

# **Enhancing Access to Justice for Sustainable Development in Kenya**

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**Kariuki Muigua**

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## **Enhancing Access to Justice for Sustainable Development in Kenya**

**Kariuki Muigua\***

### *Abstract*

*This paper critically discusses the role of access to justice in the Sustainable Development agenda. It argues that access to justice is vital in achieving Sustainable Development. The paper explores how access justice can foster the Sustainable Development agenda in Kenya. It highlights some of the challenges facing the attainment of access to justice and offers suggestions towards enhancing access to justice for Sustainable Development in Kenya.*

### **Introduction**

Access to justice has been described as a situation where people in need of help, find effective solutions available from justice systems which are accessible, affordable, comprehensible to ordinary people, and which dispense justice fairly, speedily and without discrimination, fear or favor and a greater role for Alternative Dispute Resolution<sup>1</sup>. It can also refer to a fair and equitable legal framework that protects human rights and ensures delivery of justice<sup>2</sup>. Access to Justice has also been defined as judicial and administrative remedies and procedures available to a person (natural or juristic) aggrieved or likely to be aggrieved by an issue<sup>3</sup>. In addition, access to justice may also be

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\* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Senior Lecturer at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [January, 2024].

<sup>1</sup> Ladan, M. T., 'Access to Justice as a Human Right Under the ECOWAS Community Law.' [https://www.researchgate.net/publication/272246292\\_Access\\_to\\_Justice\\_as\\_a\\_Human\\_Right\\_Under\\_the\\_Ecowas\\_Community\\_Law](https://www.researchgate.net/publication/272246292_Access_to_Justice_as_a_Human_Right_Under_the_Ecowas_Community_Law) (Accessed on 04/01/2024)

<sup>2</sup> Ibid

<sup>3</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice.' Glenwood Publishers Limited, 2015

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understood as the ability of an individual who seeks justice to access legal information, legal advice, legal assistance and legal representation<sup>4</sup>.

Access to Justice is a Constitutional right in Kenya<sup>5</sup>. The Constitution of Kenya provides that the state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice<sup>6</sup>. The United Nations points out that access to justice is a basic principle of the rule of law<sup>7</sup>. It further points out that in the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable<sup>8</sup>.

Realizing access to justice is vital in achieving Sustainable Development. According to the International Development Law Organization (IDLO), access to justice is a critical pillar for poverty reduction and Sustainable Development<sup>9</sup>.

This paper critically discusses the role of access to justice in the Sustainable Development agenda. It argues that access to justice is vital in achieving Sustainable Development. The paper explores how access justice can foster the Sustainable Development agenda in Kenya. It highlights some of the challenges facing the attainment of access to justice and offers suggestions towards enhancing access to justice for Sustainable Development in Kenya.

### **1.0 Access to Justice and the Sustainable Development Agenda**

It has correctly been observed that access to justice is a fundamental component of the Sustainable Development Agenda<sup>10</sup>. Access to justice ensures that legal systems are

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<sup>4</sup> Dereymaeker, G., 'Formalising the Role of Paralegals in Africa: A Review of Legislative and Policy Developments. Cape Town: Dullah Omar Institute (CSPRI), *Open Society Justice Initiative and Paralegal Advisory Service Institute*, (2016) pp.1-32.

<sup>5</sup> Constitution of Kenya, 2010., Article 48, Government Printer, Nairobi

<sup>6</sup> Ibid

<sup>7</sup> United Nations., 'Access to Justice.' Available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (Accessed on 04/01/2024)

<sup>8</sup> Ibid

<sup>9</sup> International Development Law Organization., 'Access to Justice in Kenya.' Available at <https://www.idlo.int/what-we-do/initiatives/access-justice-kenya> (Accessed on 04/01/2024)

<sup>10</sup> SDG Resource Centre., 'Access to Justice.' Available at <https://sdgresources.relx.com/tags/access-justice> (Accessed on 04/01/2023)

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equitable, responsive, and accessible to all, therefore playing a critical role in achieving various aspects of Sustainable Development<sup>11</sup>. This could be in the context of gender equality, reducing inequalities, labour rights, or environmental protection among other various targets envisaged under the Sustainable Development Goals (SDGs)<sup>12</sup>.

Access to Justice is at the heart of the United Nation's 2030 Agenda for Sustainable Development<sup>13</sup>. The Agenda envisages a world of universal respect for human rights and human dignity, the rule of law, justice, equality and nondiscrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity<sup>14</sup>. SDG 16 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<sup>15</sup>. Among the targets under SDG 16 is to promote the rule of law at the national and international levels and ensure equal access to justice for all; develop effective, accountable and transparent institutions at all levels; and ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements<sup>16</sup>. Realizing the targets under SDG 16 is vital in enhancing access to justice for Sustainable Development. It has been argued that SDG 16's emphasis on access to justice is critical in ensuring fairness and legal protection for all persons, and especially the most vulnerable since it calls for the establishment and strengthening of institutions at all levels to deliver justice effectively, transparently, and without undue delay<sup>17</sup>.

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 04/01/2023)

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> SDG Resource Centre., 'Access to Justice.' Op Cit

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In addition, access to justice is vital in realizing other SDGs including SDG 5, which focuses on gender equality since it plays a crucial role in addressing issues like gender-based violence, discrimination, and unequal power dynamics; SDG 8 which aims to foster decent work and economic growth by upholding labour rights including fair treatment in the workplace, protecting workers' rights, and providing avenues for redress in cases of labor violations; SDG 10, which aims at reducing inequalities within and among nations by protecