotiate in order to support the sustainable

²⁴ Lefevre N, 'The Human Rights-Based Approach to Conflict Transformation in Indigenous Contexts'

<https://www.academia.edu/9964347/The_Human_Rights_Based_Approach_to_Conflict_Transformation_in_Indigenous_Contexts> accessed 21 August 2022, p.5.

²⁵ Ashton, P. and Turton, A., "Transboundary water resource management in southern Africa: opportunities, challenges and lessons learned." *Wirkus, L* (2005): 5-32, at 5.

²⁶ LA BANQUE AFRICAINE DDP and BANKGROUP A, 'The Africa Water Vision for 2025: Equitable and Sustainable Use of Water for Socioeconomic Development', 1.

²⁷ Mwanza DD, 'Water for Sustainable Development in Africa' in Luc Hens and Bhaskar Nath (eds), *The World Summit on Sustainable Development: The Johannesburg Conference* (Springer Netherlands 2005) <https://doi.org/10.1007/1-4020-3653-1_4> accessed 4 June 2022.

management of water, as well as all other accessible natural resources that are intertwined with water.²⁸

Water resources can only be managed successfully and efficiently when the entire river basin or catchment is the fundamental management unit, according to modern methods to water resource management. Moreover, since surface water and ground water are closely related, they must be treated as a single resource and managed as such.²⁹

2.4. Factors Shaping the Course of Conflict

There are many factors that determine the emergence, persistence, and even management of conflicts. The understanding of these factors is essential in developing policies that effectively limit and manage conflict. The factors range from internal to relational and contextual factors.³⁰

The internal factors are factors that are structural in nature and relate to how the conflicting individuals and/or groups affect the course of a conflict. They include, for example, the level of economic development, cultural patterns, individual interests in the conflicts and decision-making institutions. These factors influence self-conceptions, identities, conceptualization of the grievances, goal formulation, and the methods for attaining the goals. The internal factors affect the level of participation of the parties in conflict management.³¹

²⁸ Heyns P, 'Water-Resources Management in Southern Africa' (2003) 1 *International waters in southern Africa* 5, 7.

²⁹ Ashton, P. and Turton, A., "Transboundary water resource management in southern Africa: opportunities, challenges and lessons learned." *Wirkus, L* (2005): 5-32, at 17.

³⁰ Kriesberg, Louis, "Factors shaping the course of intractable conflict," *Beyond Intractability*. Available at

http://www.beyondintractability.org/essay/factors_shaping_intractable_conflict/

Accessed on 20 August 2022.

³¹ ashley.faoliu@colorado.edu, 'Factors Shaping the Course of Intractable Conflict' (*Beyond Intractability*, 6 July 2016) <<https://www.beyondintractability.org/essay/factors-shaping-intractable-conflict>> accessed 1 September 2022.

The nature of the relationships between the parties to the conflict and how those relationships are interpreted by the parties may have an impact on how the conflict develops and is handled.

Size disparities (group disputes), economic endowment (resources), coerciveness between the parties, and cultural norms of behaviour are some of the relationship elements. They also cover the type and level of cooperation between rivals in the social, cultural, and economic spheres. Because both parties are experiencing the burden of the dispute brought on by the lack of the other party's output, conflicts between groups that rely on each other's produce will be simple to handle.³²

2.5. Causes of Conflicts

Interest conflicts can appear in many different ways. For instance, it may involve natural resources like land, food, territory, water, and energy. These disagreements might be over who should get resources, whether resources should be allocated, and how resources should be divided. Power and control of the resources are other potential drivers of conflict.³³

Conflicts over identity are another issue. These are about the communities that individuals feel a connection to on a cultural, social, and political level. Status conflicts that concern whether individuals feel their traditions and social standing are respected as well as whether they are treated with respect and decency may occur. Differences in values, particularly those expressed in governmental, religious, or ideological systems, may also contribute to conflicts.³⁴ Scholars have stressed that human needs are among the major

³² Callanan, G.A., Benzing, C.D. and Perri, D.F., "Choice of conflict-handling strategy: A matter of context." *The Journal of Psychology* 140, no. 3 (2006): 269-288.

³³ Humphreys, M., "Natural resources, conflict, and conflict resolution: Uncovering the mechanisms." *Journal of conflict resolution* 49, no. 4 (2005): 508-537; 'Natural Resources and Conflict | Helvetas' <<https://www.helvetas.org/en/switzerland/what-we-do/our-topics/voice-inclusion-cohesion/conflict-transformation/natural-resources-and-conflict>> accessed 1 September 2022.

³⁴ See *Toolkit and guidance for preventing and managing land and natural resources conflict - World* | ReliefWeb. <https://reliefweb.int/report/world/toolkit-and-guidance-preventing-and-managing-land-and-natural-resources-conflict> (accessed 2022-09-01); Brahm, E.,

causes of Conflicts, arguing that deep-seated conflicts result from the lack of basic need for security, identity, respect, safety, and control, which many people feel to be inalienable. Therefore, if they aren't there, the ensuing conflict will persist until society's structure is adjusted to meet everyone's requirements.³⁵

For instance, the need for identity has been described as a fundamental driver of intractable conflict.³⁶ People who perceive threats to their identities as a means of preserving their essence frequently respond in a very negative way to such threats. If identity conflicts are handled through interest-based negotiation, the resolutions are likely to be at most transitory since identity issues in particular are not negotiable interest-based conflicts.³⁷ Conflicts can be categorized in a number of ways. Sometimes an observer may think that the interests of the parties are incompatible but the respective parties are not aware of these incompatibilities. They might be latent conflict or evident, peaceful or manifest. Self-delusion, justification, ignorance, or information suppression might be the root of this. Such undetected or dimly perceived conflicts of interest are referred to as latent. Conflicts emerge when these opposing, unrecognised interests become aware and expressed.³⁸

"Religion and Conflict." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2005 <<http://www.beyondintractability.org/essay/religion-and-conflict>> accessed 1 September 2022.

³⁵ See Burton, J., *Conflict: Human needs theory* (New York: St. Martin's Press), Springer, 1990; Kelman, H., *International Behavior: A Social Psychological Analysis* (New York: Holt, Rinehart and Winston), 1965; Burgess, Heidi and Guy M. Burgess, 'What Are Intractable Conflicts?' (*Beyond Intractability*, 22 June 2016) <https://www.beyondintractability.org/essay/meaning_intractability> accessed 1 September 2022.

³⁶ Jay Rothman, *Resolving Identity-Based Conflicts* (San Francisco: Jossey Bass), 1997. See also John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (United States Institute of Peace), 1998.

³⁷ Burgess, Heidi and Guy M. Burgess, 'What Are Intractable Conflicts?' (*Beyond Intractability*, 22 June 2016) <https://www.beyondintractability.org/essay/meaning_intractability> accessed 1 September 2022.

³⁸ Brahm, E., 'Conflict Stages' (*Beyond Intractability*, 6 July 2016) <https://www.beyondintractability.org/essay/conflict_stages> accessed 1 September 2022.

2.6. Stages of conflict

Conflicts are said to happen in cycles or episodes that can last anywhere from a few seconds to many minutes. Each episode affects future episodes as well as the outcomes of earlier episodes. The conflict episode model consists of six parts or phases.³⁹ The following explanation deals with just two people in disagreement, but the model may easily be extended to include more. The "latent" stage of conflict occurs if individuals have divergent wants, values, or interests.

A "triggering event" that causes the emergence (or start) of the evident conflict may be necessary for the conflict to become apparent. Emergence may be swiftly followed by settlement or resolution, or it may be followed by escalation, which might turn out to be quite damaging.⁴⁰ The process of escalation, nevertheless, has a limit. Temporary de-escalation or de-escalation as part of a larger trend toward settlement or resolution are both possible. A stalemate, in which neither side can prevail, might result from an intensification of the conflict. If the pain of continuing the fight outweighs the discomfort of sustaining the confrontation, the parties are in what one observer refers to as a "hurting stalemate," which frequently provides an opportune chance for dialogue and a potential resolution. Finally, peace building activities aim to mend strained bonds with the long-term objective of bringing former adversaries together, if and when an agreement is reached.⁴¹

Some academics extend this list to include other stages. One author adds unsuccessful peacemaking attempts following the intensification and institutionalization of destructive conflict, particularly for intractable conflict.

³⁹ Louis R Pondy, 'Organizational Conflict: Concepts and Models' (1967) 12 *Administrative Science Quarterly* 296

<<https://www.jstor.org/stable/2391553?origin=crossref>> accessed 1 September 2022.

⁴⁰ Katz, N. and McNulty, K., "Reflective listening." Retrieved February 4 (1994): 2021 <https://www.maxwell.syr.edu/docs/default-source/ektron-files/conflict-resolution-nk.pdf?sfvrsn=4de5d71e_5> accessed 1 September 2022.

⁴¹ Brahm, E., "Conflict stages: Beyond intractability (Guy Burgess and Heidi Burgess, Eds.). Boulder: Conflict Research Consortium, University of Colorado." (2003) Available at <http://www.beyondintractability.org/essay/conflict_stages/> Accessed on 23 August 2022.

This later stage is strongly related to the hurtful stalemate..⁴²

2.7. Costs of Conflicts

Conflicts inevitably have expenses associated with them. Conflict may explode into violence, bloodshed, and devastation when it cannot be effectively handled. Conflict expenses are frequently discussed in media reporting.⁴³ The most evident cost of violent intractable conflict is its human cost, which is exemplified by the loss of lives. Other less evident human costs include displacements, long-term wounds sustained by conflict, rape, or torture victims, and impaired people's capacity to make a livelihood. Trauma can also have psychological repercussions, especially in cases of violent disputes. Additional human costs include feelings of extreme anxiety, mistrust, melancholy, and hopelessness.⁴⁴ Secondly, there are a range of economic consequences associated with armed conflict, both as a result of the violence itself and as a result of the decisions made not to be involved in the fight. For example, mounting and maintaining assaults has immediate costs. There are additional ancillary costs, such as the loss resulting from the loss of labour, expenses resulting from lost production time, and expenditures resulting from damaged production equipment.⁴⁵

⁴² *Ibid.* Other scholars conceive stages of conflicts differently. Alker, Gurr, and Rupesinghe distinguish between six phases: dispute (equivalent to conflict emergence); crisis (equivalent to escalation); limited violence; massive violence; abatement (equivalent to de-escalation); and settlement. See Rosalia Rodriguez-Garcia, *et al.* "How Can Health Serve as a Bridge for Peace?" Available online at <http://www.certi.org/publications/policy/gwc-12-a-brief.htm> Accessed on 23 August 2022.

⁴³ Eriksson, J., Adelman, H., Borton, J., Christensen, H., Kumar, K., Suhrke, A., Tardif-Douglin, D., Villumstad, S. and Wohlgemuth, L., *The international response to conflict and genocide: lessons from the Rwanda experience: synthesis report.* Joint Evaluation of Emergency Assistance to Rwanda, 1996. < <https://www.oecd.org/derec/50189495.pdf>> Accessed on 23 August 2022.

⁴⁴ *Ibid.*

⁴⁵ Solimano, A., ed. *Political crises, social conflict and economic development: The political economy of the Andean region.* Edward Elgar Publishing, 2005; Mueller, H. and Tobias, J., "The cost of violence: Estimating the economic impact of conflict." *International Growth Centre* (2016); Fearon, J. and Hoeffler, A., "Benefits and costs of the conflict and violence targets for the post-2015 development agenda." *Conflict and violence assessment paper, Copenhagen Consensus Center* (2014): 1-65.

Significant environmental devastation is another frequent side effect of conflict. It is challenging to defend environmental preservation when there are other, more pressing issues as a result of the struggle. As a result, faster resource exploitation may cause significant environmental harm. The land and well suffer long-term damage from weapons, including chemical and biological ones. Tourism is also affected by conflict, some of which may have aided ecotourism initiatives.⁴⁶ The third consequence of conflict is that it may undermine the sense of community in an organisation by harming long-standing connections. Fourth, those participating in conflict experience emotional losses.⁴⁷

2.8 Benefits of Conflicts?

Conflicts are unavoidable and can be advantageous. They can jolt individuals out of complacency and inspire them to take the necessary action. Conflict might occasionally be essential to rouse people from problematic relationships

⁴⁶'Environmental Conflicts' (ACCORD) <<https://www.accord.org.za/ajcr-issues/environmental-conflicts/>> accessed 1 September 2022; Mukete, B.; Yujun, S.; Zama, E.; John, A.; Tahle, M.; Lisette, N.; Bernard, L. Environmental Degradation in Conflict and Post-Conflict Regions. *International Journal of Environmental Protection and Policy* 2017, 4, 187–195; 'How Does War Damage the Environment?' (CEOBS, 4 June 2020) <<https://ceobs.org/how-does-war-damage-the-environment/>> accessed 1 September 2022; 'Impact of Terrorism and Conflicts on Travel and Tourism - Unintended Opportunities' (Hotel Management Network, 8 September 2021) <<https://www.hotelmanagement-network.com/comment/impact-of-terrorism-and-conflicts-on-travel-and-tourism-industry/>> accessed 1 September 2022; Mohammad Sharif Karimi, Mohsen Khezri and Somayeh Razzaghi, 'Impacts of Regional Conflicts on Tourism in Africa and the Middle East: A Spatial Panel Data Approach' (2022) 25 *Current Issues in Tourism* 1649 <<https://doi.org/10.1080/13683500.2021.1931054>> accessed 1 September 2022; Marina Tkalec and Ivan Žilić, 'Does Proximity to Conflict Affect Tourism: Evidence from NATO Bombing' (2021) 16 *PLoS ONE* e0258195 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8528334/>> accessed 1 September 2022.

⁴⁷ Kenneth W. Thomas and W. H. Schmidt, "A Survey of Managerial Interests with Respect to Conflict," *Academy of Management Journal*, June 1976; Maiese, M., "Emotions." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: July 2005 <<http://www.beyondintractability.org/essay/emotion>> accessed 1 September 2022.

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or behaviour.⁴⁸ Land, riches, power, and other tangible material benefits are frequently the outcomes of conflicts. For instance, self-government in Africa was established as a result of the fight between African nationalists and the colonial authorities.⁴⁹ Similar to this, the first Gulf War provided the US a strategic edge in the Middle East and control over the region's two most significant oil-producing nations, Saudi Arabia and Kuwait.⁵⁰ Conflict may also serve as the catalyst for a process where people come to terms with the fact that they have both shared adversaries and interests. People could start to feel strongly invested in their side's eventual victory as a result. Conflicts over identity, for instance, are perceived as a means of preserving self-esteem. Therefore, people are more willing to fight for it if their identity is more closely related to the organisation. Conflict's danger frequently leads to greater self-identities. Depending on the nature of that identification, this can be advantageous or disadvantageous.⁵¹

A disagreement of some kind is very frequently how social connection starts. As an illustration, lawyers collaborate when they discover one another on the defence team for the other party in a court case. When kids argue over toys, they frequently engage in social interaction that subsequently turns into cooperative play. Adults may also initially encounter one other in a conflict setting. However, when the conflict is settled, the parties can build trust and go on to communicate amicably. As an illustration, businesses and unions typically start out on opposite sides of disputes.⁵² However, they take steps

⁴⁸ 'Session 5. Conflict Management' <<https://www.fao.org/3/w7504e/w7504e07.htm>> accessed 1 September 2022; Jason S Wrench, Narissra M Punyanunt-Carter and Katherine S Thweatt, 'Chapter 9: Conflict in Relationships' <<https://milnepublishing.geneseo.edu/interpersonalcommunication/chapter/9/>> accessed 1 September 2022.

⁴⁹ Khapoya, V.B., "African Nationalism and the Struggle for Freedom." In *The African Experience*, pp. 139-167. Routledge, 2015.

⁵⁰ Duffield, John S. "'Oil and the Iraq War: How the United States Could Have Expected to Benefit, and Might Still.'" (2005).

⁵¹ Brahm, E., "Benefits of Intractable Conflict." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: September 2004 <<http://www.beyondintractability.org/essay/benefits>> accessed 1 September 2022.

⁵² Brahm, E., "Benefits of Intractable Conflict." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado,

to settle their differences, which are resolved with the signing of the recognition agreement. Soon, they are both actively involved in advancing the interests of employees. In terms of the environment, this is also feasible. Communities that battle for a resource come to value it and hate its persistent scarcity. They are forced to the negotiating table as a result, where they may discuss and settle their conflict.⁵³ The drawbacks of disputes frequently outweigh their advantages. Conflicts cannot be avoided, but they must be handled well in order to maintain peace among the populace, avert bloodshed, and save lives.⁵⁴ Conflicts don't just happen by accident. They are greatly influenced by the context. Numerous outside influences, each with a different scope and impact, influence their course. The collection of other conflicts that overlay or have an impact on any specific conflict is a significant external factor. Conflicts inside the family structure are one example of an external element sustaining social institutions that differs from those on a tribal size. Another significant external aspect affecting the conflict is the parties' respective income levels. In addition, other issues like the technology supporting communication, transport, and manufacturing play a significant role in how disputes develop. Non-social environmental challenges include things like the climate, the availability of water and mineral resources, pollution, and the condition of the soil.⁵⁵

2.9. Conclusion

In order to minimize harm to biodiversity, human livelihoods, and human well-being, conservation conflicts are on the rise and must be controlled.⁵⁶

Boulder. Posted: September 2004 <<http://www.beyondintractability.org/essay/benefits>> accessed 1 September 2022.

⁵³ Ibid.

⁵⁴ Gambari, I. A. Peace Management and Conflict Resolution: A Practitioner's Perspective. In *The State of Peacebuilding in Africa: Lessons Learned for Policymakers and Practitioners*; McNamee, T., Muyangwa, M., Eds.; Springer International Publishing: Cham, 2021; pp 277-292. https://doi.org/10.1007/978-3-030-46636-7_16.

⁵⁵ Bercovitch, J. and Jackson, R., "Negotiation or mediation? An exploration of factors affecting the choice of conflict management in international conflict." *Negotiation Journal* 17, no. 1 (2001): 59-77.

⁵⁶ Redpath, S.M., Young, J., Evely, A., Adams, W.M., Sutherland, W.J., Whitehouse, A., Amar, A., Lambert, R.A., Linnell, J.D., Watt, A. and Gutierrez, R.J., 'Understanding and Managing Conservation Conflicts' (2013) 28 *Trends in Ecology & Evolution* 100

Conflict, in whatever shape it takes, is likely to have a number of consequences (though at different geographical scales), including physical injury to persons and the natural resource base, as well as a negative influence on productivity and overall economic growth.⁵⁷ Interactions with other sectors are rarely considered in development programmes that focus on specific natural resource sectors (forestry, livestock, water, etc.). A reasonable development policy must acknowledge conflict; ignoring discordant parts may win favour in the short term, but it will never result in long-term solutions.⁵⁸ In line with this, it has been argued that:

Understanding natural resource management necessitates a multidisciplinary approach that examines a variety of interconnected and complicated processes: First and foremost, it is critical to investigate ecological conditions and how resources respond to natural and human-caused changes.

The use, management, and tenure relations associated with resources are determined by their nature (e.g., density, volume, fluctuation) as well as how they are valued (by users, policymakers, or markets).

Second, because they frequently involve a combination of different groups of local users (pastoralists, farmers, "original" inhabitants, migrants, the political and economic elite, etc.) and State agencies and officials, these tenure relations or property rights are in fact dynamic objects of intricate struggles between various stakeholders.

Third, these fights are fueled by and result from local and national political processes that, in turn, are influenced by global discourses

<<https://www.sciencedirect.com/science/article/pii/S0169534712002169>> accessed 19 August 2022.

⁵⁷ U Bob and S Bronkhorst, 'Environmental Conflicts: Key Issues and Management Implications' (2011) 10 *African Journal on Conflict Resolution* 10
<<http://www.ajol.info/index.php/ajcr/article/view/63307>> accessed 5 May 2022.

⁵⁸ Blench R, *Aspects of Resource Conflict in Semi-Arid Africa* (Overseas Development Institute London 1997).

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such as "decentralisation," "disengagement from the state," "democratisation," and "environmental degradation."

As a result, in addition to these three sectors of natural resource management (production, property, and politics), the method also incorporates features from the national and global levels, with the main focus remaining on the local level where day-to-day management is practised.⁵⁹

It has been pointed out that while social issues are sometimes overlooked in favor of environmental goals, this might cause certain actors to feel unfairly treated, which could jeopardize the conservation effort's goals.⁶⁰ Access to land, the management of wildlife, resources and benefits from protected areas, sustainable utilization, livelihoods, development, and social justice are all frequent sources of conflict.⁶¹ There is a need for the stakeholders to identify the causes and manifestations of conflicts in the country and put in place responsive mechanisms to address the same.

⁵⁹ Benjaminsen TA and Lund C, *Politics, Property and Production in the West African Sahel: Understanding Natural Resources Management* (Nordic Africa Institute 2001), 7.

⁶⁰ Lecuyer, L., Calmé, S., Blanchet, F.G., Schmook, B. and White, R.M., "Factors affecting feelings of justice in biodiversity conflicts: Toward fairer jaguar management in Calakmul, Mexico." *Biological Conservation* 237 (2019): 133-144.

⁶¹ Crowdcast Inc, "'Conflict Resolution for the Future of Biodiversity Conservation" with Dr Alexandra Zimmermann' (Crowdcast) <<https://www.crowdcast.io/e/conflict-resolution-for-the-future-of-biodiversity>> accessed 19 August 2022.

CHAPTER THREE

Environmental Conflict Management: Institutions and Approaches

3.1. Introduction

This chapter seeks to explore the various institutional and methodological approaches to environmental conflicts management and answer the question whether the existing legal and institutional frameworks in Kenya for the resolution of environmental conflicts is sufficient to effectively deal with these conflicts.

The nexus between the environmental conflicts and the state of the existing dispute resolution mechanisms for resolving environmental conflicts has not been adequately explored. The institutional and legal mechanisms for resolving environmental conflicts now in place in Kenya apparently have not eliminated environmental conflicts. The issue then is: Why have the existing institutional and legal mechanisms been ineffective in the face of the ever increasing conflicts? Therefore, the author herein seeks to explore the possibilities and opportunities that both formal and informal mechanisms, including ADR mechanisms present in realising the goal of resolving or managing environmental conflicts in Kenya.

The term “environmental conflict” is not a dictionary word and hence lacks a common meaning. While few writers have grappled with the meaning of it, some have attempted to demonstrate the links between environment and conflict, various environmental dimensions, including scarcity and abundance, improvement and degradation, production and marketing, and benefits sharing that underlie the various conflicts within the different conflict systems.¹

¹ Collins H. Khal, *States Scarcity and Civil Strife in the Developing World*, Princeton University Press, Princeton (New Jersey), 2006.

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For purposes of this chapter, the author treats conflict management as an institutional approach to environmental management, where ‘institutions’ are defined as ‘the conventions, norms and formally sanctioned rules of a society, where they provide expectations, stability and meaning essential to human existence and coordination; institutions support certain values, and produce and protect certain interests’.² These institutions may be formal or informal, based on their form and what they achieve.³ In the instant case, environmental conflict management approaches are geared towards securing environmental rights for the most vulnerable groups of people. It has been observed that environmental conflicts cannot always be resolved, but there are a number of ways to transform conflicts and sometimes the process of conflict transformation can be a pathway towards transition to another state of sustainability.⁴

This chapter thus highlights some of the approaches to effective environmental conflicts management with the aim of entrenching environmental rights for all.

3.2. Environmental Conflict Management Institutions and Approaches

“Environmental conflicts” refer to the contests that exist as a result of the various competing interests over access to and use of natural resources such as land, water, minerals and forests. Various groups, communities, developers, government and other organisations have differing ideas of how to access and utilize environmental resources. Laws and policies which have a conflict generating capacity are often pursued by the various groups leading to further friction among them.

There is a legal and institutional framework that is supposed to deal with environmental conflicts and either resolve or manage them. These

² Arild Vatn, *Environmental Governance: Institutions, Policies and Actions* (Paperback edition, Edward Elgar Publishing 2016) 78.

³ *Ibid*, 78.

⁴ E Gunilla Almered Olsson and Pernille Gooch, eds., *Natural resource conflicts and sustainable development*. Routledge, 2019, 5.

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institutions include the courts of law, tribunals under various Acts⁵, The National Environmental Management Authority⁶, National Environmental Complaints Committee, National Environment Tribunal, and other various informal community based resource governance bodies.⁴ The laws include the numerous statutes that deal with the environment. Notable among them is the framework law, the Environmental Management and Coordination Act (EMCA)⁵, the Public Health Act⁷, the Forest Conservation and Management Act 2016⁸, the Water Act 2016⁹ and the various statutes dealing with land administration.¹⁰ Despite the existence of the aforesaid laws and institutions, environmental conflicts continue to manifest themselves in Kenya. There have been for instance violent conflicts over access to and use of land in Kenya, which conflicts are well documented.¹¹

Over the years, Kenya has been faced with conflicts over natural resources such as water, forests, minerals and land among others. The existing legal and institutional mechanisms that are in place to deal with environmental conflicts have not offered much in stemming the prevalence of environmental conflicts. Environmental conflicts in Kenya are still present and a cause of much concern.

⁵ Environmental (Management and Coordination) Act, No. 8 of 1999, laws of Kenya.

⁶ Established under S.7 of the EMCA (Cap 8 of 1999).

⁷ Cap. 242 laws of Kenya.

⁸ Forest Conservation and Management Act, No 34 of 2016, Laws of Kenya.

⁹ Water Act, No. 43 of 2016, Laws of Kenya.

¹⁰ National Land Commission Act, No. 5 of 2012; Land Registration Act (No. 3 of 2012); Land Act (No. 6 of 2012); Community Land Act, No. 27 of 2016; Environment and Land Court (No. 19 Of 2011); Land Adjudication (CAP. 284); Land Consolidation (CAP. 283); Land Control Act (CAP. 302); Physical and Land Use Planning (No. 13 of 2019).

¹¹ *The Akiwumi Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya (31st July, 1999) notes the contribution of the issue of land to violent conflicts in Kenya due to the way it is treated with fervent sentimentality and sensitivity and in many ways, considered explosive. The report at pg. 53 notes that "Whereas, the constitution guarantees the right of ownership of property anywhere in the country, the peaceful co-existence of the forty-two tribes that live within our national borders, appears to have been profoundly undermined by diverse man-made problems that are either directly or indirectly connected to land."*

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The existing legal mechanisms for resolving environmental conflicts include the courts of law both under civil and criminal law¹², the National Environment Tribunal (NET)¹³, National Environmental Complaints Committee¹⁴, Arbitral tribunals¹⁵, Statutory tribunals set up under various laws (such as the Land Adjudication Boards)¹⁶ and customary law systems of dispute settlement.¹⁷

Resolving environmental conflicts has mainly been attempted under the institutional and legal framework described hereinabove. However, Alternative Dispute Resolution has not been adequately utilized in the arena of addressing environmental conflicts. Alternative Dispute Resolution refers to those Dispute Resolution Mechanisms that are “alternative” to the court system. These include negotiation, mediation, conciliation, ‘med-arb’ and ‘arb-med’. Sometimes, arbitration is also included in the definition of ADR.

Environmental issues are special and need to be settled quickly. The area where humans reside is where the environment's resources are located. Environmental resources are essential to their way of life. Environmental conflicts may escalate into violence, loss of livelihoods, evictions, and even fatalities if left uncontrolled..¹⁸ ADR may not provide a full solution to the problem. It can however be used in tandem with other existing dispute resolution mechanisms and with certain reform measures in place, the nightmare of ugly environmental conflicts in Kenya may be avoided.

¹² Environmental Management and Co-ordination Act, Act. No. 8 of 1999, Part XIII Section 137-146.

¹³ *Ibid*, Part. XII sections 125-136.

¹⁴ *Ibid*, section 31; see also Environmental Management and Coordination (Amendment) Act, 2015.

¹⁵ See Land Adjudication (CAP. 284); Arbitration Act, No. 8 of 1995.

¹⁶ Land Adjudication (CAP. 284).

¹⁷ Community Land Act, No. 27 of 2016; National Land Commission Act, No. 5 of 2012; Constitution of Kenya 2010, Article 67(2)(f); Ajayi, A.T. and Buhari, L.O., "Methods of conflict resolution in African traditional society." *African research review* 8, no. 2 (2014): 138-157.

¹⁸ Bob, U. and Bronkhorst, S., "Environmental conflicts: Key issues and management implications." *African Journal on Conflict Resolution* 10, no. 2 (2010): 9-30.

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Some of these conflict management mechanisms have not been very effective in resolving or managing environmental conflicts. For instance, courts are formal, rigid, expensive to reach, and bureaucratic. Instead of the parties' interests, they deal with precise legal rights.¹⁹ The court system is adversarial in nature with limited room for negotiation and agreement on issues of interest to the parties. Law itself has at times been a source of conflict rather than a conflict solver.²⁰ Of concern is the way environmental governance is carried out, without adequate participation by the people. Environmental democracy, which involves giving people access to information on environmental rights, easing access to justice in environmental matters and enabling public participation in environmental decision making, *inter alia*, is at its minimum in Kenya.²¹

Then there are the procedures of what are known as alternative dispute resolution (ADR). They include of community-based and conventional conflict resolution methods including negotiation, mediation, and conciliation. To achieve the illusive tranquilly that comes with equitable resource sharing amongst communities, which is much desired, these still need to be properly used.

¹⁹ Bingham, L., "The challenges of environmental conflict resolution." In *Promise and Performance of Environmental Conflict Resolution*, pp. 33-56. RFF Press, 2003; Heikkila, T. and Schlager, E.C., "Addressing the issues: The choice of environmental conflict-resolution venues in the United States." *American Journal of Political Science* 56, no. 4 (2012): 774-786.

²⁰Spangler, B., "Settlement, Resolution, Management, and Transformation: An Explanation of Terms." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: September 2003 <<http://www.beyondintractability.org/essay/meaning-resolution>> accessed 19 August 2022.

²¹ See generally, Dr Susan Hazen, *Environmental Democracy*, (<<http://www.ourplanet.com>>). Accessed on 16th January 2009. Susan Hazen is a director of the Environmental Assistance Division, Environmental protection Agency, Washington DC; Csaba Kiss and Michael Ewing (eds), "Environmental Democracy: An Assessment of Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters in Selected European Countries." European Regional Report (published by The Access Initiative Europe.) available at <http://www.accessinitiative.org> accessed on 18 August 2022.

3.3. Methods of Managing Environmental Conflicts

The different approaches that may be utilised to settle or at least manage environmental conflicts when they occur have typically been offered by authors in the environmental discourse. These techniques include: Party to Party Conflict Management; Negotiation; Fighting It Out; Yielding; Avoidance; Compromise; Involving a Third Party-Mediation. One may add litigation, arbitration, and hybrid dispute resolution methods to the list of conflict management initiatives involving third parties.²² Conflict can be resolved by employing force when one party has the resources and motivation to win regardless of whether the other side loses and regardless of whether or not the winning process harms interpersonal ties. It is significant to highlight that not all sides will be able to employ force; rather, how it is employed will mainly rely on how much power one party has in relation to the other..²³

The parties that want to avoid conflict more than they want to achieve their goals are best suited for a withdrawal-based conflict management technique. Not least because it may be used as a threat to convince hesitant and occasionally more powerful parties to engage in more cooperative discussions, it is crucial to recognise the power of withdrawal (whether it be positive or negative).²⁴

There are instances when one party in a dispute scenario prioritises preserving a positive relationship with one or more of the other parties over accomplishing its own particular goals when accommodation is used as a

²² Fisher, R., "Sources of conflict and methods of conflict resolution." *International Peace and Conflict Resolution, School of International Service, The American University* (2000); Tyler, S.R., "Policy implications of natural resource conflict management." *Cultivating peace: Conflict and collaboration in natural resource management* (1999).

²³ Warner, M., "Conflict management in community-based natural resource projects: experiences from Fiji and Papua New Guinea." (2000), p.18. Available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.168.4002&rep=rep1&type=pdf>

²⁴ Ibid, p. 18; Author removed at request of original Publisher, '6.2 Conflict and Interpersonal Communication' <<https://open.lib.umn.edu/communication/chapter/6-2-conflict-and-interpersonal-communication/>> accessed 2 September 2022.

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conflict management technique. While such outcomes may appear to be the result of force, the difference is that instead of losing outright, the accommodating party perceives itself to have gained by securing good relations, possibly along with an element of good will and the opportunity to accomplish some greater goal at a later time.²⁵ Sometimes people mix up compromise with consensus. Although coming to a compromise during a negotiation may seem advantageous, it really means that at least one side feels forced to make a concession.²⁶ Consensus-building tactics can result in compromises in the final agreement, but there are several key differences between the two approaches. In particular, consensus-building tries to prevent trade-offs and instead generate a "win-win" outcome. On the other side, a compromise approach seeks to minimise what are seen to be unavoidable trade-offs.²⁷

Conflicting parties must avoid the following in order to come to an agreement: compromising on their immediate demands and aggressive stances in order to address the underlying needs that each side believes are really motivating the conflict; focusing on a single solution instead of considering the broadest and most creative variety of solutions to satisfy the underlying needs of the parties; and individualised, frequently inflated requests in favour of being clear and precise.²⁸

²⁵ Ibid, p.18; 'Session 5. Conflict Management'

<<https://www.fao.org/3/w7504e/w7504e07.htm>> accessed 2 September 2022; Katz, N & McNulty, K., Conflict Resolution. [Online publication], 1994

<https://www.maxwell.syr.edu/docs/default-source/ektron-files/conflict-resolution-nk.pdf?sfvrsn=4de5d71e_5> accessed 2 September 2022.

²⁶ Ibid, p. 18; 'Negotiation and Mediation Techniques for Natural Resource Management' <<https://www.fao.org/3/a0032e/a0032e0a.htm>> accessed 2 September 2022; United Nations, 'The Process of Negotiation' (United Nations) <<https://www.un.org/en/model-united-nations/process-negotiation>> accessed 2 September 2022; Wertheim, E., "Negotiations and resolving conflicts: An overview." College of Business Administration, Northeastern University, [available at: <http://web.cba.neu.edu/~ewertheim/interper/negot3.htm>] (2002).

²⁷ Ibid, p. 18.

²⁸ Ibid, p. 18.

3.3.1. Environmental Conflicts and ADR

Natural resources including water, pasture, land, and forests are among the natural resources that are the subject of environmental conflicts because of access to and usage of these resources. People's means of support are involved. Conflicts may become violent, harm the environment, and threaten livelihoods if they are not resolved..²⁹

Natural resources may lead to conflict whether they are renewable or not. Cropland land, clean water, firewood, and fish are examples of renewable resources. Petroleum and minerals are non-renewable resources.³⁰

The most significant causes of violence, according to some studies, are shortages of forested areas, fresh water, fish, and agricultural land. This is in part due to the absence of respected, efficient conflict resolution procedures among those responsible for managing the aforementioned resources. The environmental disputes in Kenya are not uncommon. Land is "handled with fervent sentimentality and sensitivity and in many respects considered combustible," according to the Akiwumi Report on tribal confrontations in Kenya. This contributes to the problem of land being a factor in violent conflicts in Kenya.³¹ The Report also mentions how many communities viewed the rise of multi-party politics as an attempt to isolate and evict them from their property. Tribal concerns with economic foundations also affected multi-party politics, making it simpler to inspire tribal conflict motivated by politics.³² That situation offered the perfect opportunity for ethnic cleansing to be used for political gain.

²⁹ See generally Matiru V. (2000) *Conflict & Natural Resource Management*, Food & Agriculture Organisation (FAO); Buckles D and Rusnak D (1999) "Cultivating Peace: Conflict and collaboration in Natural Resource Management" IDRC/World Bank 1999 p. 3 & 4; Thayer DM (2003) "Nature of Conflict over nature: Protected Areas, Transfrontier Conservation and the meaning of Development" Saratunga Skidmore College-The School for International Training.

³⁰ Canadian Security Intelligence Service and Gizewski, P., *Environmental scarcity and conflict*. Canadian Security Intelligence Service, 1997. p. 1.

³¹ Akiwumi, Augustus Molade, *Report of the judicial commission appointed to inquire into tribal clashes in Kenya*. The Commission, 1999.

³² Ibid.

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According to the Akiwumi Report, the 1992 and 1997 land conflicts in Kenya were caused by the unequal distribution of land resources and by subpar government policies and programmes that were seen as favouring some factions over others.

The various conflicts that have taken place in Kenya are caused by concerns over the utilisation of environmental resources. Contests over access to and use of Kenya's natural resources can be partly blamed for the post-election violence in 2007–2008.³³ These conflicts have been brewing since the days of colonialism, when large areas of land were taken over to build communities for European settlers and Africans were sent to live in less productive reserves.³⁴ After independence, the government embarked on mechanisms that saw Africans and not necessarily members of the displaced communities buy back the white owned farms through soft loan schemes. The effect was that rich and “connected” Kenyans took their place and most of the indigenous displaced communities remained squatters in their ancestral land.³⁵

3.3.2 Environmental Conflicts and ADR – The Link

Environmental conflicts are unique as they involve people’s lives. Left to escalate, suffering and death may be the undesirable result. Certain benefits of ADR processes make them suited for use in resolving environmental problems. For instance, the processes that permit the greatest degree of party

³³ Oucho, J., "Undercurrents of Post-Election Violence in Kenya: Issues in the long-term agenda." In *Tensions and Reversals in Democratic Transitions: The Kenya 2007 General Elections*, pp. 491-533. 2010; Nzau, M. and Guyo, M., "The Challenge of Securing Kenya: Past Experience, Present Challenges and Future Prospects." *The Journal of Social Encounters* 2, no. 1 (2018): 37-59.

³⁴ Youe, C., "Moving the Maasai: A Colonial Misadventure." (2008): 202 <https://ora.ox.ac.uk/catalog/uuid:1eee21c4-035b-4ea9-8b0a-4079690c4f7d/download_file?file_format=application%2Fpdf&safe_filename=604788477.pdf> accessed 2 September 2022; Kanyinga, K., *Re-distribution from above: The politics of land rights and squatting in coastal Kenya*. Vol. 115. Nordic Africa Institute, 2000; Ogot, B.O., "The historical development of African societies, 1500–1800: conclusion." *GENERAL HISTORY OF AFRICA-V* (1992): 895.

³⁵ Akiwumi, *ibid*.

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autonomy, such negotiation, conciliation, and mediation, are informal, cost-effective, and give parties the freedom to come up with their own long-term solutions to issues. Therefore, they are especially well suited for resolving environmental problems.³⁶ Sometimes rigid and bureaucratic, courts and official tribunals do not encourage the upkeep of friendly connections between the parties. The parties leave the hearings before these courts and tribunals angry and dissatisfied. Does ADR have the ability to bring about "win-win" outcomes for all parties and swiftly settle environmental conflicts? This merits investigation. However, it is possible to assert that the characteristics of party autonomy, flexibility, inclusivity, informality, and acceptability by all parties may be utilised to develop solutions to environmental concerns.³⁷

In 2008, Kenya resorted to mediation through the Koffi Annan initiative³⁸ to resolve a political standoff. Mediation offers a dispute resolution mechanism where all parties come to the table and with the help of the mediator find their own solutions. Negotiation also played a part within the mediation process. It was ADR that saved Kenya from the brink of total anarchy. Thus, there must be something in ADR that is worth examining with a view to making use of the same to resolve environmental conflicts which have the

³⁶ Stukenborg, C., "The Proper Rule of Alternative Dispute Resolution (ADR) in Environmental Conflicts." *U. Dayton L. Rev.* 19 (1993): 1305; Weidner, H., "Alternative dispute resolution in environmental conflicts-promises, problems, practical experience." In *Alternative dispute resolution in environmental conflicts: experiences in 12 countries*, pp. 11-55. Berlin: Edition Sigma, 1998.

³⁷ Muigua, K., "Managing natural resource conflicts in Kenya through negotiation and mediation." (2016)

<http://erepository.uonbi.ac.ke/bitstream/handle/11295/97031/Muigua_Managing%20Natural%20Resource%20Conflicts%20in%20Kenya%20through%20Negotiation%20and%20Mediation.pdf?sequence=3&isAllowed=y> accessed 2 September 2022; Mugford, J., ed. *Alternative Dispute Resolution: Proceedings, 22-24 July 1986*. No. 15. Australian Institute of Criminology, 1986.

³⁸ Koffi Annan, the former Secretary General of the United Nations mediated the all-out conflict that was labeled the 'post-election' violence in 2007 - 08 in Kenya. Essentially the long-term causes of the conflict were issues relating to access to and use of natural resources. The initiative resulted in the signing of the peace agreement formalized in the National Accord & Reconciliation Act.

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potential to tear the country apart if left unchecked.

In the Koffi Annan initiative, ADR (specifically mediation) was used in the face of the apparent failure or impotence of the legal and institutional mechanisms for the resolution of conflict in Kenya. A critical look at ADR methods in the resolution of environmental conflicts is worthwhile considering the many positive attributes and potential for involving the public and reaching of acceptable solutions that can withstand the test of time. ADR can be used to address environmental conflicts with the long-term aim of sustaining environmental democracy, peace keeping and efficient management of environmental resources, to ensure sustainable use of the same.³⁹

It is possible to come up with “win-win” situations. With the flexibility and informality of ADR the parties may come up with ‘tailor made” solutions to their problems. Apart from arbitration ADR processes involve a large measure of party autonomy. The parties are free to come up with their own agreements and implement them. In the environmental arena, agreed solutions rather than those imposed on the parties are desirable. The people are able to live and abide by them and relationships are preserved. Mechanisms for sound environmental management by all stakeholders can be put in place.

ADR processes have not been given an adequate chance within the Kenyan framework of environmental disputes resolution. Maybe it is time we tried them out in the context of the real environmental conflicts. Given the many positive attributes of ADR the experiment may be worth it and may save Kenyan lives and contribute to sustainable development.

³⁹ Susan Hazen (1998), *Environmental Democracy*, (<<http://www.ourplanet.com>) accessed on 25 August 2022; Kariuki Muigua, Paul Musyimi; *Enhancing Environmental Democracy*, *Law Society of Kenya Journal* Vol 4 2008 No. 1.

3.3.3 Challenges Facing Application of ADR Mechanisms in Environmental Conflicts

The existing legal and institutional framework for environmental management is disjointed because different entities are responsible for different aspects of environmental law and policy.

The Environmental Management and Coordination Act (EMCA), which was passed with the intention of improving management of Kenya's environmental resources, did little to eliminate the variety of regulatory frameworks in place for various environmental resources.

Furthermore, the development of necessary legislation and rules to support the EMCA framework is still far from completion. This collection creates a misleading impression that there are enough institutions and regulations to resolve environmental concerns. A proper application of the law through the institutions outlined in this collection of laws still leaves many issues unresolved; therefore, it is necessary to update the EMCA and combine all pertinent laws so that it will be simpler to assess the effectiveness of the law and institutions mentioned above. In addition to the foregoing, environmental norms and laws need to be enforced more strictly, and therefore legislative and institutional changes on environmental governance in Kenya are required.⁴⁰

Until recently, there were no substantial legal provisions that addressed the use of ADR techniques to handle or resolve environmental disputes. This implies that any outcomes reached utilising ADR processes lacked a legal foundation under the parent Act and were not given the same respect as those reached through litigation. This changed when Kenyans passed the new Constitution in August 2010, ushering in a new era. Numerous post-constitutional acts have been enacted to codify the different conflict resolution systems outlined in the new Constitution, including alternative dispute resolution processes like mediation and arbitration.

⁴⁰ Kenya Vision 2030, p. 104.

3.4. Reform Measures

In order to increase the use of ADR in the resolution of environmental issues, it is necessary to continuously modify the legal and institutional frameworks in Kenya. ADR and customary dispute resolution processes are recognized in several important acts, such as the EMCA and the Civil Procedure Act, in order to be in compliance with the new Constitution.

Kenyans must play a larger role in deciding how to protect the environment. It is necessary to strengthen the principles of environmental democracy, which call for public involvement in environmental issues, access to knowledge, and access to justice.⁴¹ The 2010 Constitution recognises this need and under Article 69, it provides that the state shall encourage public participation in the management, protection and conservation of the environment.⁴²

To effectively manage its natural resources and prevent environmental conflicts, Kenya must educate the general public on environmental issues. To promote intergenerational and intragenerational justice⁴³ and preserve sustainable development, Kenyans should begin receiving instruction in natural resource management in primary schools. The aforementioned educational setting should include a thorough explanation of ADR-related conflict management techniques. It is important to draw attention to and underline each party's advantages and disadvantages. To be able to choose the appropriate ADR techniques to use in specific situations, the public should be well-informed. A public education and consultation process is required whenever a law has to be altered or issued in order to guarantee that

⁴¹ Susan Hazen (1998), *supra*.

⁴² Constitution of Kenya, Article 69(1) (d).

⁴³ These concepts have been defined under S. 2 of the EMCA to mean (i) that the present generation should ensure that in exercising its right to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations and, ii) that all people within the present generation have the right to benefit equally from the exploitation of the environment, and that they have a equal entitlement to a clean and healthy environment.

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any new laws that are enacted will be accepted by the general public. Ideally, the process of establishing laws should be open to everybody. Although environmental conflicts can't always be resolved peacefully, they can be controlled so that Kenya doesn't experience the previous spike in hostilities over disputes over who gets to access and uses whose environmental resources. Only the right situations can benefit from ADR. To make it successful in the face of the continuously growing environmental conflicts, it is necessary to enhance the current institutional and legal framework for the resolution of environmental conflicts. Institutions like the National Environmental Management Authority (NEMA), other institutions included in the Environmental Management and Coordination Act (EMCA), the Judiciary, etc., can be extremely important in Kenya's management of environmental conflicts. To be able to operate efficiently and have an impact on the ground, such institutions require support and good management. The domestic justice systems did little while Kenya witnessed post-election violence in 2008.

It was necessary to bring in a mediator from outside Kenya to resolve the disagreement using ADR techniques. Kenya could take notes from other countries that have successfully handled environmental problems by integrating their institutional and legislative frameworks with ADR principles. We may improve our conflict resolution capacities by learning from such nations.

3.5. Conclusion

The goal of this chapter was to examine the Kenyan legal and institutional framework for resolving environmental disputes in greater detail in order to determine its effectiveness. It is obvious that the framework confronts significant difficulties, and environmental issues continue to show themselves in violent confrontations that result in the loss of lives and means of subsistence. Environmental disputes that go uncontrolled make sustainable development impossible. Kenya's framework for resolving environmental conflicts is deficient and in urgent need of revision. Due to the numerous flaws in the current institutional and legal system, environmental

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disputes continue to have a detrimental impact on Kenyans. In the Kenyan context, ADR has not been extensively utilised. As a result, the environmental sector seldom makes use of factors like cost effectiveness, party autonomy, flexibility, etc. With its beneficial qualities, including as its participatory aspect, ADR may be used to handle environmental problems and make sure Kenyans achieve sustainable development. To guarantee the swift resolution of environmental conflicts, a connection between ADR and those issues must be made. Kenya doesn't have a good system in place for resolving environmental conflicts. The above-mentioned reform actions can be implemented in order to make the current framework more effective. In certain countries, like Uganda, arranging conferences is a requirement of the legal process, and parties cannot file a lawsuit without appearing in front of a magistrate or the court's registrar. The judicial officer hears both sides' arguments at this point and attempts to determine if it is necessary to file a lawsuit or if the parties can resolve their disagreement via discussion.

The judge here supports negotiations and potential resolutions, and only permits topics or situations that cannot be resolved to be filed as lawsuits. The Court-Annexed Mediation in Kenya is a step in the right direction and should be supported fully and rolled out across the country's judicial stations.⁴⁴

⁴⁴ Mburu, K., 2022. Kericho Law Courts Roll Out Court annexed Mediation – *Kenya News Agency*. [online] [Kenyanews.go.ke](https://www.kenyanews.go.ke). Available at: <https://www.kenyanews.go.ke/kericho-law-courts-roll-out-court-annexed-mediation/> [Accessed 9 September 2022]; Mauri Aluda, Maurice. "Judiciary Rolls-out Court Annexed Mediation in Trans Nzoia." *Kenya News Agency*, 11 June 2022, <https://www.kenyanews.go.ke/judiciary-rolls-out-court-annexed-mediation-in-trans-nzoia/>; World Bank, "Court Annexed Mediation Offers Alternative to Delayed Justice for Kenyans", "https://www.worldbank.org/En/News/Feature/2017/10/05/Court-Annexed-Mediation-Offers-Alternative-to-Delayed-Justice-for-Kenyans." *Kenya News Agency*, 11 June 2022, <https://www.kenyanews.go.ke/judiciary-rolls-out-court-annexed-mediation-in-trans-nzoia/>; Ater, Sarah. "Strides in Court Annexed Mediation in Kenya," <https://www.mediate.com/Strides-in-Court-Annexed-Mediation-in-Kenya/>." *Kenya News Agency*, 11 June 2022, <https://www.kenyanews.go.ke/judiciary-rolls-out-court-annexed-mediation-in-trans-nzoia/>.

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In human interactions, environmental conflicts are unavoidable, just like all other types of conflicts. If they are not controlled, however, they have a tendency to turn into disputes that damage relationships between people or groups and result in unintended costs. The utmost possible use of ADR should be used to resolve environmental disputes because it is a realistic option. Given its numerous drawbacks and difficulties, ADR cannot be the solution to every environmental issue. In the environmental sector, ADR is worthwhile to use, nevertheless. In order to minimise or at least manage environmental disputes and guarantee Kenya reaches its aim of sustainable development, the advantages arising from ADR processes should be properly utilised in the Kenyan context. In order to manage a conflict, the parties involved must acknowledge that the issue at hand affects both sides, participate in dialogue with specific objectives in mind, rely on credible evidence, and be conscious of trade-offs.⁴⁵ Of concern is the way environmental governance is carried out, without adequate participation by the people. Environmental democracy which involves giving people access to information on environmental rights, easing access to justice in environmental matters and enabling public participation in environmental decision making, *inter alia*, is at its minimum in Kenya.⁴⁶

Alternative Dispute Resolution (ADR) methods, which include mediation, conciliation, negotiation and traditional/community based dispute resolution mechanisms, are yet to be fully utilised to realise the elusive tranquility that comes with equitable resource sharing between communities,

⁴⁵ Redpath, S.M., Young, J., Evely, A., Adams, W.M., Sutherland, W.J., Whitehouse, A., Amar, A., Lambert, R.A., Linnell, J.D., Watt, A. and Gutierrez, R.J., 'Understanding and Managing Conservation Conflicts' (2013) 28 Trends in Ecology & Evolution 100 <https://www.sciencedirect.com/science/article/pii/S0169534712002169> accessed 19 August 2022.

⁴⁶ See generally, Susan Hazen, Environmental Democracy, (<<http://www.ourplanet.com>). Accessed on 16 August 2022; Csaba Kiss and Michael Ewing (eds), "Environmental Democracy: An Assessment of Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters in Selected European Countries." European Regional Report (published by The Access Initiative Europe.) available at <http://www.accessinitiative.org> accessed on 16 August 2022.

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which is much sought after. Therefore, the author herein urges stakeholders to explore the possibilities and opportunities that ADR mechanisms present in realising the goal of resolving or managing environmental conflicts in Kenya. While it is already acknowledged that ADR may not provide a full solution to the problem, it can however be used in tandem with other existing dispute resolution mechanisms and with certain reform measures in place, the nightmare of ugly environmental conflicts in Kenya may be avoided. Environmental conflict management institutions and approaches should be designed in a way that ensures equal access to justice and creation of peaceful societies through effective and swift elimination of conflicts. This is why this chapter advocates for exploration of both formal and informal approaches in management of environmental conflicts due to their close association with people's livelihoods and the risks involved.

CHAPTER FOUR

Best Practices in Conflict Management and the Environment: Developing World Perspectives

4.1. Introduction

The conservation of biodiversity and sustainable development are two global objectives that are significantly threatened by the pervasive problem of conservation conflicts. Conflicts are expected to become more frequent and more intense as the human population grows and more serious environmental problems, such as habitat destruction and climate change, become more serious.¹ It has rightly been pointed out that in the twenty-first century, our ability to sustain development will depend on two converging threats to humanity: rising inequality between and within nations, and the complex risks from environmental change as we continue to push Earth's planetary boundaries. This is highlighted by global dialogues around the Sustainable Development Goals (SDGs) in the context of the post-2015 development agenda and the UN Conference on Sustainable Development (Rio+20).²

This chapter highlights the emerging global best practices as far as environmental conflict management is concerned but also has a specific focus on the developing world's approaches to environmental conflicts management.

¹ Hodgson ID, Redpath SM, Sandstrom C & Biggs D (2020) *The State of Knowledge and Practice on Human-Wildlife Conflicts*. O'Neill M (Editor) & Villat J (Editor) The Luc Hoffman Institute. Gland, Switzerland. <https://luchoffmanninstitute.org/the-surprising-new-way-to-approach-human-wildlife-conflict-a-new-report/> [Accessed on 10 August 2022].

² Khoday, K., Inglis, S., Hussein, S., Scott, T. and Raine, A., "*Environmental Justice: Comparative Experiences in Legal Empowerment*." United Nations Development Programme: New York, NY, USA (2014), p.5. <<https://www.undp.org/sites/g/files/zskgke326/files/publications/Environmental-Justice-Comparative-Experiences.pdf>> [Accessed on 10 August 2022].

4.2. International Environmental Law Framework and Environmental Conflict Management

A complex ecosystem of international environmental law has resulted from state efforts to manage shared environmental resources, protect natural ecosystems, and lessen environmental impact.³ There are many instances of environmental harm that give rise to duty and potential liability in times of peace, and international environmental law (IEL) covers these situations.⁴ Due to the potential catastrophic harm that armed conflict may have to the environment and its long-term effects on the environment and human health, international environmental law is also crucial to take into account during times of war.⁵

This is achieved through application of Multilateral environmental agreements and principles of IEL; Customary international environmental law and soft law instruments; and scholarly commentaries.⁶ The majority of multilateral environmental accords are built upon and make reference to certain international environmental law concepts. The *Rio Declaration on Environment and Development*, which was approved during the *Rio Conference* in 1992, codified many of these, including state sovereignty over own

³ Mitchell, R.B., Andonova, L.B., Axelrod, M., Balsiger, J., Bernauer, T., Green, J.F., Hollway, J., Kim, R.E. and Morin, J.F., "What we know (and could know) about international environmental agreements." *Global Environmental Politics* 20, no. 1 (2020): 103-121, p. 103

<https://rmitchel.uoregon.edu/sites/rmitchel1.uoregon.edu/files/resume/articles_refereed/2020-globalenvlpolitics-introductiontoieadb.pdf>

⁴ Mrema, E., Bruch, C. and Diamond, J., *Protecting the environment during armed conflict: an inventory and analysis of international law*. UNEP/Earthprint, 2009, p.34

<<https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/->

Protecting%20the%20Environment%20During%20Armed%20Conflict_An%20Inventory%20and%20Analysis%20of%20International%20Law-

2009891.pdf?sequence=3&isAllowed=> Accessed 3 September 2022.

⁵ Leins K (ed), 'International Environmental Law and Principles', *New War Technologies and International Law: The Legal Limits to Weaponising Nanomaterials* (Cambridge University Press 2022) <<https://www.cambridge.org/core/books/new-war-technologies-and-international-law/international-environmental-law-and-principles/E5DC37DB202991EF3959FD5535429ED7>> accessed 3 September 2022.

⁶ *Ibid*, p.34.

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resources and the notion of common but differentiated responsibilities. International environmental law principles can serve a variety of purposes.⁷ It is usually challenging to determine the bounds or the precise international legal status of any general concept or rule in the absence of unambiguous judicial authority and in light of the contradictory interpretations under state practice. The application of each principle in relation to a specific action or incident, and its ramifications, must be taken into account on the facts and circumstances of each case, taking into account a number of factors, such as the principle's origin, the text's content and language, the specific action at issue, the activity's environmental and other consequences, and the circumstances under which it occurs (including the actors and the geographical region).⁸ The legal position of certain broad concepts or norms may be less established than that of others, while others may indicate growing legal duties. In each instance, the concept or rule enjoys widespread

⁷ Vietnam Ministry of Natural Resources and Environment. Department of Legal Affairs (2017) *International Environmental Law: Multilateral Environmental Agreements*, p. 20. Available at: <https://wedocs.unep.org/20.500.11822/21491> (Accessed: 3 September 2022).

The other principles include:

- (1) *the principle of preventive action;*
- (2) *the principle of co-operation;*
- (3) *the principle of sustainable development;*
- (4) *the precautionary principle; and*
- (5) *the polluter pays principle.*

(Peel J and Sands P (eds), 'General Principles and Rules', *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012) <<https://www.cambridge.org/core/books/principles-of-international-environmental-law/general-principles-and-rules/FCABFE1A87CAC34F18C0C0F80C706F>> accessed 3 September 2022).

⁸ Peel J and Sands P (eds), 'General Principles and Rules', *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012) <<https://www.cambridge.org/core/books/principles-of-international-environmental-law/general-principles-and-rules/FCABFE1A87CAC34F18C0C0F80C706F>> accessed 3 September 2022).

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acceptance and is reflected in widespread state practise by frequent usage or citation in a framework of international law.⁹

Pacta sunt servanda, which literally translates to "agreements must be respected," is the foundational concept of international law. A State is obligated by the conditions of a multilateral environmental agreement once it joins as a Party and must concentrate on its implementation. States frequently have to develop or modify policies and laws in order to carry out the obligations of multilateral environmental accords. Institutional setup or reorganization, as well as being ready for routine reporting on implementation, may be additional duties. Multilateral environmental accords can include compliance checks and dispute resolution processes. If the Parties fail to carry out their obligatory obligations, the compliance mechanism may be utilized to facilitate compliance and the dispute resolution processes may be applied to address disagreements that may arise between the Parties.¹⁰

One of the most significant changes in recent decades has been the rise in environmental awareness among people all around the world. More than ever before, globalization has aided in bridging the gap between societies and the state of their environments. At the same time, environmental issues are spreading beyond national borders and have a significant influence on Earth's health. Thus, it has become crucial to change economic development and progress to a route toward environmental sustainability that more effective environmental laws and legal frameworks be developed across the globe.¹¹

Environmental law serves as a cornerstone for environmental sustainability, and it is increasingly important that its goals be fully realised in light of

⁹ Ibid.

¹⁰ Vietnam Ministry of Natural Resources and Environment. Department of Legal Affairs (2017) *International Environmental Law: Multilateral Environmental Agreements*, pp. 16-17. Available at: <https://wedocs.unep.org/20.500.11822/21491> (Accessed: 3 September 2022).

¹¹ Anshu Singh, "Principles and Development of International Environmental Law", *Pen Acclaims*, Volume 10, May 2020, ISSN 2581-5504, pp.1-2.
< <http://www.penacclaims.com/wp-content/uploads/2020/06/Anshu-Singh.pdf>>

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mounting environmental pressures.¹² Around the world, both urban and rural populations rely heavily on informal systems to administer justice. In the *Declaration of the High-level Meeting on the Rule of Law*¹³, Member States acknowledged that everyone, including women and members of vulnerable groups, should have full and equal access to informal judicial systems where they are in conformity with international human rights law.¹⁴

The *Declaration* emphasizes the ‘importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding, stress that justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations, and stress the need for the international community, including the United Nations, to assist and support such countries, upon their request, as they may face special challenges during their transition’.¹⁵

In recognition of the place of both formal and informal mechanisms in global conflict management framework, and in line with paragraph 15 of the above mentioned *Declaration*, it has been observed that in many developing countries, almost 80% of cases are settled through informal systems, which are also sometimes referred to as "traditional," "indigenous," "customary," or "non-state" justice systems. The protection of land, property, and cattle; the settlement of family and community disputes; and the preservation of entitlements, such as access to public services, are all topics that informal justice systems frequently deal with. They also handle personal security and

¹² Norul Mohamed Rashid, ‘Environmental Law’ (United Nations and the Rule of Law) <<https://www.un.org/ruleoflaw/thematic-areas/land-property-environment/environmental-law/>> accessed 3 September 2022.

¹³ UN General Assembly, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels: resolution / adopted by the General Assembly, 30 November 2012, A/RES/67/1.*

¹⁴ Norul Mohamed Rashid, ‘Informal Justice’ (United Nations and the Rule of Law) <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/informal-justice/>> accessed 3 September 2022.

¹⁵ Para. 18, UN General Assembly, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels: resolution / adopted by the General Assembly, 30 November 2012, A/RES/67/1.*

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local crime.¹⁶ Despite the fact that delivering accessible justice is a state duty mandated by international human rights standards, this duty does not call for all justice to be delivered by means of formal court institutions. The provision of justice through informal justice systems is not against human rights standards if done in a manner that respects and upholds human rights. In fact, it can be a way to better fulfil human rights obligations by providing accessible justice to people and communities where the formal justice system is unable to do so due to capacity issues or geographical limitations.¹⁷ The use of non-combative approaches to conflicts and disputes is also reflected in various international environmental law regulatory instruments. For instance, through its Non Compliance procedure, which aims to provide a multilateral mechanism for non-confrontational discussion rather than adjudication and aid parties in seeking an amicable resolution to protocol-related problems, the Montreal Protocol offers an effective method for resolving disputes.¹⁸

The main driver of innovation in international environmental law has been close interaction with national laws and policies, to the point where economists have noted the "non-ergodic world" of environmental regimes, which is teeming with regulatory approaches that are new, frequently divergent, and competing. This world is subject to unforeseeable natural and technological changes as well as being subject to unforeseeable natural and technological changes.¹⁹

Rapid environmental change poses challenges to the global order that are becoming acknowledged as defining characteristics of our time. Some

¹⁶ Norul Mohamed Rashid, 'Informal Justice' (United Nations and the Rule of Law) <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/informal-justice/>> accessed 3 September 2022.

¹⁷ 'Informal Justice Systems | United Nations Development Programme' (UNDP) <<https://www.undp.org/publications/informal-justice-systems>> accessed 3 September 2022.

¹⁸ Siang E, 'Main Principles of International Environmental Law' <https://www.researchgate.net/publication/318125898_Main_principles_of_International_Environmental_Law> accessed 3 September 2022.

¹⁹ Sand P, 'The Evolution of International Environmental Law', *The Oxford Handbook of International Environmental Law* (2007)

<https://www.researchgate.net/publication/288662385_The_Evolution_of_International_Environmental_Law/link/56c8689b08aee3cee53d619e/download> accessed 3 September 2022.

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academics have argued that it is necessary to investigate normative and institutional responses in international law to such environmental change by focusing on two central issues: first, whether law can foresee, prevent, and adapt to environmental transformations; and second, whether international legal responses to social, economic, and technological innovation can adequately reflect the evolving needs of contemporary societies at national and international scales.²⁰ There is a need for continued discussions around these issues as they not only affect the realisation of sustainable development agenda but also the effective responses and management of related environmental conflicts. Africa must also strive to be part and parcel of these debates in its efforts to achieve 2030 Agenda on Sustainable Development Goals.

4.3. Peacebuilding and Conflict Management in Africa: Continental Status

Conflicts have occurred often throughout Africa, which has been caused by a number of factors, including but not limited to natural resources, the struggle for political dominance, poverty, negative ethnicity, religion, environmental causes, and outside pressure, among others.²¹ It is also important to note that some of the frequent ethnic conflicts have been linked to the former colonial rulers in Africa, where colonial authorities drew local and national territorial boundaries based on a rather simplistic understanding of the nature of ethnic

²⁰ Craik, Neil, Cameron Jefferies, Sara Seck, and Timothy Stephens. "Global Environmental Change and Innovation in International Law." *Articles, Book Chapters, & Popular Press*, January 1, 2018.

https://digitalcommons.schulichlaw.dal.ca/scholarly_works/248. Accessed on 3 September 2022.

²¹ 'The Environmental Challenges in Sub Saharan Africa'

<<http://web.mit.edu/africantech/www/articles/EnvChall.htm>> accessed 3 June 2022; 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 Report* 36. Brighton, UK: Institute of Development Studies, 15 <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15570/EIR%2036_Conflict_analysis_of_Northern_Kenya.pdf?sequence=1&isAllowed=y> accessed 3 June 2022.

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communities, forcing people who previously lived apart into political entities and dividing those who previously lived together, undermining the normal process of state creation and nation building.²² This has arguably been a major source of conflict among communities in some African countries, such as Nigeria.²³

According to the African Union, "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 the African people, ridding the continent of wars, violent conflicts, human rights violations, humanitarian crises, as well as preventative measures."²⁴

African Union's *Agenda 2063*, Africa's blueprint and master plan for transforming Africa into the global powerhouse of the future²⁵, seeks to achieve a peaceful and secure Africa.²⁶

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.

²² Lillian Mworira and J Ndiku, 'Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies', 162.

²³ 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).

²⁴ 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 3 June 2022.

²⁵ 'Agenda 2063: The Africa We Want. | African Union' <<https://au.int/en/agenda2063/overview>> accessed 3 June 2022.

²⁶ African Union, *Agenda 2063*, 2 <https://au.int/sites/default/files/documents/33126-doc-03_popular_version.pdf> accessed 3 June 2022.

4.4. Telling the African Story: A Voice from the South

In order to present the African tale as viewed through the eyes of the African people, it is important to not only emphasize on the difficulties and challenges facing the African continent but also how they may be overcome utilising indigenous solutions.

The claim that African issues may be solved locally is supported by the continent's abundance of natural resources, which has led to many exploration and exploitation efforts across the whole of the continent.²⁷ Africa has a large quantity of natural resources like oil, gold, diamonds, iron, cobalt, copper, bauxite, silver, uranium, titanium, petroleum among others.²⁸

The people of Africa are entitled to the richness of the continent's natural resources. Governments in African nations are in charge of protecting these resources. Utilizing Africa's resources should assist in achieving the economic rights of its citizens as outlined in different international legal agreements and state legislation.²⁹

While a quick glance would suggest that Africa is a wealthy continent with a population that is expected to have a high standard of living and excellent development, as well as good infrastructure, high employment rates, high-quality education, good health, and a long life expectancy, as well as a conflict-free region where everyone is at ease with life due to the abundance of resources, the reality in Africa is ironically glaringly the opposite.³⁰ Instead of being used to solve African people's problems, Africa's resources are fueling

²⁷ Rajaram, A., "Rich Countries, Poor People; Will Africa's Commodity Boom Benefit the Poor", available on <http://blogs.worldbank.org/african/rich-countries-poor-people-will-africa-s-commodity-boom-benefit-poor> [Accessed on 3 May 2022].

²⁸ World Resources, 'Natural Resources of Africa', available at www.worldresources.envi.org/natural-resources-africa/ [Accessed on 3 May 2022].

²⁹ Muigua, K., *Nurturing Our Environment for Sustainable Development*, p. 107.

³⁰ Ibid.

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the world economy while Africa itself remains economically crippled; exploited and neglected.³¹

This unfortunate state of affairs may be largely attributed to national leaders who, despite being entrusted with the responsibility of protecting natural resources for the benefit of the populace, have betrayed that trust by engaging in high levels of corruption in the application of natural resource revenues and by not having the interests of the populace at heart when they enter into resource extraction contracts. In actuality, Africans have been denied their right to profit from and have control over how their natural resources are used. There is a large majority of poor people and a very small percentage that are highly affluent.³²

At the continental level, the *Africa Mining Vision 2009*³³ was expected to address most of these challenges including: exploitative multinational corporations, lack of expertise and corruption, and African countries negotiating unfavourable mining development agreements. The *Africa Mining Vision* was formally established in 2009 by the African Union (AU), to promote equitable, broad-based development through the prudent utilization of the continent's natural wealth.³⁴ However, African countries still struggle with

³¹ Ibid.

³² World Bank, *Economic Survey for Sub-Saharan Africa, 2013, Africa Pulse October, 2013 Vol.8* available at http://www.worldbank.org/content/dam/Worldbank/document/Africa/Report/Africas-Pulse-brochure_Vol8.pdf [Accessed 3 June 2022].

³³ African Union, *Africa Mining Vision: "Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development"*, (United Nations Economic Commission for Africa (ECA), February, 2009). Available at https://www.uneca.org/sites/default/files/PublicationFiles/africa_mining_vision_english.pdf [Accessed on 3 June 2022].

³⁴ African Union, *Africa Mining Vision, February 2009*. Available at https://au.int/sites/default/files/documents/30995-doc-africa_mining_vision_english_1.pdf [Accessed 3 June 2022].

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making the mineral resources work for them, in uplifting the lives of their people.³⁵ For instance, this is demonstrated in the case of Nigeria where it has

This shared vision will comprise:

- *A knowledge-driven African mining sector that catalyses & contributes to the broad-based growth & development of, and is fully integrated into, a single African market through:*

- *Down-stream linkages into mineral beneficiation and manufacturing;*
 - *Up-stream linkages into mining capital goods, consumables & services industries;*
- *Side-stream linkages into infrastructure (power, logistics; communications, water) and skills & technology development (HRD and R&D);*
 - *Mutually beneficial partnerships between the state, the private sector, civil society, local communities and other stakeholders; and*
 - *A comprehensive knowledge of its mineral endowment.*
- *A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities;*
- *A mining sector that has become a key component of a diversified, vibrant and globally competitive industrialising African economy;*
- *A mining sector that has helped establish a competitive African infrastructure platform, through the maximisation of its propulsive local & regional economic linkages;*
- *A mining sector that optimises and husbands Africa's finite mineral resource endowments and that is diversified, incorporating both high value metals and lower value industrial minerals at both commercial and small-scale levels;*
- *A mining sector that harnesses the potential of artisanal and small-scale mining to stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development; and*
- *A mining sector that is a major player in vibrant and competitive national, continental and international capital and commodity markets.*

³⁵ See generally, Abuya, W.O., "Mining Conflicts and Corporate Social Responsibility in Kenya's Nascent Mining Industry: A Call for Legislation," In *Social Responsibility, IntechOpen*, 2018; African Union, *Assessment of the Mining Policies and Regulatory*

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been reported that, despite the enactment of various acts, the culture of impunity and corruption has continued to occupy the country's oil industry and poverty reduction remains elusive.³⁶

Kenya is no exception as it has a number of mineral deposits albeit in smaller amounts, which, as already pointed out, have not contributed much to the country's GDP as would be expected. The communities are also yet to boast of any significant benefits from the mining activities going on within their regions.³⁷ The challenges affecting the extractives sector in Kenya are not only limited to those related to modes of benefit sharing. There has been a general lack of openness, transparency and accountability as far as the mining activities are concerned.

Frameworks in the East African Community for Alignment with the Africa Mining Vision, op cit.; Kimani, M., "Mining to profit Africa's people," *Africa Renewal* 23, no. 1 (2009): 4-5; Bush, R., "Conclusion: mining, dispossession, and transformation in Africa," *In Zambia, mining, and neoliberalism*, pp. 237-268. Palgrave Macmillan, New York, 2010. Available at https://www.sahistory.org.za/sites/default/files/file%20uploads%20/alastair_fraser_miles_larmer_zambia_mining_anbook4you.pdf#page=260 [Accessed 3 June 2022]; Murombo, T., "Regulating mining in South Africa and Zimbabwe: Communities, the environment and perpetual exploitation," *Law Env't & Dev. J.* 9 (2013): 31.

³⁶ Poncian, J., & Kigodi, H. M., "Transparency initiatives and Tanzania's extractive industry governance," *Development Studies Research* 5, no. 1 (2018): 106-121, p. 108.

³⁷ Ndemo, B., "Kenya's mineral resources could pull millions out of poverty," *Daily Nation*, Monday June 24 2019. Available at <https://www.nation.co.ke/oped/blogs/dot9/ndemo/2274486-5169428-990fwj/index.html> [Accessed 3 June 2022]; Economic and Social Rights Centre (Hakijamii) (Kenya), *Titanium mining benefit sharing in Kwale County: HAKIJAMIIA comprehensive analysis of the law and practice in the context of Nguluku and Bwiti*, September, 2017. Available at <http://www.hakijamii.com/wp-content/uploads/2017/09/Titanium-mining-benefit-sharing.pdf> [Accessed on 3 June 2022]; cf. Base Titanium, "Response to Hakijamii's Draft Report on Base Titanium's Impacts on the Community," 25th August, 2017. Available at https://www.businesshumanrights.org/sites/default/files/documents/Hakijamii%20Base%20Response%20Final%20-%202017%2008%2028_0.pdf [Accessed on 3 June 2022; see also Masinde, J., "Are Kwale residents expecting too much?" *Daily Nation*, Tuesday February 12 2013. Available at <https://www.nation.co.ke/lifestyle/smartcompany/Are-Kwale-residents-expecting-too-much/1226-1690904-nb7rqyz/index.html> [Accessed on 3 June 2022.

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Kenya and many other African nations have yet to see the effects of the Africa Mining Vision, which was launched in 2009 and aims to promote transparent, equitable, and optimal exploitation of mineral resources. This is because there are still many instances of illicit financial flows, a lack of mineral value addition, and poverty among communities living in mining areas.³⁸

The extractives industry in Kenya holds high hopes for the Kenyan people with not only increased revenues but also lowered cost of living as the prices of petroleum products have a significant effect on the cost of essential commodities in the country.³⁹ Some of the mechanisms that are meant to enhance the economies of the national, county governments and communities through benefit sharing include but not limited to: direct investment in projects that benefit the people, jobs and employment creation and technology transfer amongst others. Notably, this is in line with one of the EITI principles that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction.⁴⁰

While the current legislation on the extractives industry in the country has several requirements on disclosure and reports touching on various aspects, Kenya cannot currently pride itself as having transparency by governments (both national and counties) and companies in the extractive industries and thus, there is the need to enhance public financial management and accountability. There is hardly any publicly available information on the important aspects that shed light on the status of the revenues from the extractives industry. Its only recently when the President mentioned that the first batch of oil had been exported, and there was mention of the amount

³⁸ Kitimo, A., "Call to adopt mining values and principles in East Africa," *The East African*, Saturday July 27 2019. Available at <https://www.theeastafrican.co.ke/business/Call-to-adopt-mining-values-and-principles-in-East-Africa/2560-5212362-hwctkgz/index.html> [Accessed on 3 June 2022.

³⁹ Munyua, J., & Ragui, M., "Drivers of instability in prices of petroleum products in Kenya," *Prime Journal of Business Administration and Management (BAM)* 3, no. 3 (2013): 919-926.

⁴⁰ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

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exported or its value.⁴¹ The details of such deals remain few. Kenya's scenario is not unique to this country but is also reflected across many African countries, to the detriment of the local communities.⁴²

In the spirit of ensuring that African countries and especially Kenya only adopts what works for them, while we push for adoption of best practices in management of revenues from the extractives sector in Kenya, and considering that Kenya has had no previous experience in oil production, there is a temptation to adopt frameworks from other countries despite the contextual differences between countries.⁴³ It is therefore recommended that the Government of Kenya has a responsibility to adopt frameworks that are consistent with the prevailing social, economic, political and cultural circumstances in the country so as to facilitate the development of the oil and gas industry.⁴⁴

This does not however mean that all is lost within the African continent as there are some success stories within the continent. For instance, Botswana has extractive mineral industries that have played a crucial role in the development of the country. Through proper management of its resources and thus achieving a mineral-led economic growth, the country has been transformed from one of the poorest countries in the world at the time of independence in 1966 to an upper-middle income country.⁴⁵ Botswana mainly exports diamonds, as the world's largest producer in value terms, as well as

⁴¹ Presidential Strategic Communication Unit, "Kenya in Sh1.3bn oil export deal," *Daily Nation*, Thursday, August 1, 2019. Available at <https://www.nation.co.ke/news/Kenya-joins-list-of-oil-exporters/1056-5219572-qkp633z/index.html> [Accessed 3 June 2022].

⁴² Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

⁴³ Kenya Civil Society Platform on Oil & Gas, "Setting the Agenda for The Development of Kenya's Oil and Gas Resources - The Perspectives of Civil Society," Aug 11, 2014. Available at <http://kcspog.org/setting-the-agenda-for-the-development-of-kenyas-oil-and-gas-resources-the-perspectives-of-civil-society/> [Accessed on 3 June 2022].

⁴⁴ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

⁴⁵ Jefferis, K., "The role of TNCs in the extractive industry of Botswana," *Transnational corporations* 18, no. 1 (2010): 61-92 at p.61.

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copper and nickel.⁴⁶ Botswana's record of mineral-led development is remarkable and the country is also considered to be relatively free of the corruption and environmental damage that is often associated with mining industries. Public finances are strong, debt is minimal, and the country enjoys investment-grade credit ratings.⁴⁷

Thus, Kenya and the African continent in general, stands to benefit greatly from its oil, gas and mineral resources but only if the same are well managed through accountability and transparency in revenues declaration and ultimately, proper utilisation of such revenues in promoting growth, development and investment in other sectors of the economy.⁴⁸

Natural resources and the fight for control of these resources inevitably come with conflicts. The risks of violent conflict increase when exploitation of natural resources causes environmental damage, loss of livelihood, or unequal distribution of benefits.⁴⁹ Sudan, DRC and Nigeria are just but few examples of African states that have gone on internal armed conflict because of their rich natural resources. There are natural resources in Democratic Republic of Congo in the tropical rain forest which covers more than 100 Million hectares. However, there have been recorded cases of terrible violence and immense human suffering.⁵⁰ The war has largely impacted on the environment and native wildlife. Parties to armed conflicts have resorted to occupying natural

⁴⁶ Ibid, p.61.

⁴⁷Ibid, p.61; See also International Monetary Fund, Botswana: 2017 Article iv Consultation – Press Release; Staff Report, August 2017, IMF Country Report No. 17/249. Available at <https://www.imf.org/~media/Files/Publications/CR/2017/cr17249.ashx> [Accessed 3 June 2022].

⁴⁸ Ibid.

⁴⁹ United Nations, "Environmental Rule of Law," available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0> [Accessed on 3 June 2022].

⁵⁰ Samndong, R.A. & Nhantumbo, I., *Natural resources governance in the Democratic Republic of Congo: Breaking sector walls for sustainable land use investments*, (International Institute for Environment and Development Country Report, February 2015), p. 11. Available at <http://pubs.iied.org/pdfs/13578IIED.pdf> [Accessed on 23 March 2022].

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habitats thereby scaring animals away.⁵¹ indigenous conflict management mechanisms can be utilized alongside the judicial systems to address the many conflicts that have ravaged the continent for long.

Natural resources are a source of livelihood for many, and any development activities that affect the same in any way ought to seek the social licence through engaging the affected communities through public participation. Competition for scarce resources may lead to a 'survival of the fittest' situation.⁵² In such circumstances, environmental degradation poses a higher potential for conflict, as every group fights for their survival.⁵³ Even where resources are abundant, conflicts can arise when one group controls a disproportionate portion of the same ("Resource capture"). Resource capture occurs when the supply of a resource decreases due to either depletion or degradation and/or demand increases (due to population and/or economic growth).⁵⁴ This encourages the more powerful groups in a society to exercise more control and even ownership of the scarce resource, thereby enhancing their wealth and power.⁵⁵ For instance, land has been an emotive issue in Kenya as it is in the hands of a few people in the country, and this has often led to tribal clashes.⁵⁶

Considering that most of these conflicts have underlying issues that may not be fully addressed through the adversarial court system, the use of ADR and TDR mechanisms such as negotiation and mediation processes can cure this as

⁵¹ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

⁵² See generally, "Chapter 5: Survival at Stake: Violent Land Conflict in Africa," *Small Arms Survey 2013*, available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2013/en/Small-Arms-Survey-2013-Chapter-5-EN.pdf> [Accessed on 23 March 2022].

⁵³ See Bowman, K., et al, "Chapter 1: Environment for Development," (United Nations), available at http://www.unep.org/geo/geo4/report/01_Environment_for_Development.pdf [Accessed on 23 March 2022].

⁵⁴ Khagram, S., et al, "From the Environment and Human Security to Sustainable Security and Development," *Journal of Human Development*, Vol. 4, No. 2, July 2003, pp. 289-313, p. 295.

⁵⁵ *Ibid.*

⁵⁶ See the Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya', (the 'Akiwumi Commission'), (Government Printer, Nairobi, 1999).

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they can help them in playing a more meaningful and active role in conflict management and decision-making processes. Having forums for negotiation and mediation between the stakeholders and communities can go a long way in averting conflicts and allowing proposed and ongoing developmental activities enjoy social acceptance in the community since concerns and expectations are more likely to be managed through such forums. Conflict resolution mechanisms such as negotiation and mediation are recommended because they afford the affected communities or sections of the public an opportunity to negotiate and reach a compromise agreement, where all sides get satisfactory outcome.⁵⁷ ADR and Traditional dispute resolution mechanisms, especially negotiation and mediation, still have relevance in natural resource conflicts management, a role recognized in the Constitution of Kenya.⁵⁸ This is the true essence of environmental democracy; affording communities guaranteed and meaningful participation in the decision making process by presenting proof and reasoned arguments in their favour, as tools for obtaining a socio-economic justice.⁵⁹

These processes have been indigenous to the African continent for centuries and they hold a key in addressing these conflicts with a relatively high degree of success.⁶⁰

⁵⁷ Warner, M., 'Conflict Management in Community-Based Natural Resource Projects: Experiences from Fiji and Papua New Guinea,' Working Paper No. 135, (Overseas Development Institute, April 2000), p. 16.

⁵⁸ See Art. 60(1) (g); Art. 159.

⁵⁹ Ristanić, A., 'Alternative Dispute Resolution and Indigenous Peoples: Intellectual Property Disputes in the Context of Traditional Knowledge, Traditional Cultural Expressions and Genetic resources,' (Lund University, April 2015), available at [https://www.law.lu.se/webuk.nsf/%28MenuItemById%29/JAMR32exam/\\$FILE/Alternative%20Dispute%20Resolution%20and%20Indigenous%20Peoples.%20Intellectual%20Property%20Disputes%20in%20the%20Context%20of%20Traditional%20Knowledg.pdf](https://www.law.lu.se/webuk.nsf/%28MenuItemById%29/JAMR32exam/$FILE/Alternative%20Dispute%20Resolution%20and%20Indigenous%20Peoples.%20Intellectual%20Property%20Disputes%20in%20the%20Context%20of%20Traditional%20Knowledg.pdf) [Accessed on 15 February 2022].

⁶⁰ Muigua, K., *Settling Disputes through Arbitration in Kenya*, 3rd Ed., Glenwood Publishers, Nairobi – 2017; Muigua, K., *Alternative Dispute Resolution and Access to Justice in Kenya*, Glenwood Publishers, Nairobi – 2015; Muigua, K., *Resolving Conflicts through Mediation in Kenya*, Glenwood Publishers, Nairobi – 2013; Muigua, K., "Chapter 25: Natural Resource Conflicts in Kenya: Effective Management for Attainment of Environmental Justice", in Patricia Kameri-Mbote and Collins Odote, eds., *Blazing the Trail*

4.5. Conclusion

Since the advent of international environmental law, there have been continuous changes occasioned by both practice and law. Domestic laws must bear this in mind at all times. Such principles as public participation, environmental democracy, public awareness and sustainable development must take root in all spheres of environmental law, including management of environmental conflicts. Technological developments must also be embraced in not only addressing environmental conflicts but also enhancing environmental management and governance to prevent occurrence of these conflicts in the spirit of the principle of preventive action and the precautionary principle.

CHAPTER FIVE

Effective Conflict management as a Tool for Entrenching Environmental Rights

5.1. Introduction

A concern for protecting civilians throughout the course of a conflict has contributed to the rise of human rights norms as a crucial part of the global policy framework for thinking about and responding to violent conflict.¹ When used in this context, the term "human rights" refers to standards that define acceptable conduct and encapsulate the notion that all people are morally equal.² The denial of human rights and the ensuing marginalisation and poverty are the fundamental causes of all conflicts; however, in indigenous contexts, the fundamental causes can be further outlined as the denial of their collective rights as a group, particularly the loss of control over and separation from their traditional lands, territories, and natural resources, as well as the denial of their right to self-determination, which includes maintaining their own way of life, language, traditions, and culture.³

This chapter looks at how effective conflict management can be used as a tool to entrench environmental rights especially within the most vulnerable communities. Notably, environment has been defined as 'the natural environment-to the physical space in which human activities take place and from which we acquire the resources necessary for sustaining our lives'.⁴ Flowing from this is the fact that the human-nature interactions are likely to result in conflicts as some groups of persons may feel threatened by access and

¹ Parlevliet M, "The transformative potential of human rights in conflict resolution," In *Human Rights and Conflict Resolution*, pp. 16-40. Routledge, 2017, p.17.

² Ibid, p. 18.

³ Lefevre N, 'The Human Rights-Based Approach to Conflict Transformation in Indigenous Contexts'

<https://www.academia.edu/9964347/The_Human_Rights_Based_Approach_to_Conflict_Transformation_in_Indigenous_Contexts> accessed 21 August 2022, p. 5.

⁴ Arild Vatn, *Environmental Governance: Institutions, Policies and Actions* (Paperback edition, Edward Elgar Publishing 2016) 14.

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control of some finite resources by another group.⁵ For both sustenance and as a pillar of the economy, environmental resources are vital to the survival of individuals and nations. In some situations, having access to or controlling an environment's resources has been a contentious matter that frequently causes tensions and violent confrontations inside, between, and among nations.⁶ It has also been observed that the issues of land tenure, land use rights, use of commons, customary rights, privatization of the commons, among others, are related to access and availability of natural resources- as sources for conflicts.⁷ In addition to the possibility of resource scarcity occasioned by 'resource capture' by the powerful, environmental conflicts may also be as a result of environmental degradation and the resultant biodiversity loss.⁸ International human rights norms that are ingrained in international law, broadly accepted by governments, adopted into domestic law (if not practice), and embraced by individuals from all cultures and walks of life serve as the foundation for contemporary international human rights activism.⁹

5.2. Rights-Based Approaches to Environmental Conflicts Management

The quest for justice in Kenya predates the current Constitution of Kenya which was promulgated in 2010. Before then, there was little by way of statutory or legal instruments in Kenya that provided for the legal channels that guaranteed the citizenry's access to justice. Indeed, much of the debate surrounding access to justice were mainly based on enhancing the efficacy of the national courts and tribunals, which were considered as the major channels of accessing justice. While the 2010 Constitution acknowledged the place of Courts in the access to justice agenda, it also recommended the exploration of

⁵ Ibid, 14.

⁶ Onuoha, Freedom C. "Environmental degradation, livelihood and conflicts: A focus on the implications of the diminishing water resources of Lake Chad for north-eastern Nigeria." *African journal on conflict resolution* 8, no. 2 (2008): 35-61, at 36.

⁷ E Gunilla Almered Olsson and Pernille Gooch, eds., *Natural resource conflicts and sustainable development*. Routledge, 2019, 5.

⁸ Bob, Urmilla, and Salomé Bronkhorst. "Environmental conflicts: Key issues and management implications." *African Journal on Conflict Resolution* 10, no. 2 (2010): 9-30.

⁹ Lutz EL, Babbitt EF and Hannum H, 'Human Rights and Conflict Resolution from the Practitioners' Perspectives' (2003) 27 *The Fletcher Forum of World Affairs* 173, at p. 174.

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alternative means that would address such challenges as cost-effectiveness, time, physical accessibility and the differing literacy levels among consumers of justice, among others.¹⁰

Almost all societies have sporadic conflicts over ecological concerns, such as land use, environmental quality, water allocation, waste disposal, and natural resource management, among others.¹¹ It has been observed that "Rights-Based Approaches" (RBAs) to conservation are a promising way forward, but they also raise a variety of new challenges and questions, including what such approaches are, when and how they can be put into practice, and what their implications are for conservation. This is true even though there are many and complex links between human rights and biodiversity and natural resource conservation. Additionally, RBAs may assist with better governance but are themselves molded by the governing systems in which they function as well as by history, politics, socioeconomics, and culture.¹²

It is commendable that environmental rights are no longer in doubt in Kenya and there even exists several court decisions affirming every person's right to pursue the same¹³. However, this did not mark the push for clearer framework to protect and implement these rights especially in Kenya. Where the existing jurisprudence is that where a party is unable to prove the denial, violation, infringement or threat to environmental rights for one reason or the other, then

¹⁰ Muigua, K., Access to Justice: Promoting Court and Alternative Dispute Strategies (Available at

<http://www.kmco.co.ke/index.php/publications/108-access-to-justice-promoting-court-and-alternative-dispute-resolution-strategies>.

¹¹ Fisher, J., "Managing environmental conflict," *The handbook of conflict resolution: theory and practice* (2014): 3.

¹² Campese, J., Sunderland, T.C.H., Greiber, T., Oviedo, G., eds., *Rights-Based Approaches: Exploring Issues and Opportunities for Conservation* (Center for International Forestry Research (CIFOR) and The International Union for Conservation of Nature (IUCN) 2009) <<https://cgspace.cgiar.org/handle/10568/20183>> accessed 23 June 2022.

¹³ Article 42 of the Constitution of Kenya provides that every person has the right to a clean and healthy environment, which includes the right – to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and to have obligations relating to the environment fulfilled under Article 70.

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the same risks being continually violated. Even in such scenarios, courts should step in and use their *suo motu* powers in respect of environmental protection and conservation to safeguard the right to clean and healthy environment of all and promote the sustainable development agenda.¹⁴

Rights-based approaches in the context of this chapter entail: Rights to access, own and benefit from land, water and other natural resources (substantive rights); and Rights to take part in governing natural resources and access justice for redress (procedural rights).¹⁵ Demands for equitable access to resources, resistance to discrimination, and the desire for self-determination all lead to violent conflicts. A cycle of dehumanization based on fear is created by violations of human rights. Conflict can be sparked and fueled by the denial of human rights as much as by the desire for those same rights. In order to pursue their demands, groups may resort to using force if the state fails to uphold fundamental human rights and offer channels for peaceful conflict resolution.¹⁶

5.2.1. Democracy/Environmental Democracy

Environmental Democracy is an important component in realisation of environmental rights in that it seeks to ensure that environmental and natural resources management decisions take into consideration and equitably address the concerns of citizens in relation to those resources, through

¹⁴ *Ibid*, see also Muigua, K., *Reconceptualising the Right to Clean and Healthy Environment in Kenya*, Paper Presented at the side event at the 3rd United Nations Environment Assembly held in Nairobi, organized by the UoN School of Law & the Centre International de Droit Comparé de l'Environnement (CIDCE), at the UoN School of Law on Friday 1st December 2017; Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi - 2016, chapter Nine;

¹⁵ 'How to Support a Rights-Based Approach to Nature-Based Solutions | DIIS' <<https://www.diis.dk/en/research/how-to-support-a-rights-based-approach-to-nature-based-solutions>> accessed 23 June 2022.

¹⁶ Mertus, J. A., and J. Helsing, 'Introduction: Exploring the Intersection between Human Rights and Conflict', in Idem (eds), *Human Rights and Conflict: Exploring the Links between Human Rights, Conflict, and Peacebuilding*, USIP Press, Washington - GSDRC (17 April 2008) <<https://gsdrc.org/document-library/exploring-the-intersection-between-human-rights-and-conflict/>, <https://gsdrc.org/document-library/exploring-the-intersection-between-human-rights-and-conflict/>> accessed 21 August 2022.

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promoting free access to meaningful information on environmental quality and problems by affected people, to enable their meaningful participation in decision-making, and empowering them to seek enforcement of environmental laws or compensation for damages.¹⁷ Notably, the concept of Environmental Democracy is informed by the idea ‘that an informed and legally empowered citizen is the most important aspect of environmental democratisation’.¹⁸ The concept of Environmental Democracy thus emerged to promote and ensure public engagement in governmental environmental decision-making.¹⁹ Arguably, people have a right to obtain information upon request, and to be informed of planned projects, developments or other initiatives which will affect them, their environment or their natural resources through Free, Prior And Informed Consent (FPIC), under which duty bearers are expected to obtain the agreement for specific activities from an appropriate entity (rights holders), following a consultative process involving full disclosure of all relevant information, sufficiently in advance of the activities commencing, and without coercion or manipulation.²⁰ The principle of FPIC also extends to the use of indigenous knowledge and practices relating to the environment, and the sharing of any resulting benefits.²¹

The idea finds credence in Article 1 of the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* and Principle 10 of the 1992 *Rio Declaration on Environment and Development* which provides that: “environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities,

¹⁷ Peeters M, ‘Judicial Enforcement of Environmental Democracy: Critical Analysis of Case Law on Access to Environmental Information in the European Union’ (2020) 4 *Chinese Journal of Environmental Law* 13.

¹⁸ See Parola G, *Environmental Democracy at the Global Level: Rights and Duties for a New Citizenship* (Walter de Gruyter 2013), 50.

¹⁹ Peeters M, ‘Judicial Enforcement of Environmental Democracy: Critical Analysis of Case Law on Access to Environmental Information in the European Union’ (2020) 4 *Chinese Journal of Environmental Law* 13, 14.

²⁰ BirdLife International, International B, ‘An Introduction to Conservation and Human Rights for BirdLife Partners’, 8.

²¹ *Ibid*, 8.

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including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”²²

It has, however, been argued that while concepts of ecological and Environmental Democracy seek to reconcile two normative ideals: ensuring environmental sustainability while safeguarding democracy, these ideals are frequently conceived as being in conflict, as democracy is perceived as too slow and cumbersome to deliver the urgent large-scale collective action needed to tackle environmental problems.²³ The perceived conflict is based on the assertion that, on the one hand, if citizens accord low priority to ecological values, efforts to strengthen environmental protection and sustainability through democratic processes may falter, and on the other hand, securing environmental values through authoritarian rule comes at a high democratic price.²⁴

The Convention on Biological Diversity (CBD) Aichi Target 1 requires that “by 2020, at the latest, people are aware of the values of biodiversity and the steps they can take to conserve and use it sustainably”.²⁵

Notably, ecological democracy seeks environmentally sustainable ends through broad, active democratic participation.²⁶ As a result, national political

²² Peeters M, ‘Judicial Enforcement of Environmental Democracy: A Critical Analysis of Case Law on Access to Environmental Information in the European Union’ (2020) 4 *Chinese Journal of Environmental Law* 13

²³ Pickering J, Bäckstrand K and Schlosberg D, ‘Between Environmental and Ecological Democracy: Theory and Practice at the Democracy-Environment Nexus’ (2020) 22 *Journal of Environmental Policy & Planning* 1.

²⁴ *Ibid*, 1.

²⁵ Unit B, ‘Aichi Biodiversity Targets’ (18 September 2020) <<https://www.cbd.int/sp/targets/>> accessed 8 March 2022.

²⁶ Takacs D, ‘Whose Voices Count in Biodiversity Conservation? Ecological Democracy in Biodiversity Offsetting, REDD+, and Rewilding’ (2020) 22 *Journal of Environmental Policy & Planning* 43.

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institutions constitute an important arena for biodiversity conservation.²⁷ It has been observed that while the proximate drivers of biodiversity loss such as habitat loss, climate change, overexploitation, and invasive species are relatively well-mapped, one of the causes to those triggers is countries' institutional set-ups and thus, the formal and informal rules shaping the decision-making and the implementation of biodiversity management are considered to be paramount.²⁸

The right to participation refers to the procedural right to have a say in the decisions that are made, where there exists a gradient in the level of participation in decision-making, from simple 'consultation' to active partnership of stakeholders in project conception, design, implementation, monitoring and evaluation; and from 'limited' participation to 'full and effective participation' of 'all relevant stakeholders' with special attention given to the most vulnerable groups, minorities and those sectors of society that are underrepresented.²⁹ The participation of the people in biodiversity conservation is important considering that actions to conserve nature and natural resources are closely related to the rights of people to secure their livelihoods, enjoy healthy and productive environments and live with dignity and as a result, the pursuit of conservation goals can contribute positively to the realization of many fundamental human rights.³⁰ There is thus, a need for States to continue establishing effective legal and institutional frameworks to protect biodiversity, and to conduct social and environmental assessments of projects and policies and to facilitate public participation in conservation decisions.³¹ Environmental Democracy is associated with on transparency, participation, and justice and as a result, it is considered to be more

²⁷ Rydén O and others, 'Linking Democracy and Biodiversity Conservation: Empirical Evidence and Research Gaps' (2020) 49 *Ambio* 419.

²⁸ *Ibid*, 419.

²⁹ BirdLife International, International B, 'An Introduction to Conservation and Human Rights for BirdLife Partners', 8.

³⁰ Springer J, Campese J and Painter M, 'Conservation and Human Rights: Key Issues and Contexts. Scoping Paper for the Conservation Initiative on Human Rights' [2011] Unpublished report. Conservation Initiative on Human Rights Working Group, 5.

³¹ See Bigard C, Pioch S and Thompson JD, 'The Inclusion of Biodiversity in Environmental Impact Assessment: Policy-Related Progress Limited by Gaps and Semantic Confusion' (2017) 200 *Journal of environmental management* 35.

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participatory and inclusive and provides opportunities for everyone, including those in the most marginalised positions to participate in decision-making.³²

Environmental Democracy in Kenya has come a long way from being a virtually non-existent concept under the laws of Kenya to one that is now prominently recognised both under the law and the case law emanating from the highest courts. The wording of the statutes may not specifically mention the words 'environmental democracy' but the idea is captured in various words, especially in the 2010 post- constitutional era. For instance, Article 10 of the Constitution provides for the following national values and principles: patriotism; national unity; sharing and devolution of power; the rule of law; democracy and participation of the people; human dignity; equity; social justice; inclusiveness; equality; human rights; non-discrimination and protection of the marginalised; good governance; integrity; transparency and accountability; and sustainable development. These values and principles ought to bind all state organs, state officers, public officers and all persons whenever any one of them: applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.³³

The lack of environmental democracy was largely informed by the top-down approach previously adopted in Kenya.³⁴ Environmental democracy in environmental management matters led to the buttressing of the co-management of natural resources and environmental resources. Co-management of these resources has several advantages as it overcomes the many limitations and pitfalls of centralized, top-down resource management hence resulting in more efficient, appropriate and equitable resource management.³⁵ Further, it fosters meaningful communication in the decision-

³² 'Will Democracy Save Us from the Biodiversity Crisis?' (Demo Finland, 27 November 2020) <<https://demofinland.org/en/will-democracy-save-us-from-the-biodiversity-crisis/>> accessed 20 March 2022.

³³ Article 10 (1), Constitution of Kenya, 2010.

³⁴ See Muigua, K., Kariuki, F., Wamukoya, D., *Natural Resources and Environmental Justice in Kenya*, (Glenwood Publishers, Nairobi, 2015).

³⁵ *Ibid*; Article 10, Constitution of Kenya.

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making process thus contributing to effective management of the marine resources.³⁶

In the *Matter of the National Land Commission* [2015] eKLR³⁷, the Supreme Court of Kenya in its advisory opinion observed as follows:

Kariuki Muigua, Didi Wamukoya, Francis Kariuki in their book, [Natural Resources and Environmental Justice in Kenya (Glenwood Publishers Limited, Nairobi: 2015)] discuss the link between the growth of government structures, and the delegation of decision-making powers to state agencies, such as commissions. They observe as follows (pages 24 to 25):

“In Kenya today, as the size and scope of government continues to grow, decisions that have previously been made by elected officials in a political process are now being delegated by statute to technical experts in state agencies and constitutional commissions. The rationale is, therefore, to incorporate public values into decisions, improve the substantive quality of decisions, resolve conflicts among competing interests and build trust in institutions and educate and inform the public.”³⁸

The Supreme Court went further to capture the place of democracy (including environmental democracy) in the following words:

[348] *“It is thus clear that the principle of the participation of the people does not stand in isolation; it is to be realised in conjunction with other constitutional rights, especially the right of access to information (Article 35); equality (Article 27); and the principle of democracy (Article 10(2)(a)). The right to equality relates to matters concerning land, where State agencies are encouraged also to engage with communities, pastoralists, peasants and any other members of the public. Thus, public bodies should engage with specific stakeholders, while also considering the views of*

³⁶ Ibid.

³⁷ In the *Matter of the National Land Commission* [2015] eKLR, Advisory Opinion Reference 2 of 2014.

³⁸ Ibid, para. 346.

other members of the public. Democracy is another national principle that is enhanced by the participation of the people.”³⁹

[352] *“The participation of the people is a constitutional safeguard, and a mechanism of accountability against State organs, the national and county governments, as well as commissions and independent offices. It is a device for promoting democracy, transparency, openness, integrity and effective service delivery. During the constitution-making process, the Kenyan people had raised their concerns about the hazard of exclusion from the State’s decision-making processes. The Constitution has specified those situations in which the public is assured of participation in decision-making processes. It is clear that the principle of public participation did not stop with the constitution-making process; it remains as crucial in the implementation phase as it was in the constitution-making process.”*

[353] *“I agree fully with the views of Odunga J. in the case of **Robert Gakuru**, that public participation is not an abstract notion and, on matters concerning land, State organs, the Ministry, and the NLC must breathe life into this constitutional principle, and involve the public in land management and administration; legislative plans and processes; and policy-making processes. This is clear from the terms of Article 10 of the Constitution, which requires these bodies to:(a) apply or interpret this Constitution; (b) enact, apply or interpret any law; or (c) make or implement public policy decisions bearing in mind the participation of the people, and the goals of democracy, and transparency.”*

[354] *“I would refer to the Draft Public Participation Guidelines for County Governments, which is of persuasive authority in this Advisory Opinion. It states that the importance of public participation includes to: strengthen democracy and governance; increase accountability; improve process, quality and results, in decision-making; manage social conflicts; and enhance process legitimacy. Although these are not the final guidelines, they bear similar objectives of public participation as those articulated in the Constitution, and in the County Governments Act. Finally, the Draft Guidelines provide*

³⁹ Ibid, para. 348.

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conditions for meaningful public participation, such as: (i) clarity of subject-matter; (ii) clear structures and process on the conduct of participation; (iii) opportunity for balanced influences from the public in general; (iv) commitment to the process; (v) inclusive and effective representation; (vi) integrity; (vii) commitment to the value of public input; (viii) capacity to engage; (ix) transparency; and (x) considerations of the social status, economic standing, religious beliefs and ethnicity of the members of the public. These conditions are comparable to the constitutional values and principles of democracy, transparency, accountability and integrity.”

[355] “In conclusion, an array of rich ingredients of the participation of the people, emerge from various sources: decisions by superior Courts in Kenya; comparative jurisprudence from another jurisdiction; works by scholars; draft principles and guidelines bearing upon public participation by various State organs and governments; and relevant constitutional and legal provisions. The categories of these ingredients are not closed. It will devolve to the citizens, as well as stakeholders, to monitor the practicability of these ingredients, and to appraise the scope for improvement, so they may increasingly reflect the vision of the Constitution.”

5.3. Effective Conflict Management Methods: Principles

This section highlights a number of principles which, if incorporated into conflict management approaches, may go a long way in enhancing the protection of human rights of the participants. Conflict resolvers and human rights activists both contribute to conflict resolution through a variety of methods. On the one hand, there is the interest-based approach, which aims to balance needs, wants, and worries, for instance through conciliation dialogues, mediation, or making suggestions for legal reform. The rights-based approach, on the other hand, is based on the laws, norms, and values of societies or organisations in a particular setting, and may include things like criminal

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prosecution, legal action, constitutional interpretation, disciplinary measures, or punishment.⁴⁰

It is recommended that stakeholders advocate for adoption of both interest-based as well as rights-based approaches in addressing environmental-related conflicts.

5.3.1 Principle of Participation

The parties who directly benefit from the decision must actively participate in the negotiating and decision-making processes in order for them to be successful. Bringing parties together in some form of informal or formal venue and assuring them of a chance for valuable input are the fundamental objectives of conflict resolution.⁴¹

5.3.2 Principle of Inclusion

Unlike participation, this focuses on who participates rather than how they participate. Since those excluded will have a larger motive to thwart any agreements that are achieved, it is preferable in the field of conflict resolution to involve as many stakeholders as possible, even those who may be potentially disruptive.⁴²

5.3.3. Principle of Empowerment

Lack of resources, experience, or both on the side of one or more parties may make multi-party conversation less effective. Conflict resolution professionals may include teaching, training, and coaching in the process to assist balance

⁴⁰ Gomes-Mugumya, A., "Reflections on rights and conflict from Uganda." *Human Rights and Conflict Transformation: The Challenges of Just Peace* (2010), p.76. Available at <https://core.ac.uk/download/pdf/71733154.pdf#page=72> accessed 21 August 2022.

⁴¹ Lutz EL, Babbitt EF and Hannum H, 'Human Rights and Conflict Resolution from the Practitioners' Perspectives' (2003) 27 *The Fletcher Forum of World Affairs* 173, p. 177.

⁴² Lutz EL, Babbitt EF and Hannum H, 'Human Rights and Conflict Resolution from the Practitioners' Perspectives' (2003) 27 *The Fletcher Forum of World Affairs* 173, p. 177.

the sides. This will increase the effectiveness of all parties and create a more solid foundation for sincere conversations.⁴³

5.3.4. Principle of Cultural Sensitivity

Conflict resolution techniques are common throughout most civilizations. Long after an outside intervener has left, methods and solutions that are culturally acceptable and known will continue to be effective. As a result, it is crucial to understand these patterns and, whenever possible, improve on native behaviours.⁴⁴

5.3.5. Principle of Equity

The idea of equity, as opposed to equality, is that a mediator should treat all parties at the table with same respect, providing everyone an equal amount of time and attention, despite the fact that they have different levels of power. This appreciation and respect helps to improve the forum's suitability for productive debate and problem-solving.⁴⁵

5.3.6 The Sustainable Livelihoods Approach (SLA)

The Sustainable Livelihoods Approach (SLA), a participatory approach to analysing and improving the lives of those living in poverty and disadvantage, is founded on the understanding that everyone has skills and resources that may be developed to assist them improve their lives.⁴⁶ A livelihood includes the skills, resources, and activities necessary for a way of life. It is considered sustainable when it can withstand stress, recover from shocks, and maintain or improve its skills, resources, and activities both now and in the future

⁴³ *Ibid*, p. 177.

⁴⁴ *Ibid*, p. 177.

⁴⁵ *Ibid*, p. 177.

⁴⁶ 'The Sustainable Livelihoods Approach: Toolkit for Wales' (*Oxfam Policy & Practice*) <<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/297233/sustainable-livelihoods-approach-toolkit-wales-010713-en.pdf?sequence=8> > accessed 20 August 2022.

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without depleting the base of natural resources.⁴⁷ By improving equal access to resources and decision-making processes and making sure that decision-making bodies are accountable to all, conflict management can also increase the sustainability of livelihoods for communities.⁴⁸

It is important to note that while the sustainable livelihoods approach makes it easier to identify practical priorities for actions that are based on the opinions and interests of those involved, it does not replace other tools like sector-wide approaches, participatory development, or integrated rural development. Instead, it: connects people to the overall enabling environment that influences how people live their lives; and it brings attention to bear on the inherent potential of people in terms of their skills, social networks, access to physical and financial resources, and ability to influence core institutions.⁴⁹

Arguably, communities enjoying sustainable livelihoods are less likely to engage in destructive conflicts and even where such conflicts emerge, they have better incentives to address the same the quickest way possible.⁵⁰

5.4 Conclusion

As already pointed out, environmental factors, whether they are caused by nature or humans, can also put people at risk and leave them feeling vulnerable.⁵¹

⁴⁷ Serrat, O., "The sustainable livelihoods approach." In *Knowledge solutions*, pp. 21-26. Springer, Singapore, 2017, p. 15.

⁴⁸ McNairn R, 'Building Capacity to Resolve Conflict in Communities: Oxfam Experience in Rwanda' (2004) 12 *Gender & Development* 83.

⁴⁹ Serrat, O., "The sustainable livelihoods approach." In *Knowledge solutions*, pp. 21-26. Springer, Singapore, 2017, p. 15.

⁵⁰ See generally, Adams, W.M., Aveling, R., Brockington, D., Dickson, B., Elliott, J., Hutton, J., Roe, D., Vira, B. and Wolmer, W., 'Biodiversity Conservation and the Eradication of Poverty', *science* 306, no. 5699 (2004): 1146-1149.

⁵¹ Bob, Urmilla, and Salomé Bronkhorst. "Environmental conflicts: Key issues and management implications." *African Journal on Conflict Resolution* 10, no. 2 (2010): 9-30, 13.

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It has been argued that including a human rights perspective in an analysis or response to violent or destructive conflict increases knowledge of the issues involved and raises the question of how to work effectively toward a lasting peace. More focus is placed on underlying factors, such as the role of the state, governance systems, and power dynamics, than is typically the case in conflict resolution attempts, when human rights considerations are taken into account. The design of conflict resolution procedures and the evaluation of settlement possibilities both benefit from taking human rights into account.⁵² In general, the protection of human rights is essential for establishing and maintaining peace, and peacemaking and peacebuilding are essential for the preservation of human rights, and both are thus equally important as they complement and advance each other.⁵³

Conflict is less likely to occur in a society where human rights are upheld. This holds true for both political and civil rights, in addition to social, economic, and cultural rights. A society may be considered to be extensively addressing its citizens' problems if social and economic rights are upheld, and it may also be considered to have some degree of political accountability if political rights are upheld.⁵⁴

In order to promote peace and protect rights, it is important to have a better understanding of how human rights and conflict resolution can both complement and conflict with one another during peace processes. This is because the two topics are inextricably linked in ways that make it difficult to separate one from the other.⁵⁵

⁵² Parlevliet M, "The transformative potential of human rights in conflict resolution," In *Human Rights and Conflict Resolution*, pp. 16-40. Routledge, 2017, p. 16.

⁵³ Gomes-Mugumya, A., "Reflections on rights and conflict from Uganda." *Human Rights and Conflict Transformation: The Challenges of Just Peace* (2010), p. 82.

⁵⁴ Manikkalingam, R., "Promoting peace and protecting rights: how are human rights good and bad for resolving conflict?" *Essex Human Rights Review* 5, no. 1 (2008): 1-12, p. 2.

⁵⁵ *Ibid*, p. 12; see also Nations U, 'Conflict Resolution and Human Rights in Peacebuilding: Exploring the Tensions' (*United Nations*)

<<https://www.un.org/en/chronicle/article/conflict-resolution-and-human-rights-peacebuilding-exploring-tensions>> accessed 21 August 2022; Corissajoy, 'When Human

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Rights and Conflict Resolution Clash: Can Both Prevail Together? (*Beyond ff*) accessed 21 August 2022.

CHAPTER SIX

The Place of Conflict Management in Sustainable Development Agenda

6.1. Introduction

The Sustainable Development Goals (SDGs) adopted by the United Nations (UN) in 2015 are widely hailed as a huge success: they represent a global agreement on a comprehensive strategy to address the social and environmental issues that are affecting people all over the world.¹ Instead of relying on nature for survival, as we have done for ages, sustainable development offers a framework for people to coexist with and thrive in harmony with the natural world.²

The main principles of sustainable development agenda as captured in the *2030 Agenda for Sustainable Development*³ include the economic, social and environmental sustainability. These are encapsulated in the 17 Sustainable Development Goals and 169 targets, which are meant to lay out a plan of action for people, planet, and prosperity that will strengthen universal peace in larger freedom. They also identify eradicating poverty in all of its manifestations, including extreme poverty, as the greatest global challenge and a crucial prerequisite for sustainable development.⁴ The Sustainable Development Goals (SDGs) also envisage a world in which democracy, good governance and the rule of law as well as an enabling environment at national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental

¹ Higgs, Kerry. "How sustainable are the SDGs?" (2020): 109-130, 109 <<https://anzsee.org.au/wpcontent/uploads/2020/07/EESolutionsFutureRoyalDraftJuly2ndFINALEbook.pdf#page=109>> accessed 13 July 2022.

² Dernbach, J.C. and Mintz, J.A., "Environmental laws and sustainability: An introduction." *Sustainability* 3, no. 3 (2011): 531-540, 531.

³ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

⁴ 'Transforming Our World: The 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs' <<https://sdgs.un.org/2030agenda>> accessed 13 July 2022.

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protection and the eradication of poverty and hunger.⁵ The term "governance" is used to describe "steering" in this context, which includes both processes and institutions and involves an element of authority. Process relates to how decisions are made on priorities, how conflicts are addressed and maybe handled, and how coordination of people's actions with regard to resource usage is made easier. On the other hand, the structural aspect relates to how these procedures are set up and 'managed'.⁶

It has been observed that COVID-19 tremendously disrupted the world's economy where the pandemic left the world's informal employees, especially young workers and women, on their own with no support or protection against financial and health issues. This was as a result of massive job losses, enlarged market gender gap, informal workers' lack of social safety, and decreased work and education opportunities for youth.⁷

Despite having adopted the SDGs into its domestic laws and planning, Kenya still faces the risk of widespread poverty, natural resources and biodiversity degradation, lack of access to safe water for all, escalating climate change, desertification, land degradation, soil erosion, flooding and drought; and increased natural disaster risks.⁸ This chapter argues that these challenges cannot and should not be addressed in a disjointed manner, if any real progress is to be made.

This chapter seeks to analyze the aspects of governance as well as how they interact with the environmental and social tenets of sustainable development with the aim of ensuring that the SDGs are achieved, especially post the

⁵ Ibid.

⁶ Vatn, Arild, *Environmental governance: institutions, policies and actions*, Edward Elgar Publishing, 2015, p. 133.

⁷ Fallah Shayan, N., Mohabbati-Kalejahi, N., Alavi, S. and Zahed, M.A., 'Sustainable Development Goals (SDGs) as a Framework for Corporate Social Responsibility (CSR)' (2022) 14 Sustainability 1222, 8 <<https://www.mdpi.com/2071-1050/14/3/1222>> accessed 13 July 2022.

⁸ National Environment Management Authority, *Kenya State of Environment Report 2019-2021* <https://www.nema.go.ke/images/Docs/EIA_1840-1849/Kenya%20State%20of%20Environment%20Report%202019-2021%20final-min.pdf> accessed 17 July 2022.

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COVID-19 pandemic. Arguably, sustainable development as a process of transformation of the economy must, in consequence, also result in a transformation of society and its governance structures for a sustainable future.⁹ All this must also be accomplished in a way that takes into account environmental sustainability.

The chapter discusses the Environmental, Social, and Governance (ESG) approach to sustainability and how different players, including governments, communities and businesses can participate in promoting and achieving sustainability through ESG approach as a way of addressing and avoiding conflict.

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. This chapter discusses the place of conflicts, especially those related to environmental resources, in achieving the sustainable development agenda.

6.2 Environmental Aspect of Sustainable Development Agenda

The world leaders who signed the 2030 Agenda stated in the preamble that they are "Determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources, and taking urgent action on climate change, so that it can support the needs of the present and future generations."¹⁰ A number of SDGs are dependent on the health of the environment for their realisation. These include but are noted limited to: Goal 2 seeks to end hunger, achieve food security and improved nutrition and promote sustainable agriculture; Goal 6 seeks to ensure availability and sustainable management of water and

⁹ Ketschau, T.J., "Social sustainable development or sustainable social development-two sides of the same coin? the structure of social justice as a normative basis for the social dimension of sustainability." *International Journal of Design & Nature and Eco dynamics* 12, no. 3 (2017): 338-347, 338.

¹⁰ *Environment UN, 'Sustainable Development Goals' (UNEP - UN Environment Programme, 19 October 2017) <<http://www.unep.org/evaluation-office/our-evaluation-approach/sustainable-development-goals>> accessed 17 July 2022.*

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sanitation for all; Goal 12 seeks to ensure sustainable consumption and production patterns; Goal 13 urges State parties to take urgent action to combat climate change and its impacts; Goal 14 calls for conservation and sustainable use of the oceans, seas and marine resources for sustainable development; and Goal 15 urges State parties to protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.¹¹

In order to achieve environmental sustainability, natural resources management and disaster risk management, there is also a need for improved management of natural resources and biodiversity; access to safe water for all; climate change; desertification, land degradation, soil erosion, flooding and drought; and natural disaster risk reduction and management.¹² It is thus arguable that unless the environmental problems facing the planet are addressed, the other SDGs will remain a mirage. In addition, environmental related conflicts will continue affecting communities.

6.3. Economic Aspect of Sustainable Development Agenda

The SDGs envisage a world in which every country enjoys sustained, inclusive and sustainable economic growth and decent work for all.¹³ The economic aspect is to be achieved through ensuring that every State has, and shall freely exercise, full permanent sovereignty over all its wealth, natural resources and economic activity.¹⁴

¹¹ 'List of the 17 Sustainable Development Goals | Agora' <<https://agora-parl.org/resources/aoe/list-17-sustainable-development-goals>> accessed 17 July 2022.

¹² Urama, Kevin, Nicholas Ozor, and Ernest Acheampong, "Achieving Sustainable Development Goals (SDGs) Through Transformative Governance Practices and Vertical Alignment at the National and Subnational Levels in Africa," *SDplanNet Africa Regional Workshop*, March 3–5, 2014, 3.

¹³ 'Transforming Our World: The 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs' <<https://sdgs.un.org/2030agenda>> accessed 13 July 2022.

¹⁴ *Ibid.*

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SDG 8 seeks to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.¹⁵ Some of the related relevant targets include: Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries;¹⁶ achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors;¹⁷ promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small- and medium-sized enterprises, including through access to financial services;¹⁸ improve progressively, through 2030, global resource efficiency in consumption and production and endeavour to decouple economic growth from environmental degradation, in accordance with the 10-year framework of programmes on sustainable consumption and production, with developed countries taking the lead;¹⁹ by 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value;²⁰ by 2020, substantially reduce the proportion of youth not in employment, education or training;²¹ take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms;²² protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment;²³ by 2030, devise and implement policies to promote sustainable tourism that creates jobs

¹⁵ *SDG 8, UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.*

¹⁶ *Target 8.1.*

¹⁷ *Target 8.2.*

¹⁸ *Target 8.3.*

¹⁹ *Target 8.4.*

²⁰ *Target 8.5.*

²¹ *Target 8.6.*

²² *Target 8.7.*

²³ *Target 8.8.*

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and promotes local culture and products;²⁴ strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all;²⁵ increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries;²⁶ and by 2020, develop and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization.²⁷

The underlying affirmation of these targets are that “economic, social, and technological progress” must occur “in harmony with nature,” envisaging “a world in which ... consumption and production patterns and use of all natural resources – from air to land, from rivers, lakes and aquifers to oceans and seas – are sustainable ... One in which humanity lives in harmony with nature and in which wildlife and other living species are protected,” but the SDGs fail to offer any quantified target for resource efficiency, and do not specify what a sustainable level of material footprint might be.²⁸

It has been noted that in the economic debate, sustainable development is most frequently defined as the requirement to maintain a continuous flow of income for humanity, produced from non-declining capital stocks. In this perception, at least, steady stocks of human, man-made, natural, and social capital are seen as necessary and frequently sufficient criteria for sustainable development.²⁹ Economic sustainability has been defined as the meeting the economic needs of the present without diminishing the economic needs of the future.³⁰

²⁴ Target 8.9.

²⁵ Target 8.10.

²⁶ Target 8.A.

²⁷ Target 8.B.

²⁸ Hickel, J., "The contradiction of the sustainable development goals: Growth versus ecology on a finite planet." *Sustainable Development* 27, no. 5 (2019): 873-884, at 874 & 875.

²⁹ Joachim H Spangenberg, 'Economic Sustainability of the Economy: Concepts and Indicators' (2005) 8 *International Journal of Sustainable Development* 47, 48
<<http://www.inderscience.com/link.php?id=7374>> accessed 14 July 2022.

³⁰ Solin, J., "Principles for Economic Sustainability: Summary," (a summary of John Ikerd's *Principles of Economic Sustainability. It was developed based on attendance a 5-day workshop taught by John and John's Essentials of Economic Sustainability book*)

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Although intergenerational equity is frequently viewed as a factor in economic sustainability, it is not always clear what exactly needs to be perpetuated.³¹

The question that has, therefore, been frequently asked is whether the world be able to sustain economic growth indefinitely without running into resource constraints or despoiling the environment beyond repair.³² Thus, the relationship between economic growth and the environment is, and always remains, controversial.³³

However, what may be universally accepted is that increased private earnings are only one aspect of economic growth; it may also make a substantial contribution to the production of resources that can be mobilised to enhance social services (such as public healthcare, epidemiological protection, basic education, safe drinking water, among others).³⁴ These are ultimately important in realisation of SDGs. Economic empowerment of individuals as well as investing in social services that will benefit the current wider citizenry as well as future generations is thus an important step towards achieving sustainability.

6.4. Social Aspect of Sustainable Development Agenda

1. Social sustainability entails robust, inclusive communities where people may voice their opinions and governments act on them. In order to achieve social sustainability, opportunities must be increased for everyone, both now and in the future. It is essential for eradicating poverty and promoting shared wealth, together with economic and environmental sustainability.³⁵

<https://www3.uwsp.edu/cnrap/wcee/Documents/Principles%20for%20Economic%20Sustainability%20%20page%20summary.pdf> accessed 14 July 2022.

³¹ Sudhir Anand and Amartya Sen, 'Human Development and Economic Sustainability' (2000) 28 *World Development* 2029, 2029

<https://linkinghub.elsevier.com/retrieve/pii/S0305750X00000711> accessed 14 July 2022.

³² Panayotou, T., "Economic Growth and the Environment." *CID Working Paper Series* (2000), 1.

³³ Brock, W.A. and Taylor, M.S., "Economic growth and the environment: a review of theory and empirics." *Handbook of economic growth* 1 (2005): 1749-1821.

³⁴ *Ibid*, 2032.

³⁵ 'Overview' (World Bank)

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Social problems, in particular, prohibit individuals from living healthy lifestyles, disturb communities, and interfere with businesses. While most of these problems are universal, some are particular to particular regions or populations. These problems may include, but are not limited to, discrimination (based on race, colour, and gender), poverty, homelessness, hunger, malnutrition, and obesity, a lack of basic freedoms, the unemployment crisis, pandemics and epidemics, disabilities and chronic diseases, violence, crime, and insecurity as well as wars and political conflicts, gender inequality, and a lack of education and opportunities.³⁶

The distribution of economic opportunities and social services while resolving power disparities constitutes the process of social development, which involves institutions at all levels, from national governments to various civil society groups.³⁷ Social development has also been defined as "a process of planned social change designed to promote people's welfare within the context of a comprehensive process of economic development".³⁸ The emphasis of social sustainability and inclusion is on the requirement to "put people first" throughout the development process. By empowering individuals, creating cohesive and resilient societies, and making institutions accessible and answerable to citizens, it fosters social inclusion of the underprivileged and vulnerable.³⁹

Efforts towards sustainability must thus take note of these aspects of social sustainability for creation of an inclusive society.

<https://www.worldbank.org/en/topic/socialsustainability/overview> accessed 14 July 2022.

³⁶ Fallah Shayan, N., Mohabbati-Kalejahi, N., Alavi, S. and Zahed, M.A., 'Sustainable Development Goals (SDGs) as a Framework for Corporate Social Responsibility (CSR)' (2022) 14 Sustainability 1222, 14 <<https://www.mdpi.com/2071-1050/14/3/1222>> accessed 13 July 2022.

³⁷ Julie L Drolet, 'Chapter 14 - Societal Adaptation to Climate Change' in Trevor M Letcher (ed), *The Impacts of Climate Change* (Elsevier 2021) <https://www.sciencedirect.com/science/article/pii/B9780128223734000112> accessed 14 July 2022.

³⁸ Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996), 79.

³⁹ 'Social Sustainability and Inclusion' (World Bank)

<<https://www.worldbank.org/en/topic/socialsustainability>> accessed 14 July 2022.

6.5. Peace and Sustainable Development: Addressing Causes of Resource Related Conflicts

Sustainable development agenda has gained the support of the international community as part of adopting an integrated approach to development issues and environmental conservation and protection. Sustainable development seeks to ensure that all development activities are conscious of environmental conservation and protection. The underlying thread in this chapter is to promote sound environmental governance and management for sustainable development. The discourse recognises that sustainable development agenda not only deals with the environment, but it seeks to address all the factors that affect people's livelihoods and consequently the sustainability of environment and natural resources. This is in recognition of the fact that people's livelihoods mainly depend on the natural and other environmental resources.

Sustainable development agenda is not only concerned with environmental matters. Instead, it adopts both anthropocentric and ecocentric approaches. There is a need for promotion of sustainable development using the two approaches: Some of the running themes that are informed by the anthropocentric approach to environmental management include Poverty Eradication, Food Security, Environmental Democracy, Environmental Justice, Environmental Security, Public Participation, Gender Equity, Access To Information, Conflicts Management, amongst others. All these themes are discussed within the broader theme of human rights while emphasizing the special relationship between human rights and the environment. This is particularly important in light of the new Constitutional provisions on governance and in the Bill of Rights including Articles of the Constitution that touch on environment and natural resources.⁴⁰

Ecocentric arguments also inform the discussion on themes such as combating climate change, impact of resource extraction, environmental health, and environmental conservation for the sake of the Mother Nature. However,

⁴⁰ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016, pp. xi-xii.

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promoting such rights as the right to a clean and healthy environment has both anthropocentric and ecocentric benefits and should therefore be pursued.⁴¹

Thus, the sustainable development agenda advocates for an integrated approach to tackling environmental management challenges as well as social problems affecting the society.⁴² This is in line with the UNDP's approach in the recent past where it has been advocating for inclusivity, sustained political commitment and national ownership alongside the need to have gender equality, and integrated planning, budgeting and monitoring as part of achieving the 2030 Sustainable Development Goals (SDGs) agenda.⁴³ OECD also 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.⁴⁴

6.6. Role of Law in Promoting Environmental, Social, and Governance (ESG) Approach: Governance Aspect of Sustainable Development Agenda

The environmental rule of law is crucial to sustainable development because it combines environmental requirements with the fundamental components of the legal system and lays the groundwork for better environmental

⁴¹ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016, p. xii.

⁴² See also Hussein Abaza and Andrea Baranzini, *Implementing Sustainable Development: Integrated Assessment and Participatory Decision-Making Processes* (Edward Elgar Publishing 2002).

⁴³ United Nations Development Programme, "Implementation of 2030 Agenda has to be inclusive, participatory and bottom-up," Jul 18, 2017. Available at <https://www.undp.org/content/undp/en/home/presscenter/pressreleases/2017/07/18/implementation-of-2030-agenda-has-to-be-inclusive-participatory-and-bottom-up.html> [Accessed on 6 April 2022]; See also Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (Assembly of European Regions, 4 March 2019) <<https://aer.eu/integrated-approach-sdgs/>> accessed 6 April 2022;

⁴⁴ Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (Assembly of European Regions, 4 March 2019) <<https://aer.eu/integrated-approach-sdgs/>> accessed 6 April 2022.

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governance.⁴⁵ In addition, by linking environmental sustainability to fundamental rights and responsibilities, it draws attention to environmental sustainability, reflects universal moral principles and ethical standards of conduct, and establishes a basis for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and responsibilities, it is possible to argue that environmental governance will be arbitrary, that is, discretionary, subjective, and unpredictable.⁴⁶

The rule of law fosters equality of treatment, increases personal and property security, and offers a fair and amicable means of resolving conflicts.⁴⁷ The rule of law was defined by United Nations Secretary-General Kofi Anan in 2004 as follows:

The rule of law . . . refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁴⁸

⁴⁵ Environment UN, 'Promoting Environmental Rule of Law' (UNEP - UN Environment Programme, 5 October 2017) <<http://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law>> accessed 17 July 2022.

⁴⁶ *Ibid.*

⁴⁷ Michel J, *The Rule of Law and Sustainable Development*. Center for Strategic & International Studies, 2020, 5 < https://www.researchgate.net/profile/James-Michel-3/publication/342881527_The_Rule_of_Law_and_Sustainable_Development/links/5f0b3464a6fdcc4ca46389c5/The-Rule-of-Law-and-Sustainable-Development.pdf> accessed 17 July 2022.

⁴⁸ *Ibid.*, 8.

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The place of rule of law in promoting sustainability is well captured under SDG 16 which seeks to promote just, peaceful and inclusive societies.⁴⁹ The law is important as it provides essential tools and institutions for governing resources sustainably.⁵⁰ In addition to being critical (and frequently last) stages in itself for effectively adopting sustainability solutions, laws and governance are also vital elements to assist technological and economic progress.⁵¹ It has been emphasised that the presence of robust, well-resourced public institutions at the national and international levels is essential for the execution of the 2030 Agenda's necessary policy reforms.⁵²

It has been observed that the SDGs have thus far mostly been implemented through a top-down, government-led strategy, with goals and initiatives determined at the global (and increasingly, national) level.⁵³ To achieve the SDGs, grassroots action for sustainable development, also known as "solutions that react to the local context and the interests of the communities concerned," is necessary.⁵⁴ The SDGs' localization is based on Local Agenda 21, a bottom-up, participatory initiative allowing local governments to interact with their citizens on sustainable development.⁵⁵

To co-create locally relevant sustainability routes, communities, stakeholders, and academics must collaborate, and participatory approaches are crucial for

⁴⁹ Martin, 'Peace, Justice and Strong Institutions' (United Nations Sustainable Development) <<https://www.un.org/sustainabledevelopment/peace-justice/>> accessed 17 July 2022.

⁵⁰ Dernbach, J.C. and Mintz, J.A., "Environmental laws and sustainability: An introduction." *Sustainability* 3, no. 3 (2011): 531-540, 532.

⁵¹ Clune WH and Zehnder AJB, 'The Three Pillars of Sustainability Framework: Approaches for Laws and Governance' (2018) 9 *Journal of Environmental Protection* 211.

⁵² Martens, Jens. "Redefining policies for sustainable development." *Exploring* (2018): 11, 20 <https://www.2030spotlight.org/sites/default/files/spot2018/chaps/Spotlight_Innenteil_2018_redefining_policies_martens.pdf> accessed 13 July 2022.

⁵³ Szetey, K., Moallemi, E.A., Ashton, E., Butcher, M., Sprunt, B. and Bryan, B.A., 'Co-Creating Local Socioeconomic Pathways for Achieving the Sustainable Development Goals' (2021) 16 *Sustainability Science* 1251, 1251 <<https://doi.org/10.1007/s11625-021-00921-2>> accessed 13 July 2022.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

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fostering this cooperation in governance issues.⁵⁶ Notably, the 2010 Constitution of Kenya provides that 'all State organs, State officials, public offices, and all individuals are bound by the national values and principles of governance whenever any of them: apply or interpret this Constitution; enact, apply, or interpret any legislation; or make or implement public policy choices'.⁵⁷ Good governance, integrity, transparency, accountability, sharing and devolution of power, the rule of law, democracy, and public participation are among the national values and guiding principles of governance. Other national values and guiding principles include good governance, integrity, transparency, and accountability, patriotism, national unity, as well as sustainable development.⁵⁸ "Social Development is based on positive, humane, people oriented development in society....The basic principles... are human dignity, equality, social justice, and equitable distribution of resources.... People's participation and empowerment are necessary conditions...."⁵⁹

These principles are especially relevant in light of the spirit of devolution, where the Constitution states that 'the objects of the devolution of government are, among other things – to promote democratic and accountable exercise of power; to give powers of self-governance to the people and enhance their involvement in the exercise of State authority and in making decisions that affect them; to acknowledge the right of communities to manage their own affairs and to further their development; to protect and promote the interests and rights of minorities and marginalised communities'.⁶⁰

There is a need for efforts geared towards achievement of the principle of sustainable development to be molded around the foregoing national values

⁵⁶ See Szetey, K., Moallemi, E.A., Ashton, E., Butcher, M., Sprunt, B. and Bryan, B.A., 'Co-Creating Local Socioeconomic Pathways for Achieving the Sustainable Development Goals' (2021) 16 *Sustainability Science* 1251 <<https://doi.org/10.1007/s11625-021-00921-2>> accessed 13 July 2022.

⁵⁷ Article 10 (1), Constitution of Kenya 2010.

⁵⁸ *Ibid*, Article 10 (2).

⁵⁹ Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996), 79.

⁶⁰ Article 174, Constitution of Kenya 2010.

and principles of governance to ensure that there is an inclusive approach to governance matters in the country, for the benefit of all.

6.7. Realising Environmental, Social and Governance Tenets for Sustainable Development: Moving Forward

Integrated decision-making, or the process of incorporating environmental, social, and economic goals and factors into choices, is the key action principle of sustainable development.⁶¹ It has rightly been pointed out that despite the fact that all countries, regardless of their economic, social, or environmental contexts, can benefit from the Sustainable Development Goals (SDGs) framework, norms, and principles, translating global objectives into specific national contexts is difficult because of varying starting points, capacities, and priorities, among other factors.⁶² Global goals will be transformed into targets and indicators that take into account the specific national settings of each country in order to be relevant to all nations (and to foster national ownership). Keeping broad global aims and very different national settings coherent will be a problem.⁶³

Economic, social and governance aspects of sustainable development must take into account the environmental aspect of sustainable development. This is because environmental protection is essential to promoting sustainable economic growth because the natural environment supports economic activity both directly and indirectly through ecosystem services like carbon sequestration, water purification, managing flood risks, and nutrient cycling. Directly, the natural environment provides resources and raw materials such

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

⁶² Urama, Kevin, Nicholas Ozor, and Ernest Acheampong, "Achieving Sustainable Development Goals (SDGs) Through Transformative Governance Practices and Vertical Alignment at the National and Subnational Levels in Africa," *SDplanNet Africa Regional Workshop*, March 3-5, 2014, 2
< https://www.iisd.org/system/files/publications/sdplannet_africa.pdf > Accessed on 25 June 2022.

⁶³ *Ibid*, 2.

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as water, timber, and minerals that are required as inputs for the production of goods and services.⁶⁴

In the institutional arrangements of governments and parliaments, scholars have argued that it is crucial to reflect the encompassing nature of the 2030 Agenda and the SDGs. If competent national equivalents do not reflect and "own" the new, more cogent global government, the effort will be in vain.⁶⁵ To make the UN system "fit for purpose" on a global scale, it is necessary to reform already-existing institutions and establish new bodies in regions where there are governance gaps. This can only be done by making a commitment to address the unequal distribution of resources as well as access to participation and decision-making.⁶⁶ This is especially important considering that the SDG index, which displays each country's compliance with the SDGs and breaks down each score by SDG, reflects the fact that governments have varying degrees of commitment to the SDGs.⁶⁷

The 2030 Agenda presents a challenge to UN Environment to create and improve integrated approaches to sustainable development, methods that will show how enhancing environmental health would have positive social and economic effects. UN Environment's initiatives support the environmental component of sustainable development and promote socio-economic

⁶⁴ 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 13 July 2022.

⁶⁵ Martens, J., "Redefining policies for sustainable development." *Exploring* (2018): 11, 20 <https://www.2030spotlight.org/sites/default/files/spot2018/chaps/Spotlight_Innenteil_2018_redefining_policies_martens.pdf> accessed 13 July 2022.

⁶⁶ *Ibid.*

⁶⁷ Del-Aguila-Arcentales, S., Alvarez-Risco, A., Jaramillo-Arévalo, M., De-la-Cruz-Diaz, M. and Anderson-Seminario, M.D.L.M., 'Influence of Social, Environmental and Economic Sustainable Development Goals (SDGs) over Continuation of Entrepreneurship and Competitiveness' (2022) 8 *Journal of Open Innovation: Technology, Market, and Complexity* 73, 1 <<https://www.mdpi.com/2199-8531/8/2/73>> accessed 13 July 2022.

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development by aiming to lower environmental hazards and boost society's and the environment's overall resilience.⁶⁸

The Sustainable Development Goals (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.⁶⁹ 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.⁷⁰ Local communities need to concentrate on a locally relevant subset of goals and comprehend potential future pathways for key drivers which influence local sustainability because the Sustainable Development Goals (SDGs) recognise the importance of action across all scales to achieve a sustainable future.⁷¹ There is need for continuous creation of public awareness, civic education and creating avenues for public participation among the communities because to guide long-term local planning and decision-making to achieve the SDGs, local communities also need to understand the range of potential future pathways for their region and how they align with local sustainability objectives.⁷²

It has rightly been pointed out that 'since the world's poor understand scarcity and live "closer to nature," they have a better understanding of the finite nature of natural resources than the world's powerful and affluent elite, and they have a much greater immediate and vested interest in promoting change in the way that the world does business. As a result, they have a better understanding of

⁶⁸ Environment UN, 'Sustainable Development Goals' (UNEP - UN Environment Programme, 19 October 2017) <<http://www.unep.org/evaluation-office/our-evaluation-approach/sustainable-development-goals>> accessed 17 July 2022.

⁶⁹ 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>.

⁷⁰ *Ibid.*

⁷¹ Szetey, K., Moallemi, E.A., Ashton, E., Butcher, M., Sprunt, B. and Bryan, B.A., 'Co-Creating Local Socioeconomic Pathways for Achieving the Sustainable Development Goals' (2021) *16 Sustainability Science* 1251, 1251 <<https://doi.org/10.1007/s11625-021-00921-2>> accessed 13 July 2022.

⁷² *Ibid.*, 1251.

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the need to focus social development strategies on empowering the poor. They must thus be given the authority and influence to actively shape economic policy rather than just responding to circumstances outside their control'.⁷³

This calls for adoption of participatory and inclusive governance approaches that give all members of society and/or their representatives to air their views and actively participate in governance matters, in a meaningful way that impacts their lives positively. It has also been pointed out that while environmental law is essential to attaining sustainability, we also need to acknowledge that there is a need for a wide range of other pertinent laws, such as those governing land use and property, taxes, our governmental system, and other issues.⁷⁴ This is important in ensuring that sustainability is achieved in environmental, economic, social and governance aspects of development.

Corporations, through following ESG frameworks or guidelines, such as the *Nairobi Securities Exchange ESG – Disclosures Guidance Manual, 2021*, 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.⁷⁵ 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

⁷³ Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996), 84.

⁷⁴ Dernbach, J.C. and Mintz, J.A., "Environmental laws and sustainability: An introduction," *Sustainability* 3, no. 3 (2011): 531-540, 532.

⁷⁵ *Nairobi Securities Exchange ESG – Disclosures Guidance Manual, November 2021* <<https://sseinitiative.org/wp-content/uploads/2021/12/NSE-ESG-Disclosures-Guidance.pdf>> accessed 17 July 2022.

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enforcing such principles as “the polluter pays principle”, among others. This is especially important as it has been pointed out that ‘previous 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.⁷⁶ 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.⁷⁷

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).⁷⁸

6.8. Conclusion

Citizens' fundamental rights are viewed as the cornerstone for managing and resolving disputes, promoting economic development, and preserving human dignity in nations with democratic freedoms where people can live up to their full potential.⁷⁹ Additionally, it has been suggested that democratic nations

⁷⁶ Roy, P.P., Rao, S., Marshall, A.P. and Thapa, C., ‘Mandatory Corporate Social Responsibility and Foreign Institutional Investor Preferences’ (2020).

⁷⁷ 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 17 July 2022.

⁷⁸ Clune WH and Zehnder AJB, ‘The Three Pillars of Sustainability Framework: Approaches for Laws and Governance’ (2018) 9 *Journal of Environmental Protection* 211.

⁷⁹ ‘Democracy, Human Rights and Governance | U.S. Agency for International Development’ (26 March 2022) <<https://www.usaid.gov/democracy>> accessed 21 May 2022.

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that uphold citizens' rights and uphold the rule of law both at home and abroad are safer places to live, work, and conduct business.⁸⁰

According to stakeholders, the primary pillars of economic transformation and inclusive growth are: inclusive growth that reduces inequality; sustainable agriculture, food self-sufficiency and nutrition; diversification, industrialization and value addition; developing the service sector; and infrastructure development.⁸¹ These focus on the economic growth as well as social aspects of development. The main goal of Social Sustainability and Inclusion's work is to support people in overcoming barriers that prevent them from fully participating in society, regardless of their gender, race, religion, ethnicity, age, sexual orientation, or disability, by collaborating with governments, communities, civil society, the private sector, and other stakeholders to create more inclusive societies, empower citizens, and foster more sustainable communities.⁸²

It has rightly been pointed out that 'every objective and target in the SDG framework is implied to depend on and impact one another, although the precise nature of these connections is yet unknown at this time. Due to the goals' and targets' integrated structure, advancements made toward one objective or another are connected to other goals and targets via causal chains and feedback loops. For these reasons, an integrated and systems-based approach to the SDGs is required to guarantee that these feedbacks are understood and handled. Countries will be better positioned to realise the transformational potential of the 2030 Agenda if mutually reinforcing

⁸⁰ 'The Role of Human Rights, Democracy, and Good Governance in Promoting Sustainable Development' (GSDRC) <<https://gsdrc.org/document-library/the-role-of-human-rights-democracy-and-good-governance-in-promoting-sustainable-development/>> accessed 21 May 2022.

⁸¹ Urama, Kevin, Nicholas Ozor, and Ernest Acheampong, "Achieving Sustainable Development Goals (SDGs) Through Transformative Governance Practices and Vertical Alignment at the National and Subnational Levels in Africa," *SDplanNet Africa Regional Workshop*, March 3–5, 2014, 3 <https://www.iisd.org/system/files/publications/sdplannet_africa.pdf> Accessed on 25 June 2022.

⁸² 'Social Sustainability and Inclusion: Overview' (World Bank) <<https://www.worldbank.org/en/topic/socialsustainability/overview>> accessed 14 July 2022.

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activities are implemented and target trade-offs are minimised'.⁸³ As already pointed out, achieving sustainable development agenda requires an integrated approach that looks at the economic welfare of the people and the nation at large, while adopting a socially inclusive approach in all governance matters. Economically and socially empowered people are more likely to participate in governance matters objectively, without being distracted by poverty and other social ills, in order to also on the intergenerational aspect of sustainable development agenda for the sake of future generations. Thus, it is necessary at the local level, to support the economic and social self-determination of oppressed individuals and groups by enlisting the help of community leaders and the general public in creating locally tailored institutional responses to issues (such as fostering environmentally friendly industries as a means of combating unemployment) and encouraging communication between local interest groups regarding issues of sustainable development, and at the national level, for the government to offer all necessary support in promoting sustainability.⁸⁴ 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.⁸⁵

What can be deduced from the foregoing discussion is that it is not enough to achieve sustainable development, as conceptualized by the ruling class and those in positions of decision-making; communities must actively be involved in decision-making to come up with strategies and approaches that take into account the unique economic, social and governance needs of particular group or class of people. The fundamental principles and values have already been captured under Article 10 of the 2010 Constitution of Kenya and if fully adopted and implemented within the development agenda, they can go a long way in ensuring that Kenya achieves satisfactory results as far as

⁸³ Cameron, A., Metternicht, G. and Wiedmann, T., "Initial progress in implementing the Sustainable Development Goals (SDGs): a review of evidence from countries." *Sustainability Science* 13, no. 5 (2018): 1453-1467, 1453.

⁸⁴ Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996), 85.

⁸⁵ *Ibid*, 89.

Chapter Six: The Place of Conflict Management in Sustainable Development Agenda

implementation and localization of the 2030 Agenda for Sustainable Development, and the SDGs are concerned. This is the only way that sustainability can be truly achieved and appreciated by all the people affected, while leaving a positive mark on their lives and the country in general. Realising Environmental, Social and Governance (ESG) tenets of Sustainable Development is an imperative whose time is ripe.

CHAPTER SEVEN

Environmental Conflicts Management: A Kenyan Perspective

7.1. Introduction

Three development pillars, including the economic, social, and political pillars, serve as the foundation for Kenya's Vision 2030.¹ As it has been noted, "Kenya's road towards universal prosperity also requires the establishment of a just and cohesive society that experiences equitable social development in a clean and safe environment," the Social Pillar of the Vision 2030 aspires to invest in the people.² It is noteworthy that the Political pillar of Vision 2030 also aims to create "a democratic political system that is issue-based, people-centered, 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".³

It's important to note that the aforementioned motivations are closely related to peacebuilding initiatives, which are also supported by the United Nations 2030 Agenda for Sustainable Development (SDGs), which states in its Preamble that "the State Parties were "determined to foster peaceful, just and inclusive societies that are free from fear and violence" because "there can be no sustainable development without peace and no peace without sustainable development."⁴ The SDGs also state that "the new Agenda recognises 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

¹ 'About Vision 2030 | Kenya Vision 2030' <<http://vision2030.go.ke/about-vision-2030/>> accessed 1 May 2022.

² 'Social Pillar | Kenya Vision 2030' <<http://vision2030.go.ke/social-pillar/>> accessed 1 May 2022.

³ 'Foundation for The Pillars | Kenya Vision 2030' <<https://vision2030.go.ke/enablers-and-macros/>> accessed 1 May 2022.

⁴ *Ibid*, Preamble.

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development), on effective rule of law and good governance at all levels, and on transparent, effective, and accountable institutions."⁵ According to the aforementioned, SDG 16 is the substantive objective devoted to peace and it states that States shall "promote peaceful and inclusive societies for sustainable development, offer access to justice for all, and build effective, accountable, and inclusive institutions at all levels."⁶

While Kenya's attempts to implement the Sustainable Development Agenda are impressive in terms of economic growth and even certain social goals,⁷ 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'.⁸ The high levels of violence in Kenya have been attributed to a range of factors including: ethnic intolerance; border conflicts; political party zoning; competition over land and other resources; proliferation of small arms; weak security; and poverty, underdevelopment, and marginalisation.⁹

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

⁵ *Ibid*, para. 35.

⁶ *Ibid*, SDG 16.

⁷ '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 2022; '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 2022; 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 2022.

⁸ 'Conflict Analysis of Kenya' (GSDRC) <<https://gsdrc.org/publications/conflict-analysis-of-kenya/>> accessed 1 May 2022.

⁹ *Ibid*.

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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.¹⁰

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.¹¹ Though 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

¹⁰ 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 2022.

¹¹ AJ Olaosebikan, 'Conflicts in Africa: Meaning, Causes, Impact and Solution' (2010) 4 *African Research Review* 549, 550-551.

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two or more nations involving forces of more than one state¹², 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,¹³ with a few international ones.¹⁴ The conflicts exacerbating situation has also been attributed to 'weak or non-existent structures and institutions for conflict prevention and response'.¹⁵ This has often dragged the country in achieving its development goals and sustainability in all spheres of life.

Kenya has documented instances of violence ranging from high levels of sexual and gender-based violence and intercommunal violence to low levels of chronic violence, cycles of violence tied to elections, and an increase in terrorist attacks.¹⁶ Numerous causes contribute to the high levels of violence, such as: i) racial intolerance; ii) boundary disputes; iii) political party zoning; iv) rivalry over land and other resources; v) the proliferation of small guns; vi) lax security; and vii) poverty, underdevelopment, and marginalisation.¹⁷

¹² *Ibid*, 551.

¹³ 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.

¹⁴ '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 2022; 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 2022; '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 2022;

¹⁵ Lillian Mworira and J Ndiku, 'Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies', 163.

¹⁶ Rohwerder, Brigitte. "Conflict analysis of Kenya." *Birmingham, UK: GSDRC, University of Birmingham* (2015), p.2. Available at <http://www.gsdrc.org/wp-content/uploads/2015/12/KenyaConflictAnalysis.pdf> [Accessed on 13 February 2022].

¹⁷ *Ibid*, p.2.

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Although there have long been issues with land conflict in Africa, there have been heated discussions about how to resolve them. The majority of these discussions have focused on reforms that put the needs of the people first and market-based land regimes.¹⁸ During the 1990s and the beginning of the 2000s, Kenya's conflict transformation process was largely influenced by the relationship between political, security, economic, social, legal, and environmental variables in conflict.¹⁹

Considering the central role that land plays in community livelihoods, any decisions affecting the same is a potential trigger of resource and environmental conflicts. Kenya is no exception to these circumstances as some of the worst conflicts in the country have been as a result of land issues, as pointed out elsewhere in this book. Africa's core industries are agriculture and urbanisation, and for nations that rely so largely on agriculture, the effects of climate change are slowly making these issues worse, particularly in terms of land arability, erosion, sterility, and water shortage.²⁰ When it comes to humanitarian issues on a global scale, climate change makes matters worse by increasing the number of environmental refugees, which makes things more fragile and eventually invites assaults against state sovereignty.²¹

Kenya has made great progress in its pursuit of addressing environmental issues and conflict resolution. Many authors have weighed in on the arguments surrounding the emerging international jurisprudence and the changing domestic legislation. In Kenya, environmental narratives regarding land conflicts may be found in the literature on conservation, and they serve as a major justification for conflicts over land. Environmental justifications for land disputes are based on the escalating fights for food and water security as

¹⁸ Onguny, P. and Gillies, T., "Land Conflict in Kenya: A Comprehensive Overview of Literature." *Les Cahiers d'Afrique de l'Est/The East African Review* 53 (2019), p.53.

¹⁹ Republic of Kenya, "National Conflict Mapping and Analysis: *Peace and Conflict Trends in Kenya*," Simplified Version 2011, p.6. Available at file:///C:/Users/user/Downloads/Conflict_Mapping_Simplified_Version.pdf [Accessed on 13 February 2022].

²⁰ Onguny, P. and Gillies, T., "Land Conflict in Kenya: A Comprehensive Overview of Literature." *Les Cahiers d'Afrique de l'Est/The East African Review* 53 (2019), p.55.

²¹ *Ibid*, p.55.

a result of climatically unpredictable weather.²² This chapter highlights some perspectives relating to environmental conflicts management in Kenya ranging from emergence and management of environmental conflicts, access to justice using ADR mechanisms.

7.2. Emergence and Management of Conflicts in Kenya

The Constitution of Kenya outlines the State's responsibility to protect the environment, and it calls for citizen engagement and the use of natural resources for the good of all Kenyans. It enables the Environmental and Land Court to hear and decide on claims for redress of denial, violation, or infringement of rights and basic freedoms linked to a clean and healthy environment.²³

Frameworks for thorough impact assessments and environmental restoration are provided under the Environmental Management and Coordination Act. Conflicts over the ownership, usage, and extraction of natural resources, whether they be land, water, or non-renewable resources like hydrocarbons and minerals, can, nonetheless, have a negative impact on peace and security.²⁴ Resource conflicts can propagate potentially harmful elements affecting community stability even if there is no open, violent confrontation.²⁵

Conflicts over land are growing more common in Sub-Saharan Africa, a region where access to land has historically been seen as being quite egalitarian. Localized land disputes have the potential to escalate into widespread social unrest and political movements.²⁶

²² Onguny, P. and Gillies, T., "Land Conflict in Kenya: A Comprehensive Overview of Literature." *Les Cahiers d'Afrique de l'Est/The East African Review* 53 (2019), p.60.

²³ Nolasco, Lazarus Kubasu, "The management of conflicts in Kenya" (2017), p. 18. Available at

https://www.rosalux.de/fileadmin/images/Dossiers/Positiver-Frieden/Conflicts_and_Their_Management_in_Kenya.pdf [accessed 14 April 2022].

²⁴ Ibid, p.18.

²⁵ Ibid, p.18.

²⁶ Moyo, S., *The land question in Africa: research perspectives and questions*. Codesria, 2003. <<https://sarpn.org/documents/d0000692/P763-Moyo.pdf>> [accessed 14 April 2022].

The States employs both formal and informal mechanisms in addressing the environmental conflicts in the country.

7.3. Peacebuilding and Conflict Management in Kenya: Towards Effective Peacebuilding and Environmental Conflict Management

7.3.1 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.²⁷ It has been observed that ‘the politicized nature of ethnicity in Kenya, and the fact that both elections 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.²⁸ 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.²⁹

Poverty is a major contributing factor to insecurity and instability especially in the rural areas where communities mainly rely on scarce land based natural

²⁷ Friedrich Elbert Stiftung, ‘Regional Disparities and Marginalisation in Kenya’ [2012] Nairobi: Elite PrePress; Emma Elfverson, ‘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 14 April 2022.

²⁸ Emma Elfverson, ‘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 14 April 2022; 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’.

²⁹ Lillian Mworira and J Ndiku, ‘Inter Ethnic Conflict in Kenya: A Case of Tharaka-Tigania Conflict, Causes, Effects and Intervention Strategies’, 163.

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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.³⁰

Social stratification in any society may lead to bottled up anger and bitterness which is a recipe for violent and non-violent conflicts.³¹ Despite the constitutional guarantee on freedom from non-discrimination³², protection of the minority and marginalised groups including women through affirmative action,³³ it is a documented fact that inequalities are manifest in Kenya's

³⁰ Meine van Noordwijk, *Integrated Natural Resource Management as Pathway to Poverty Reduction: Innovating Practices, Institutions and Policies* (2019) 172 *Agricultural Systems* 60, 61.

³¹ 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.

³² Article 27, *Constitution of Kenya 2010*.

³³ 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.

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 –

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economic, social and political arenas.³⁴ 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.’³⁵ 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.³⁶

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 development; facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya, Nairobi; and enhance checks

-
- (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.

³⁴ Jeremiah Owiti, ‘Political Drivers of Inequality in Kenya’ (2014) 57 *Development* 547, 548.

³⁵ 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.

³⁶ *Ibid*, 3.

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and balances and the separation of powers.³⁷ While devolution has achieved commendable steps towards attaining equality and equity within the rural Kenya³⁸, the poverty levels and social, political and economic inequalities in the country are still high.³⁹ 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.⁴⁰

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.⁴¹ 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, 2012*⁴² should also be strictly enforced to ensure that there is real development at the grassroots

³⁷ 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.

³⁸ 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 2022.

³⁹ 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.

⁴⁰ 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.

⁴¹ Article 10, *Constitution of Kenya 2010*.

⁴² *Leadership and Integrity Act, No 19 of 2012, Laws of Kenya*.

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in efforts to eradicate abject poverty. This will also potentially address the concerns on ethnic, nepotism and favouritism during employment of devolved governments' staff.⁴³

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.⁴⁴ 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'.⁴⁵ 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.

⁴³ 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' (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 14 April 2022; Njagiri 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).

⁴⁴ 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 2022.

⁴⁵ 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).

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.⁴⁶ 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, 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.⁴⁷

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.

7.3.2 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.⁴⁸ It is important for State

⁴⁶ Kangethe, Mary Wanjiru. "The peace education programme in Kenya." *The Global Campaign for Peace Education* 121 (2015).

⁴⁷ *Ibid.*

⁴⁸ 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)*

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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’.⁴⁹ However, elders can and have indeed been used to mobilize communities along ethnic lines and this can be a threat to sustainable peace.⁵⁰ 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.⁵¹ The disproportional burden borne by women is often attributed to the inequalities that exist between men and women in social, economic and political spheres.⁵² 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.⁵³ Arguably, these factors predispose women to greater losses and suffering during conflicts. They also make them vulnerable to recruitment

<<https://www.2030spotlight.org/en/book/1730/chapter/5-quest-sustainable-peace-and-development-under-militarized-security-approaches>> accessed 9 May 2022.

⁴⁹ Huma Haider, *Conflict analysis of North Eastern Kenya. K4D Emerging Issues Report*36. Brighton, UK: Institute of Development Studies, 16.

⁵⁰ *Ibid*, 16.

⁵¹ ‘Gender in Fragile and Conflict-Affected Environments’ (GSDRC) <<https://gsdrc.org/topic-guides/gender/gender-in-fragile-and-conflict-affected-environments/>> accessed 8 May 2022.

⁵² 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 2022.

⁵³ *Ibid*.

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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.⁵⁴ 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.⁵⁵

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.⁵⁶ Despite this, statistics from many countries around the globe show that the number of women in decision-making positions remains relatively small.⁵⁷ 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.⁵⁸ Ironically, this persists despite the fact 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.⁵⁹

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Clare Castillejo, 'Building a State That Works for Women: Integrating Gender into 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 14 April 2022.

⁵⁷ '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 2022; '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 14 April 2022.

⁵⁸ 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.

⁵⁹ *Ibid.*, 3.

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The United Nations Security Council *Resolution 1325* (2000)⁶⁰ 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.⁶¹ Kenya's *National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions*⁶² (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.⁶³ 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.⁶⁴ 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.⁶⁵ 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

⁶⁰ UN Security Council, *Security Council resolution 1325 (2000) [on women and peace and security]*, 31 October 2000, S/RES/1325 (2000).

⁶¹ *Ibid*, Preamble.

⁶² 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 14 April 2022.

⁶³ *Ibid*, 11–12.

⁶⁴ *Ibid*, 12.

⁶⁵ *Ibid*, 13.

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policies, among others.⁶⁶ 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 around peace and security issues*, designed around four pillars: Participation and Promotion, Prevention, Protection, and Relief and Recovery (Emphasis added).⁶⁷

The second *Kenya National Action Plan for the Advancement of United Nations Security Council Resolution 1325 on Women, Peace and Security 2020–2024*⁶⁸ 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.⁶⁹ 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.⁷⁰

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

⁶⁶ *Ibid*, 14.

⁶⁷ *Ibid*.

⁶⁸ 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 14 April 2022.

⁶⁹ *Ibid*, 14.

⁷⁰ 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.

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women's inclusion helps prevent conflict, create peace, and sustain security after war ends.⁷¹ Women's empowerment and gender equality are also associated with peace and stability in society.⁷² 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 bridge divides and mobilize coalitions; Women raise issues that are vital for peace; and women prioritize gender equality.⁷³

It is, therefore, important to ensure that women are empowered and included in peacebuilding and conflict management in Kenya⁷⁴, as a step towards building peaceful, cohesive and inclusive societies as part of the bigger sustainable development agenda.⁷⁵

The civil society organizations as well as the private sector, both 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',

⁷¹ 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 14 April 2022.

⁷² *Ibid*, 4.

⁷³ *Ibid*, 7-9.

⁷⁴ '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 2022.

⁷⁵ 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 14 April 2022; 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*.

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'.⁷⁶ 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'.⁷⁷

7.3.3 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

⁷⁶ 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'ii<<https://www.oefresearch.org/sites/default/files/documents/publications/kenyaprivatesectorreport-digital.pdf>> accessed 3 May 2022.

⁷⁷ *Ibid*, 26.

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laws and policies for sustainable development.⁷⁸ 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’.⁷⁹

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’⁸⁰, 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, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3)’.⁸¹

The drafters of the *National Land Policy 2009*⁸² 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

⁷⁸ Martin, ‘Peace, Justice and Strong Institutions’ (*United Nations Sustainable Development*) <<https://www.un.org/sustainabledevelopment/peace-justice/>> accessed 14 April 2022.

⁷⁹ ‘Sustainable Development Goals | United Nations Development Programme’ <<https://www.undp.org/sustainable-development-goals#peace-justice-and-strong-institutions>> accessed 8 May 2022.

⁸⁰ See Articles 60(1)(g) & 67(2)(f), *Constitution of Kenya 2010*.

⁸¹ 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 2022; *Mediation Bill, 2020, Kenya Gazette Supplement No. 92 (National Assembly Bills No. 17)*.

⁸² *Republic of Kenya, Sessional Paper No. 3 of 2009 on National Land Policy, August, 2009 (Government Printer, Nairobi, 2009), para. 3.6.2.*

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Commission⁸³ and the Environment and Land Court⁸⁴ 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.⁸⁵

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 mechanisms⁸⁶, Kenya's Judiciary has been making strides towards promoting and encouraging their use in the country, while working closely with other stakeholders in the sector.⁸⁷ This is because, more

⁸³ 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.

⁸⁴ 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.

⁸⁵ Unruh, Jon. "Land rights and peacebuilding: challenges and responses for the international community." *International Journal of Peace Studies* (2010): 89-125, 89.

⁸⁶ Tanja Chopra, 'Reconciling Society and the Judiciary in Northern Kenya' [2008] Justice for the Poor and Legal Resources Foundation Trust Research Report.

⁸⁷ '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 2022; 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 2022; 'Inside the Judiciary Magazine,

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often than not, the court process fails to address the underlying real issues that brought the conflict in the first place.⁸⁸ 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.⁸⁹ 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.⁹⁰ 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."...

Edition No. 15 – *The Judiciary of Kenya* <<https://www.judiciary.go.ke/download/inside-the-judiciary-magazine-edition-no-15/>> accessed 8 May 2022; *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 2022; *Judiciary Strategic Plan 2019 -2023 – The Judiciary of Kenya* <<https://www.judiciary.go.ke/download/judiciary-strategic-plan-2019-2023/>> accessed 8 May 2022; 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 2022; *Mediation Bill, 2020, Kenya Gazette Supplement No. 92 (National Assembly Bills No. 17)*.

⁸⁸ 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/716920ESWOP1110ry0in0Northern0Kenya.pdf>> accessed 8 May 2022.

⁸⁹ *Ibid*, 21.

⁹⁰ *Ibid*, 21.

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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 achieving SDG 16.⁹¹ 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.'⁹² 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'.⁹³

The importance of these mechanisms is also acknowledged in Kenya's *National Policy on Peace-building and Conflict Management, 2011*⁹⁴ which calls for capacity building through, *inter alia*, training various stakeholders in relevant areas such as alternative conflict resolution mechanisms.⁹⁵

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.⁹⁶ 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.⁹⁷ In addition,

⁹¹ 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 2022.

⁹² Nairobi Centre for International Arbitration, *Alternative Dispute Resolution Policy, Draft October 2019*, 4.

⁹³ *Ibid*, 8.

⁹⁴ Republic of Kenya, Kenya: *National Policy on Peace-building and Conflict Management, 2011*, 11 December 2011 < <https://www.refworld.org/pd/fid/5a7ad25f4.pdf> > accessed 8 May 2022.

⁹⁵ *Ibid*, see Chapter Five.

⁹⁶ Daniel Bar-Tal, 'Reconciliation as a Foundation of Culture of Peace', *Handbook on building cultures of peace* (Springer 2009), 363.

⁹⁷ *Ibid*, 365.

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reconciliation is associated with socio-psychological processes consisting of changes of motivations, goals, beliefs, attitudes and emotions by the majority of society members.⁹⁸ 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 aggravate competition for scarce natural resources thereby contributing to instability.⁹⁹ 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.¹⁰⁰

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.¹⁰¹ Based on the foregoing, it is thus important for the State to continually promote and strengthen the use of local

⁹⁸ *Ibid*, 365.

⁹⁹ 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 2022; Jonathan Goodhand, 'Violent Conflict, Poverty and Chronic Poverty' [2001] *Chronic Poverty Research Centre Working Paper*.

¹⁰⁰ Meine van Noordwijk, 'Integrated Natural Resource Management as Pathway to Poverty Reduction: Innovating Practices, Institutions and Policies' (2019) 172 *Agricultural Systems* 60.

¹⁰¹ Huma Haider, *Conflict analysis of North Eastern Kenya. K4D Emerging Issues Report* 36. Brighton, UK: Institute of Development Studies <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15570/EIR%2036_Conflict_analysis_of_Northern_Kenya.pdf?sequence=1&isAllowed=y> accessed 8 May 2022.

leadership and community peace groups in efforts to reach sustainable peace solutions in Kenya.¹⁰²

7.4. 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 chapter 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 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, especially in relation to environmental conflicts, is a necessary step in the quest for Sustainable Development.

¹⁰² 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.

CHAPTER EIGHT

Role of State Agencies and Communities in Achieving Effective Environmental Conflicts Management

8.1 Introduction

Almost every community in the world occasionally has conflicts over ecological concerns, including, but not limited to, land use, environmental quality, water allocation, waste disposal, and natural resource management. Environmental variables are important in many conflicts, either as direct causes of conflict or as its main drivers. There are many different types of environmental conflicts, ranging from value-based disputes over divergent notions of location, space, and our relationship with the natural world to interest-based rivalry over limited or valuable natural resources. Conflicts involving the environmental drivers of identity, security, and health can also be based on needs.¹

Notably, the management of natural resources in Africa using community-based methods has gained popularity over time.² It has been argued that the two main ways for improving people's lives in order to create peace, stability, human security, and development are good governance and conflict management.³ In addition, the majority of conflicts arise as a result of the state's failure to address critical issues such as human rights, the rule of law, better economic opportunities, particularly for youths, health, educational, housing, and transportation facilities for the general public, and, most importantly, a functioning justice system. These challenges, it has been suggested, can be addressed if the government focuses on good administration

¹ Fisher, J., "Managing environmental conflict." *The handbook of conflict resolution: theory and practice* (2014): 3, p.1.

² See Haro, G.O., Doyo, G.J. and McPeak, J.G., "Linkages between community, environmental, and conflict management: Experiences from Northern Kenya." *World development* 33, no. 2 (2005): 285-299.

³ Ahmar, Moonis. "Conflict Management and Good Governance in Pakistan: Lessons from Germany." *Journal of Political Studies, Special Conference Issue*, 2019, 211:221, at 211.

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and improving people's quality of life.⁴ States automatically become one of the key players in any conflict transformation process when they reframe conflict in terms of concerns relating to human rights since they have a responsibility to respect, safeguard, and uphold human rights.⁵

The need for concerted efforts in addressing environmental conflicts is justified by the observation that while the nation-states are the main players in global politics, they are not the only ones; the international system also includes international institutions, business entities, and non-state actors.⁶ Indigenous peoples see the deprivation of their basic human and indigenous rights as a threat to their very existence. This results in conflict between the state and its indigenous peoples and, if handled incorrectly, can result in bloodshed. Since disputes between indigenous peoples and the state are fundamentally about rights, it makes sense to think about using a human rights-based strategy to resolve disputes in these situations.⁷ This chapter discusses the place of State agencies in managing internal conflicts, non-state actors as well as the role of communities in achieving lasting peace.

8.2. Role of State Institutions in Environmental Conflict Management

Article 69(1) of the Constitution of Kenya outlines the obligations of State in respect of the environment as follows: The State should: ensure sustainable exploitation, utilisation, management and conservation of the environment

⁴ *Ibid*, at 211.

⁵ Lefevre N, 'The Human Rights-Based Approach to Conflict Transformation in Indigenous

Contexts' <https://www.academia.edu/9964347/The_Human_Rights_Based_Approach_to_Conflict_Transformation_in_Indigenous_Contexts> accessed 21 August 2022, p.3.

⁶ Ataman, M., "The impact of non-State actors on world politics: a challenge to Nation-States." *Alternatives: Turkish Journal of International Relations* 2, no. 1 (2003), p. 42.

⁷ Broberg M and Sano H-O, 'Strengths and Weaknesses in a Human Rights-Based Approach to International Development – an Analysis of a Rights-Based Approach to Development Assistance Based on Practical Experiences' (2018) 22 *The International Journal of Human Rights* 664; Davis, M., "Indigenous struggles in standard-setting: The United Nations Declaration on the Rights of Indigenous Peoples." *Melbourne Journal of International Law* 9, no. 2 (2008): 439-471.

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and natural resources, and ensure the equitable sharing of the accruing benefits; work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya; protect and enhance the intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities; encourage public participation in the management, protection and conservation of the environment; protect genetic resources and biological diversity; establish systems of environmental impact assessment, environmental audit and monitoring of the environment; eliminate processes and activities that are likely to endanger the environment, and utilise the environment and natural resources for the benefit of the people of Kenya. Besides, every person is obligated cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.⁸

In addition to helping to modify institutional norms, the law can also help to influence attitudes and behaviour.⁹ Due to its distinguishing characteristics, the rule of law offers a practical framework for the peaceful resolution of conflicts. These characteristics include: establishing the societal norms and thereby ensuring dependability, justice, and stability; institutions capable of resolving conflicts; laws and mechanisms protecting citizens' rights.¹⁰

It goes without a saying that the State obligations relating to environmental conservation and promoting sustainable development are part of the process of addressing environmental conflicts as well as preventing their emergence. Notably, depending on the nature of the conflict, the state, including state institutions and officials, plays a strategic role in the management of domestic conflict, either as a mediator and peacekeeper or as a participant.¹¹ It has

⁸ Article 69(2), Constitution of Kenya, 2010.

⁹ Muigua, K., *Securing Our Destiny Through Effective Management of the Environment*, *Journal of Conflict Management and Sustainable Development*, Volume 4, No 3, (May, 2020).

¹⁰ Peace Building Initiative, "Introduction: Justice, Rule of Law & Peacebuilding Processes, 2009" <<http://www.peacebuildinginitiative.org/indexe33f.html?pageId=1844>> accessed 21 August 2022.

¹¹ Abdulrahman, Imran, and Usman A. Tar, "Conflict management and peacebuilding in Africa: the role of state and non-state agencies," *Information, society and justice journal* 1, no. 2 (2008): 185-202, at 190.

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additionally been contended that while by and large, many (maybe most) country states emerged by success (e.g., by triumph of the most impressive primitive lord over more vulnerable adjoining medieval masters), and accordingly were brought into the world as struggle members instead of as referees, on account of Africa, imperialism assumed a significant part in using together people groups from a welter of nationalities, commonwealths, societies and areas under a solitary country state where it likewise granted struggle between people groups of various foundation, especially concerning influence and asset.¹²

Regardless of the course of state arrangement, it is the obligation of the state to guarantee the upkeep of peace and lawfulness in the public eye where in dealing with the variety of human necessities and setting up system for overseeing questions, the state capacities as a referee. Beside administration structures, the state likewise plans strategies and projects pointed toward working with serene conjunction among its assorted residents. Experiencing the same thing of savage struggle, the state liability goes past only the stoppage of viciousness, to executing drives focused on the goal of the contention issue(s) among the disputants.¹³

8.3. Role of Communities in Conflict Management

In some African nations, violent inter - group conflict is seen on a yearly basis. It is frequently organised according to identity. The conflicts frequently centre on local land, raw materials, or political power. These conflicts pose a serious danger to human security and development, despite the fact that they often stay localized and are not directed at the central state.¹⁴

While communal conflicts in some areas only result in a few fatalities or are resolved before any fatalities occur, in other areas, these disagreements turn

¹² *Ibid*, at 190.

¹³ *Ibid*, at 191.

¹⁴ Elforsson E, 'How Government Bias Can Fuel Communal Conflicts in Africa' (*The Conversation*) <<http://theconversation.com/how-government-bias-can-fuel-communal-conflicts-in-africa-121640>> accessed 26 August 2022.

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violent and result in the deaths of dozens, hundreds, or even thousands of people.¹⁵ The term "communal conflict" refers to disputes between non-state organisations that are unified by a common identity.¹⁶ Since group identity is thought to be socially constructed rather than a static phenomenon, some people would equate the concept of communal identity with ethnic or religious identity, but others have purposefully left the definition more ambiguous. The communal identity is conceptualised as subjective group identification based on, for example, a common history, culture, or core values.¹⁷

Governments, it has been said, are rarely able to act as an impartial arbitrator in situations of intercommunal conflict since, when such a dispute arises, political leaders are frequently linked to its origin. This can happen directly through bias or provocation, or it can happen inadvertently due to poor policies and a failure to treat all individuals equally. As a result, politicians have to make an effort to find and promote conflict resolution techniques that are respected in the community. Traditional leaders, community-based organisations, and NGOs may fall under this category.¹⁸

Communities must be given the chance to describe how conflicts are manifesting in the broader socioeconomic setting. They must be given the chance to recognize external elements that fuel conflict and to create locally suitable conflict resolution techniques.¹⁹

¹⁵ Brosché, Johan. *Causes of Communal Conflicts: Government Bias, Elites and Conditions for Cooperation*. Expert group for Aid Studies, Swedish Ministry of Foreign Affairs, 2015, p.3. Available at <https://uu.diva-portal.org/smash/get/diva2:899332/FULLTEXT01.pdf> accessed 21 August 2022.

¹⁶ *Ibid*, p.4.

¹⁷ *Ibid*, p.4.

¹⁸ Elfversson E, 'How Government Bias Can Fuel Communal Conflicts in Africa' (*The Conversation*) <<http://theconversation.com/how-government-bias-can-fuel-communal-conflicts-in-africa-121640>> accessed 26 August 2022.

¹⁹ Frank, E., "A participatory approach for local peace initiatives: The Lodwar border harmonization meeting," *Africa Today* (2002): 69-87, p. 72.

8.4. The Place of the State and the Communities in Addressing Environmental Conflicts: Striking the Balance

a. Addressing the Bias and legitimacy

The government's capacity to control intercommunal disputes declines if the state is biased toward the conflict players. The circumstances that support collaboration are subject to other players' influence. Because it has the power to change a number of variables crucial to intercommunal interactions, the government's behaviour is crucial. The strategic interests of the government are important when determining whether or not to interfere in a community conflict, because biased choices about property rights raise the likelihood of conflicts. Additionally, central players might form alliances with local actors engaged in conflict, which could intensify contacts between central and local elites as well as interactions among local elites, potentially leading to war.²⁰

The government will be better able to control the community strife if the state has a high level of democracy. The ability of democratic institutions and procedures to support the aspects of rights, equality, and accountability is directly correlated with the degree to which government is responsive to the interests and requirements of the greatest number of individuals.²¹

Some academics advise using the following set of best practices when using collaborative decision-making processes: An agency should first decide if a cooperative strategy to finding agreements is necessary; Stakeholders should be able and willing to engage in the process and support it; Agency executives should encourage the process and guarantee there are enough resources to hold the process; A collaborative procedure to find an agreement should start with an evaluation; There should be consensus among all participants about ground rules, rather than just the sponsoring organisation setting them; The sponsoring organisation ought to guarantee the facilitator's objectivity and responsibility to each participant; Planning for execution of the agreement

²⁰ Brosché J, 'Conflict Over the Commons: Government Bias and Communal Conflicts in Darfur and Eastern Sudan' (2022) 0 *Ethnopolitics* 1.

²¹ Nations U, 'Rule of Law and Democracy: Addressing the Gap Between Policies and Practices' (United Nations) <<https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices>> accessed 26 August 2022.

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should begin as soon as the process is initiated by the agency and participants; and these processes should be governed by guidelines rather than rigid rules.²²

b. Environmental Governance Through Civic Engagement

Institutionalized participation can go a long way in enhancing the role of communities in addressing environmental conflicts in the country. To guarantee citizens enjoy unhindered justice and the rule of law, which are essential for sustainable development, responsible and inclusive institutions guided by the law may help to promote and ensure inclusive public policymaking that leaves no one behind.²³

Decision-making about environmental and natural resource policies is evolving. As parties resolve policy issues, citizens and management agency staff are increasingly looking for methods to "do things differently" and to actively engage in the decision-making process. Nowadays, "doing things differently" refers to working together.²⁴

c. Capacity building for Enhancing Participatory Conflict Management

In order for less powerful parties to participate fairly in a process of consensual negotiation, it is essential to create a level playing field.²⁵ Although the terms "capacity building" and "capacity development" are frequently used to refer to a wide range of activities, in the broadest sense, capacity refers to a party's ability to solve problems and accomplish goals, and capacity building aims to

²² Walker GB and Daniels SE, 'Collaboration in Environmental Conflict Management and Decision-Making: Comparing Best Practices with Insights from Collaborative Learning Work' (2019) 4 *Frontiers in Communication*

<<https://www.frontiersin.org/articles/10.3389/fcomm.2019.00002>> accessed 26 August 2022.

²³'SDG 16 as an Accelerator for the 2030 Agenda' (UNDP) <<https://www.undp.org/content/undp/en/home/blog/2019/sdg-16-as-an-accelerator-for-the-2030-agenda.html>> accessed 26 July 2022.

²⁴ Daniels S and Walker G, 'Working through Environmental Conflict: The Collaborative Learning Approach' [2001] *Working Through Environmental Conflict* 1.

²⁵ Warner, M., "Conflict management in community-based natural resource projects: experiences from Fiji and Papua New Guinea" (2000), p. 30.

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improve parties' ability to collaborate for their mutual benefit by giving them the knowledge and resources they need to identify problems and formulate solutions.²⁶ Since it encompasses the total system, environment, or context in which people, organisations, and societies operate and interact, capacity building is larger than organisational development. It is seen as the process through which people, groups, organisations, institutions, and communities improve their capacity to: (1) carry out essential tasks, solve issues, set and attain goals; and (2) comprehend and address their developmental requirements in a comprehensive and sustainable manner.²⁷

It has also been correctly noted that the provision of basic human needs, such as food, clean drinking water, health care, basic education, and economic possibilities within a society, is a prerequisite for developing capacity for effective governance and conflict management.²⁸ Nevertheless, capacity building goes well beyond meeting the minimum requirements. It is an issue of development at all societal levels, which includes institutional, community, and economic development. Knowledge and technical skills, organisational and institutional capacity, and the capacity to foresee, manage, and resolve disputes are some of the key assets that people, organisations, communities, and governments need in order to reach their full potential.²⁹

Notably, capacity building is a perpetual and mutually reinforcing process of changing people's attitudes, values, and organisational practices while accumulating the necessary knowledge and skills among different partners in a partnership. The goal is to improve each partner's capacity to make wise

²⁶ Corissajoy, 'Capacity Building' (*Beyond Intractability*, 6 July 2016) <<https://www.beyondintractability.org/essay/capacity-building>> accessed 20 August 2022; see also Lattanzio DJ, 'Capacity Building: A Powerful Tool to Prevent and Resolve Conflicts' (*MediateGuru*, 20 March 2021) <<https://www.mediateguru.com/post/capacity-building-a-powerful-tool-to-prevent-and-resolve-conflicts>> accessed 20 August 2022.

²⁷ Gene, J. V. "Participatory Capacity Building: A Facilitator's Toolbox for Assessment and Strategic Planning of NGO Capacity." *The Institute of Cultural Affairs, Zimbabwe*, available at http://assets.sportanddev.org/downloads/participatory_capacity_building_full.pdf. Accessed on February 10 (2003): 2020, p. 4.

²⁸ Corissajoy, 'Capacity Building' (*Beyond Intractability*, 6 July 2016) <<https://www.beyondintractability.org/essay/capacity-building>> accessed 20 August 2022.

²⁹ *Ibid.*

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decisions about their own lives and to fully accept the consequences of those decisions.³⁰ It has also been pointed out that despite the fact that there are many different approaches to building capacity, the capacity-building strategy for resolving conflicts is essential because it gives people the tools they need to recognise conflicts, properly analyse their options for dealing with them, solve them, and prevent future ones.³¹

The need for capacity building is justified on the observation that long-term, conflict resolvers help parties build better relationships with one another in order to increase institutional and interpersonal capacity to resolve or de-escalate conflict in the future and stop it from turning violent. This entails helping the parties examine their underlying presumptions and attitudes about their enemies and, if necessary, change them.³² While acknowledging that conflict is common and frequently beneficial, conflict resolvers detest the bloodshed, suffering, and loss of life it causes. They support constructive tactics over destructive ones because they feel that there are both productive and destructive ways to handle conflict.³³

8.5. Conclusion

It is possible for the various parties (government agencies, stakeholder organisations, and citizens) to look for a collaborative approach as an alternative to adversarial conflicts when environmental or natural resource conflicts have arisen. By doing this, they will be able to work through conflicts to find common ground and make wise decisions.³⁴ SDG 16 and the SDGs as a

³⁰ Geene, J. V. "Participatory Capacity Building: A Facilitator's Toolbox for Assessment and Strategic Planning of NGO Capacity." *The Institute of Cultural Affairs, Zimbabwe*, available at http://assets.sportanddev.org/downloads/participatory_capacity_building_full.pdf. Accessed on February 10 (2003): 2020, p. 4.

³¹ Lattanzio DJ, 'Capacity Building: A Powerful Tool to Prevent and Resolve Conflicts' (MediateGuru, 20 March 2021) <<https://www.mediateguru.com/post/capacity-building-a-powerful-tool-to-prevent-and-resolve-conflicts>> accessed 20 August 2022.

³² Lutz EL, Babbitt EF and Hannum H, 'Human Rights and Conflict Resolution from the Practitioners' Perspectives' (2003) 27 *The Fletcher Forum of World Affairs* 173, p. 179.

³³ *Ibid*, p. 179.

³⁴ Gregg B Walker and Steven E Daniels, 'Collaboration in Environmental Conflict Management and Decision-Making: Comparing Best Practices with Insights from

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whole must be accomplished through partnerships, integrated solutions, and the initiative and leadership of countries and member states in reshaping the institutional and social landscape and laying the foundation for significant reforms that support the establishment of sustainable peace.³⁵ Because marginalisation and exclusion may have a destabilising effect, it is essential to adopt an inclusive and participatory approach to development.³⁶

Better economic climates, greater per capita incomes, higher educational achievement, and more social cohesiveness have all been benefits of peaceful societies.³⁷ Better interpersonal ties within a community tend to promote higher levels of peace by preventing the emergence of tensions and lowering the likelihood that conflicts would turn violent.³⁸

Collaborative Learning Work' (2019) 4 *Frontiers in Communication* <<https://www.frontiersin.org/articles/10.3389/fcomm.2019.00002>> accessed 26 August 2022.

³⁵ 'SDG 16 as an Accelerator for the 2030 Agenda' (UNDP) <<https://www.undp.org/content/undp/en/home/blog/2019/sdg-16-as-an-accelerator-for-the-2030-agenda.html>> accessed 20 August 2022.

³⁶ 'SDG 16 as an Accelerator for the 2030 Agenda' (UNDP) <<https://www.undp.org/content/undp/en/home/blog/2019/sdg-16-as-an-accelerator-for-the-2030-agenda.html>> accessed 20 August 2022

³⁷ *The Institute for Economics and Peace (IEP), 'Pillars of Peace - Understanding the Key Attitudes and Institutions That Underpin Peaceful Societies - International Security Sector Advisory Team (ISSAT)', p. 2*

<<https://issat.dcaf.ch/ser/Learn/Resource-Library/Policy-and-Research-Papers/Pillars-of-Peace-Understanding-the-key-attitudes-and-institutions-that-underpin-peaceful-societies>> accessed 20 August 2022

³⁸ *The Institute for Economics and Peace (IEP), 'Pillars of Peace - Understanding the Key Attitudes and Institutions That Underpin Peaceful Societies - International Security Sector Advisory Team (ISSAT)', p. 6.*

CHAPTER NINE

Contemporary Issues in Conflict Management and Environmental Matters: Challenges and Prospects

9.1. Introduction

The chapter highlights the national obligations on environment and sustainable development; basic principles of sustainable development; general approaches to sustainability and sustainable development debate; the link between human rights and sustainable development; natural resources exploitation; climate change; environmental security; food security; trade; indigenous knowledge; gender equity; and natural resource conflicts, among others. This chapter is necessary in light of the fact that conflicts and especially environmental conflicts never take place in isolation. They have either triggering or exacerbating factors.

9.2. Contemporary Issues in Conflict Management and Environmental Matters

It is worth noting that Political, economic, and social inequality, extreme poverty, economic stagnation, inadequate government services, high unemployment, environmental degradation, and personal (economic) motivations to fight are some of the main fundamental causes of conflict.¹

a) Gender and Conflict Management

It is imperative to ensure that the gender component is taken into account when calling for public engagement and the involvement of all stakeholders in the sustainable development agenda. Article 27 of the Constitution, which protects everyone's right to equality and freedom from discrimination, supports this stance as well.²

¹ Stewart F, 'Root Causes of Violent Conflict in Developing Countries' (2002) 324 BMJ: British Medical Journal 342.

² 27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

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The need to ensure that both groups are actively and meaningfully involved in all management issues is vital since the misuse of natural resources and the subsequent conflicts hurt both men and women, especially due to their perceived traditional roles.

Although the Kenyan Constitution calls for the protection and empowerment of historically underrepresented and vulnerable groups, including women, it is crucial that these efforts extend beyond positions of national leadership to include them in all facets of everyday life.

Individually empowering men and women will strengthen institutions, even as lawmakers and policymakers make sure that gender issues are given enough weight in conflict resolution systems and that female conflict resolvers, such as mediators and arbitrators, are included when necessary, such as when land rights are at stake.³

According to UN Security Council Resolution 1325, a gender perspective would include measures that encouraged women's peace efforts and indigenous conflict resolution techniques (2000). It also stressed the need of protecting women's and girls' human rights, especially those that pertain to

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) *To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.*

³ Fitzpatrick, D., "Dispute Resolution; Mediating Land Conflict in East Timor", in AusAID' *Making Land Work Vol 2; Case Studies on Customary Land and Development in the Pacific*, (2008), Case Study No. 9, p. 175. Sourced from <http://www.ausaid.gov.au/publications/pdf>, [Accessed on 12 April 2022].

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constitutions, electoral processes, law enforcement, and the judicial system.⁴ Domestic laws on conflict management should continually embrace gender inclusivity in responses to conflicts by promoting participation of both men and women as either facilitators of resolution or those seeking justice.

b) Traditional Ecological Knowledge, Conflict Management and Environmental Management

Through the application of both formal knowledge and traditional ecological knowledge, it is important to recognise the role that ecological knowledge plays in attaining successful environmental and conflict management for sustainable development. This covers the role of traditional or indigenous knowledge in managing the environment and resolving disputes. This is based on African traditional traditions and the global consensus that respect for indigenous knowledge, cultures, and traditional practices promotes sustainable and equitable development and effective environmental management.⁵ Since indigenous knowledge is now recognised internationally, national governments should offer it more respect and encourage communities to actively adopt and apply it.⁶

Furthermore, while there are admirable statutory and constitutional provisions in light of the fact that they have recognised indigenous or traditional knowledge within the legal framework, the real challenge lies in putting these provisions into practice and creating opportunities for the incorporation of such knowledge in decision-making. There is a need to go beyond simply recognising traditional knowledge in Kenya and to make sure that it has been adequately assimilated, considered, and applied when the Constitution so mandates.⁷

Along with the aforementioned, it is evidently necessary to combine traditional and formal sciences in order to implement adaptive solutions for

⁴ Sikoska, T., & Solomon, J., "Introducing gender in conflict and conflict prevention: Conceptual and policy implications," *Gedownload op 20* (2002).

⁵ 61/295. *United Nations Declaration on the Rights of Indigenous Peoples, Preamble.*

⁶ See also Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016, p. 254.

⁷ *Ibid*, pp. 257-258.

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managing natural resources through participatory monitoring and feedback.⁸ The management of natural resources cannot be left to any one body of knowledge, such as Western science, but rather must take into account a variety of knowledge systems. Integration of knowledge systems is being done for a deeper, more basic cause. Application of scientific research with local knowledge benefits both the sustainability of natural resources and the fairness, opportunity, security, and empowerment of local populations. Local expertise is useful for scenario analysis, data gathering, management planning, building adaptive ways to learn and receive feedback, and institutional support for implementing policies.

On the other side, science either develops new technologies or aids in their improvement. Additionally, it offers tools for networking, storing, visualising, analysing, and forecasting long-term patterns so that effective solutions to challenging issues may be found.⁹ It is feasible to include the interests and sincere wishes of the locals in natural resource exploitation operations by assimilating indigenous knowledge. Conflict between members of the impacted communities and the government is also lessened as a result of this. These communities are inclined to support development initiatives if they do not sense a threat to their way of life, and they are also less prone to use unusual means of defending it.¹⁰

Therefore, traditional ecological knowledge is crucial to resolving environmental issues and managing conflicts in a productive manner.

c) Role of science and Technology in environmental management

The provisions of Kenya's 2010 Constitution give stakeholders a platform to employ technology and innovation to solve environmental problems since they acknowledge the significance of science and technology in achieving

⁸ Pandey, D.N., 'Traditional Knowledge Systems for Biodiversity Conservation,' available at http://www.infinityfoundation.com/mandala/t_es/t_es_pande_conserve.htm [Accessed on 13 April 2022].

⁹ *Ibid.*

¹⁰ Muigua, K., *Nurturing Our Environment for Sustainable Development*, p. 258.

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sustainable development.¹¹ It is a commonly held belief that innovation, technology, and science all contribute to accomplishing the Sustainable Development Goals.¹² This essential role include environmental management as well, as it is one of the Sustainable Development Goals.¹³ Chapter 35 of Agenda 21 places a strong emphasis on growing scientific knowledge, developing scientific aptitude, and building the scientific foundation for long-term management. Science for sustainable development is also at the core of this chapter.¹⁴

Even though science and technology have contributed to many environmental problems, they can and have solved most, if not all, of the world's environmental problems, notably those related to climate change, waste

¹¹ See Constitution of Kenya, 2010, Article 11 (2) (b):

(2) *The State shall –*

(b) recognise the role of science and indigenous technologies in the development of the nation;

¹² Florian Kongoli, 'Role of Science and Technology on Sustainable Development' [2016] *Sustainable Industrial Processing Summit, SIPS 1*; Kongoli, Florian. "Investments needed for new sustainable technologies." *Copper Worldwide 6, no. 1 (2016): 3*; See also Likens, Gene E. "The role of science in decision making: does evidence-based science drive environmental policy?" *Frontiers in Ecology and the Environment 8, no. 6 (2010): e1-e9*; Miller, Clark A., Paul N. Edwards, and Paul Edwards, eds. *Changing the atmosphere: Expert knowledge and environmental governance*. MIT press, 2001; Christmann, Petra. "Effects of "best practices" of environmental management on cost advantage: The role of complementary assets." *Academy of Management journal 43, no. 4 (2000): 663-680*; Cashmore, Matthew. "The role of science in environmental impact assessment: process and procedure versus purpose in the development of theory." *Environmental Impact Assessment Review 24, no. 4 (2004): 403-426*.

¹³ See also *Sustainable Development Goals Targets 17.6 and 17.8* which respectively aim to "Enhance North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation and enhance knowledge sharing on mutually agreed terms, including through improved coordination among existing mechanisms, in particular at the United Nations level, and through a global technology facilitation mechanism" and to "fully operationalize the technology bank and science, technology and innovation capacity-building mechanism for least developed countries by 2017 and enhance the use of enabling technology, in particular information and communications technology".

¹⁴ 'Science.: Sustainable Development Knowledge Platform'

<<https://sustainabledevelopment.un.org/topics/science>> accessed 14 April 2022.

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management, and environmental degradation.¹⁵ In order to enhance environmental management and protection, this may be done by utilising science and technology in the management of industrial waste. It can also be done by implementing green and clean technologies as well as climate change mitigation techniques.¹⁶

d) Climate Change as a Catalyst for Environmental Conflicts

A variety of violent conflicts have been caused by changing rainfall patterns, droughts, changes in natural vegetation, and a scarcity of resources overall. The link between pastoralist conflicts and these other violent conflicts is particularly obvious. That said, it is not always the case that violent conflict results from climate change; typically, the political, social, and economic context is important.¹⁷ The harmful effects of climate change on people's livelihoods can be significant since a sizable section of the local population depends on rain-fed agriculture and pastoralism. In addition, groups may be more likely to resort to violence to settle disputes or get access to resources when environmental changes are coupled with additional socioeconomic stressors, such as political marginalisation.¹⁸

Due to its negative consequences on the environment and human livelihoods, climate change has grown to be a global issue throughout time. Climate change is a significant issue that has an impact on many facets of the environment and human existence.¹⁹ The fight against climate change is linked to the goal of sustainable development and the elimination of poverty.

¹⁵ *ibid*, p. 12.

¹⁶ *ibid*.

¹⁷ Mobjörk, Malin. "Exploring the climate–conflict link: The case of East Africa." *Stockholm International Peace Research Institute, SIPRI yearbook 2017: Armaments, disarmament and international security* (2017): 287-299, at pp. 292-93.

¹⁸ Mobjörk, Malin. "Exploring the climate–conflict link: The case of East Africa." *Stockholm International Peace Research Institute, SIPRI yearbook 2017: Armaments, disarmament and international security* (2017): 287-299, at p. 293.

¹⁹ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016; Muigua, K., Kariuki, F., Wamukoya, D., *Natural Resources and Environmental Justice in Kenya*, Glenwood Publishers, Nairobi – 2015.

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Given that disproportionate numbers of people are affected by climate change, including women, youth, coastal populations, local communities, indigenous populations, fishermen, the impoverished, and the elderly, it is imperative that action be taken quickly. Additionally, excluded from the international efforts to combat climate change are the local communities, those who are impacted, and indigenous peoples. This is true despite the fact that the effects of climate change also put local economies that rely on natural resources and food sovereignty in danger. Furthermore, they have the potential to endanger the health of communities all over the world, particularly those who are weak and disenfranchised, such as children and the elderly.²⁰

e) International investments/Trade and Environment

International commerce and investments are now widely accepted to have a significant influence on both the environment and human rights. All countries' economies are seen to be driven by trade, which is often geared toward promoting development and eradicating poverty.²¹ On the one hand, environmental legislation, both national and international, and environmental policies, such as the development of renewable energy, environmental taxes, and conservation measures, aid in defining how nations will structure their economic operations.²² On the other hand, trade law has an impact on how nations formulate their laws and policies in areas that are crucial to environmental policy, such as subsidies, technical regulations, investment policy, and taxation.²³

²⁰ Muigua, *Securing Our Destiny through Effective Management of the Environment*, Glenwood Publishers Limited (2020), ISBN: 978-9966-046-06-1.

²¹ 'The Link between Trade and Development: What Role for the EU Trade Policy?' AIF Conference, Christiansborg, 12 September 2000; See also Preamble, World Trade Organization, "Marrakesh Agreement Establishing the World Trade Organization. Annex 1A: Multilateral Agreements on Trade in Goods-Agreement on Trade-Related Investment Measures", *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (World Trade Organization, Geneva, 1995), pp. 163-167.

²² International Institute for Sustainable Development & United Nations Environment Programme, *Trade and Green Economy: A Handbook*, (International Institute for Sustainable Development, Geneva, 2014), pp. 3-4.

²³ *Ibid*, pp. 3-4.

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The use of non-renewable raw commodities to generate foreign exchange has been considered to be the primary relationship between commerce and sustainable development.²⁴ This, it has been argued, is a result of a situation in which the developed market economies' dependence on other mineral imports from developing countries has also increased, and non-renewable resources like fuels and minerals, as well as manufactured goods, are now significantly more significant than tropical goods and other agricultural materials in the flow of primary goods from developing to industrial countries.²⁵ The Agenda 2030 for Sustainable Development seeks to ensure that there is a significant increase in exports of developing countries, with a focus on doubling the share of least developed countries in global exports by 2020. This has been such a serious issue that it has continuously impacted third world countries.²⁶

Equitable international commerce may help nations attain food security, create good jobs for the unemployed, and encourage technological transfer²⁷, maintain national economic stability and aid in the construction of infrastructure, not just for the transportation of products to and from ports but

²⁴ *Report of the World Commission on Environment and Development, Our Common Future, op cit., para. 41. However, this is not to say that it is the only link. There are other links between trade and sustainable development; if protectionism raises barriers against manufactured exports, for example, developing nations have less scope for diversifying away from traditional commodities. And unsustainable development may arise not only from overuse of certain commodities but from manufactured goods that are potentially polluting. The Commission also observed that the increase in protectionism in industrial countries stifles export growth and prevents diversification from traditional exports. Consequently, if developing countries are to reconcile a need for rapid export growth with a need to conserve the resource base, it is imperative that they enjoy access to industrial country markets for non-traditional exports where they enjoy a comparative advantage. (para. 51).*

²⁵ *Ibid, para. 40.*

²⁶ *United Nations, Transforming our world: the 2030 Agenda for Sustainable Development, op cit., para. 17.11.*

²⁷ *Art. 7 of the TRIPS 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."*

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also for the provision of essential services like energy, water, and sanitation.²⁸ When included as an SDG facilitator in the framework for sustainable development, equitable trade may be more successfully used to achieve possible objectives including the eradication of poverty, the creation of jobs, access to universal healthcare and education, and a healthy environment.²⁹

Under the right circumstances, trade may be helpful for growth and development. Trade enables nations to access bigger foreign markets, as well as skills, technology, and money, which in turn enables a better use of productive resources to accelerate structural change. Trade also gives a way to get over limitations provided by tiny local markets.³⁰

While it is obvious that the environment, commerce, and development are related, it would be preferable to take an integrated strategy that completely takes into account environmental issues, fair trade, and sustainable development.³¹ The goal of an efficient investment legal and policy framework should be to advance sustainable development. Additionally, it need to guarantee little to no environmental harm.³² Furthermore, human rights must always be respected.

The principles of sustainable development, particularly those that strive to protect human rights as well as good environmental management and

²⁸ Galmés, G.V., '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 Available at http://unctad.org/en/PublicationsLibrary/ditcted2014d1_en.pdf [Accessed on 05 April 2022].

²⁹ *Ibid*, p.10.

³⁰ *United Nations Conference on Trade and Development, Towards an enabling multilateral trading system for inclusive and sustainable development, op cit, para. 5.* Available at http://unctad.org/meetings/en/SessionalDocuments/cimem5d5_en.pdf [Accessed on 5 April 2022].

³¹ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016, chapter Ten.

³² Muigua, K., *International Investment Law and Policy in Africa: Human Rights, Environmental Damage and Sustainable Development - Paper Presented at the Africa International Legal Awareness (AILA) Africa International Legal Awareness (AILA) Conference Held on 5th November, 2018 at Riara University, Nairobi, Kenya.*

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governance, must be adhered to for long-term and sustainable investment strategies to have a beneficial influence on the lives of communities.³³

9.3. Conclusion

The issues highlighted in this chapter are critical and require to be effectively considered when coming up with institutions and approaches designed to address environmental conflicts. The 2030 Agenda on Sustainable Development Goals recognises the cross cutting issues that affect people's livelihoods, pursuit of peace and development. As such, the theme of conflict management should always be explored within the larger lens of sustainable development agenda.

³³ Ibid.

CHAPTER TEN

Concluding Chapter: Concluding Remarks

10.1. Conclusion

Arguably, 'development policies should be an integral part of the peacebuilding agenda'.¹ 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'.² 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'.³

As already pointed out, the United Nations 2030 Agenda for Sustainable Development (SDGs)⁴ 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"'.⁵

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'.⁶

¹ '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 2022.

² 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 2022.

³ Ibid, 3.

⁴ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

⁵ Ibid, Preamble.

⁶ Thania Paffenholz, '19 Understanding the Conflict-Development Nexus and the Contribution of Development Cooperation to Peacebuilding1' [2008] *Handbook of conflict*

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Notably, development and more so, sustainable development, is a multifaceted concept that requires achieving certain milestones in various sectors, such as social, political, environmental and economic spheres.⁷ It is for this reason that ‘the heads of state established five fields of critical importance, or the “five Ps” of the 2030 SDG Agenda, which are people, planet, prosperity, *peace* and partnerships (Emphasis added).⁸

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.⁹ 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.¹⁰ 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.¹¹ In the same way, an effective, credible, and accountable security sector can provide a safe and secure environment in which to entrench

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 2022.

⁷ ‘Social Development for Sustainable Development | DISD’ <<https://www.un.org/development/desa/dspd/2030agenda-sdgs.html/>> accessed 8 May 2022; 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.

⁸ 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.

⁹ Bernard Wood, ‘Development Dimensions of Conflict Prevention and Peace-Building’ [2001] UNDP. (June).

¹⁰ Thania Paffenholz, ‘19 Understanding the Conflict-Development Nexus and the Contribution of Development Cooperation to Peacebuilding1’ [2008] *Handbook of conflict analysis and resolution 272*.

¹¹ 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 2022.

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other programming initiatives, all embedded in a predictable legal environment supported by culturally appropriate rule of law programs.¹²

The worldwide community now supports the sustainable development agenda as a result of taking an integrated approach to development concerns and environmental conservation and protection. All development endeavours must be mindful of environmental preservation and protection in order to be considered sustainable.

There is a need for effective natural resources and environmental governance for fighting poverty, through accelerated economic growth and social empowerment of the people, effective and practical management of conflicts for peacebuilding, without which development cannot take place and ensuring that the right of access to justice is available to all regardless of their social, economic or political standing in the society.

The sustainable development agenda covers more than just environmental issues. Instead, both anthropocentric and ecocentric viewpoints are used. Thus, it is necessary to promote sustainable development utilising the following two methods: Poverty eradication, food security, environmental democracy, environmental justice, environmental security, public participation, gender equity, access to information, and conflict resolution are just a few of the recurring themes that are influenced by the anthropocentric approach to environmental management. All of these topics are related to the larger topic of human rights while highlighting the unique connection between those topics and the environment. Conflicts caused by the environment and limited resources might quickly arise if these issues are not addressed. This is crucial given the new constitutional provisions on governance and the fact that the Bill of Rights contains Articles of the Constitution that address the environment and natural resources.¹³

Environmental health, environmental conservation for Mother Nature's sake, and discussions on the effects of resource extraction are all influenced by

¹² *Ibid.*

¹³ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016, pp. xi-xii.

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ecocentric ideas. However, advancing rights like the one to a clean, healthy environment has advantages from both an anthropocentric and an ecocentric perspective, thus it should be promoted.¹⁴

Environmental justice and democracy is also important for fighting climate change, environmental degradation and meaningful participation in environmental management and governance issues. These themes are evident across book as part of the arguments on conflict management and avoidance. The book has also ably established the link between ADR and TDR Mechanisms and how the same can be used in enhancing access to justice for the Kenyan people and Africa in general as far as environmental conflicts are concerned.

It is obvious that managing many current environmental and natural resource concerns involves collaboration among all impacted parties given the complexity of social-ecological systems. This is especially true when taking into account the fact that no one stakeholder, or sub-group of impacted stakeholders, has the expertise, authority, resources, or competencies to handle such challenges on their own.¹⁵

As a result, the sustainable development agenda promotes a coordinated strategy for addressing both environmental management issues and societal social issues.¹⁶ This is consistent with the strategy taken by the UNDP recently, which has argued for inclusivity, long-term political commitment, and national ownership in addition to the necessity of gender equality, integrated planning, budgeting, and monitoring as part of the 2030 Sustainable Development Goals (SDGs) agenda.¹⁷ There have also been proposals for an

¹⁴ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016, p. xii.

¹⁵ Fisher, Joshua. "Managing environmental conflict." *The handbook of conflict resolution: theory and practice* (2014): 3, p.9.

¹⁶ See also Hussein Abaza and Andrea Baranzini, *Implementing Sustainable Development: Integrated Assessment and Participatory Decision-Making Processes* (Edward Elgar Publishing 2002).

¹⁷ United Nations Development Programme, "Implementation of 2030 Agenda has to be inclusive, participatory and bottom-up," Jul 18, 2017. Available at

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integrated strategy to execute sustainable development, with the argument that several SDGs are interrelated with one another. An integrated strategy entails managing trade-offs and maximising synergies across objectives.¹⁸

In terms of the rule of law and sustainable development for a brighter future for Kenyan children, this book has provided an outline of the issues that have a direct or indirect influence on the origin or management of environmental conflicts. Notably, the discourse is also entwined with Kenya's experience in terms of establishing effectiveness in the frameworks for managing conflicts and the environment in order to realise the sustainable development objectives.

There will be varying levels of complexity in each manifestation of environmental conflict with regard to each of the characteristics of environmental conflicts as discussed in the preceding chapters. This also calls for different approaches in their management, whether formal or informal, based on their nature.¹⁹ It has also been suggested that since social and ecological systems are intertwined, it is challenging to totally and permanently resolve an environmental issue. This is partly because each action has unanticipated and unforeseen effects on the dynamics of the broader system. Therefore, it may be preferable to create solutions that aim to manage disputes in a productive way rather than trying to resolve them.²⁰

This book has offered some of the main reasons why environmental conflicts ought to be resolved expeditiously as they greatly affect the livelihoods of people and also have the potential to overflow to other sectors of a country's

<https://www.undp.org/content/undp/en/home/presscenter/pressreleases/2017/07/18/implementation-of-2030-agenda-has-to-be-inclusive-participatory-and-bottom-up.html> [Accessed on 6 August 2022]; See also Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (Assembly of European Regions, 4 March 2019) <<https://aer.eu/integrated-approach-sdgs/>> accessed 6 August 2022.

¹⁸ Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (Assembly of European Regions, 4 March 2019) <<https://aer.eu/integrated-approach-sdgs/>> accessed 6 August 2022.

¹⁹ Fisher, J., "Managing environmental conflict." *The handbook of conflict resolution: theory and practice* (2014): 3.

²⁰ *Ibid*, p.9.

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framework. The book has also highlighted the relationship between the environment and conflicts as one of the main themes running across all chapters.

It is worth pointing out that environment-related or natural resource use conflicts are not only political conflicts, although most of them are connected to public policies, policy programs, political controversies and political actors, unequal exchange and various forms of conflict resolution. The conflicts may originate in everyday practices of resource users, private persons or organisations that act in the institutionally channeled and regulated forms of cultural, political, economic and other specific forms of social systems.

It has also been rightly pointed out that 'political or governmental structures or actions are not always necessary for conflict mitigation. Many conflicts involving the use of resources take the form of multi-sectorial, multi-dimensional, and multi-scale conflicts that are concurrently economic, political, social, cultural, and ethnically charged. They can also be conflicts involving values, interests, user and property rights, and conflicts involving the requirements and needs of both human and non-human resource users. They demonstrate how many social realms, social systems, and ecological systems are interconnected due to their multidimensionality'.²¹

In order to effectively manage and resolve conflicts, it is necessary to analyse the social, economic, and ecological systems and environments in which disputes and conflicts arise. These must transcend the existing widely accepted notions of sustainability or sustainable development in environmental science, environmental law, and international environmental governance.²²

There is a need for inter- and transdisciplinary knowledge syntheses to demonstrate the necessity and the forms of new development perspectives and improved conflict resolution procedures, given the likelihood of additional and intensifying conflicts as a result of global environmental change and the already present difficulties of conflict resolution. This must be done while

²¹ Olsson, E. Gunilla Almered, and Pernille Gooch, eds. *Natural resource conflicts and sustainable development*. Routledge, 2019, p. 195.

²² *Ibid*, p. 191.

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keeping in mind the interconnectedness of conflict resolution and sustainable transformation in the context of global social and environmental change.²³

Particularly, the social and natural sciences are needed for multidisciplinary knowledge syntheses. Learning how to integrate empirical research, theories, and practical application, as well as how to combine information from social and natural scientific research, are the two main components of the overall socio-ecological transformative process. Both types of knowledge integration require methodological direction, critical analysis, evaluation, and the ability to learn from previous research and policy models, as well as from their successes and mistakes.²⁴

Notably, Article 11 of the Constitution of Kenya 2010 recognises the place of science and cultural knowledge in the development of the nation. There is a need for exploring the indigenous knowledge and environment and conflict management alongside the scientific knowledge in the quest for more effective conflict management and resolution approaches backed by empirical research, theories, and practical application by and from researchers and target communities. Thus, any existing or new approaches developed to address environmental conflicts must facilitate the active and meaningful participation of affected groups of persons or communities if the same are to bear lasting outcomes. The aggrieved persons must be made to feel that they have accessed justice and have also been part of the process for them to appreciate and embrace the outcome(s) of such processes.

²³ Ibid, p. 195.

²⁴ Ibid, p. 195.

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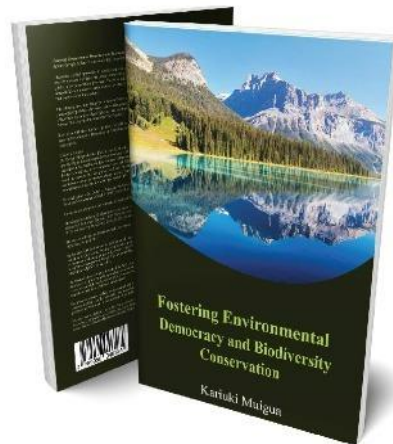
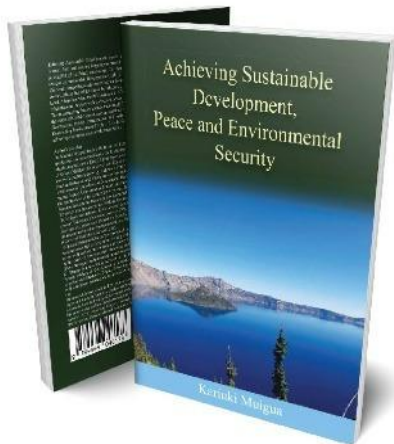
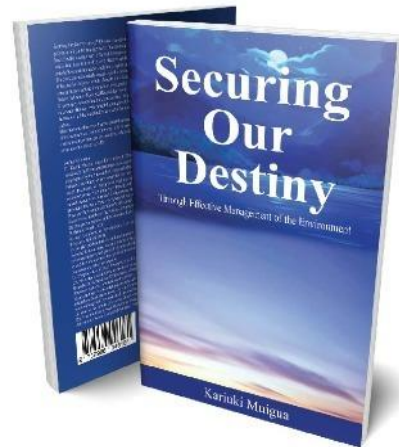
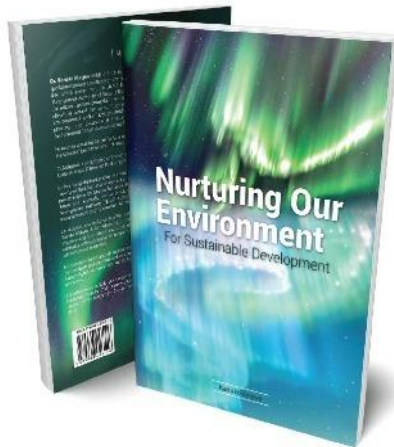
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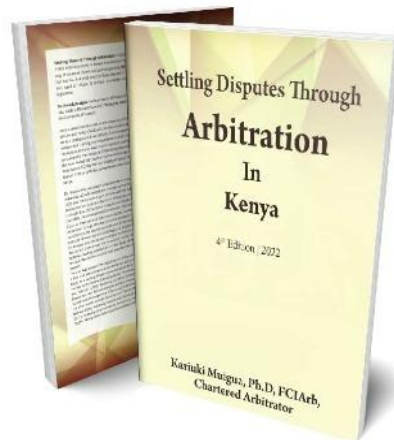
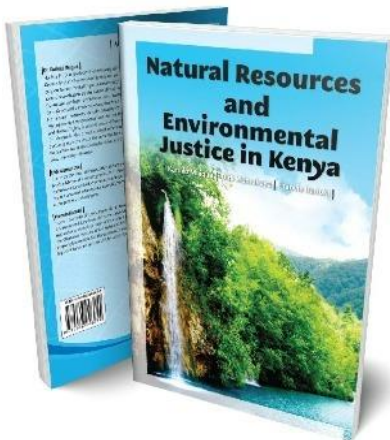
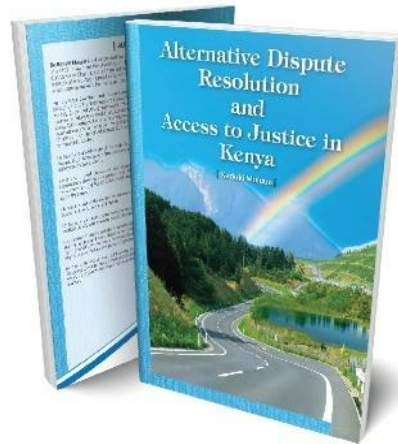
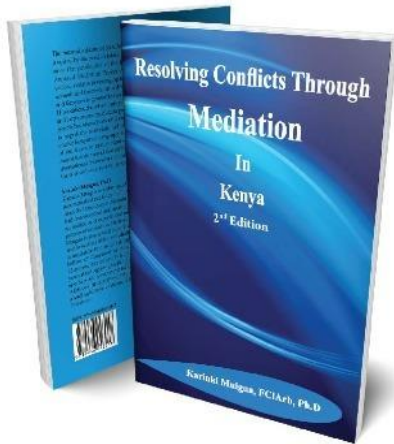
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Exploring Conflict Management in Environmental Matters is a book written in an articulate manner, form and concise language which seeks to explore the link between conflict management and environmental management, the challenges arising therefrom and offers some viable recommendations on how the same can be addressed.

The book is largely informed by the effect of conflicts on environmental matters and the resultant interactions between the two fields. Notably, the United Nations 2030 Agenda for Sustainable Development Goals (SDGs) acknowledges the place of peace in attaining not only environmental conservation but also the sustainable development goals.

It has ten chapters and the discourse adopts a human rights-based approach as well as Sustainable Development agenda background and the related topics thus feature prominently across the book.

Author's Bio-data

Dr. Kariuki Muigua holds a Doctor of Philosophy (Ph.D.) degree in law from the University of Nairobi attained in 2011. He also holds a Master of Laws (LL.M) degree attained in 2005 and Bachelor of Laws (LL.B) degree attained in 1988 both from the University of Nairobi.

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He is a distinguished law scholar, Environmental Consultant, an accredited mediator and a Chartered arbitrator. He has widespread training and experience in both international and national commercial arbitration and mediation. He has received numerous awards and honours due to his exemplary work in academia and Alternative Dispute Resolution. He is the winner of the African Arbitrator of the Year 2022 award at the 3rd African Arbitration Awards held at Kigali Rwanda beating other competitors from Egypt, Mauritius, Ethiopia, Nigeria and Kenya. He was awarded the Inaugural CI Arb (Kenya Branch) ADR Lifetime Achievement Award 2021 as well as the ADR Publication of the Year Award 2021 by the Chartered Institute of Arbitrators (Kenya Branch). He also received the ADR Practitioner of the Year Award 2021 by the Law Society of Kenya, Nairobi Branch at the Nairobi Legal Awards. He is a recipient of the 8th C.B. Madan Prize of 2020 for commitment and outstanding scholarly contribution to constitutionalism and the rule of law in Kenya.

Dr. Muigua has on various occasions been appointed by leading arbitral institutions including the Chartered Institute of Arbitrators (CI Arb-Kenya), the Nairobi Centre for International Arbitration (NCIA), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) among other institutions, as both a sole arbitrator and a member of an arbitral tribunal in arbitrations involving commercial disputes.

He is a Fellow of Chartered Institute of Arbitrators (CI Arb)-Kenya chapter. He is a member of the International Bar Association (IBA), the International Commission of Jurists, Human Rights Institute of the International Bar Association, the London Court of International Arbitration (LCIA), Chartered Institute of Arbitrators (UK) and Kenya Branch, Young International Arbitration Group, Member of Commonwealth Lawyers Association and fellow of the Institute of Certified Public Secretaries of Kenya. He served as the Branch Chairman of CI Arb-Kenya from 2012 to 2015. He currently serves as the Chartered Institute of Arbitrators (CI Arb) Regional Trustee for Africa from 2019 to date.

Dr. Muigua also serves as the Editor in Chief of two leading peer reviewed journals in East Africa, the *Alternative Dispute Resolution Journal* and the *Journal of Conflict Management and Sustainable Development*. The two journals have been hailed as leading publications in the fields of ADR, Conflict Management and Sustainable Development. The *Alternative Dispute Resolution Journal* was awarded the Arbitration Publication of the Year Award 2020 at the Africa Arbitration Awards.

He is an Advocate of the High Court of Kenya of over 30 years standing and practicing at Kariuki Muigua & Co. Advocates, a firm that specialises in environmental and commercial law litigation and Alternative Dispute Resolution. The firm is also listed as a leading Kenyan commercial law firm in the distinguished Martindale Hubbell Directory.

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His other works include *Securing Our Destiny through Effective Management of the Environment*, (Glenwood Publishers Limited, Nairobi 2020); *Achieving Sustainable Development, Peace and Environmental Security* (Glenwood Publishers Limited, Nairobi, 2021), and *Fostering Environmental Democracy and Biodiversity Conservation*, (Glenwood Publishers 2021).



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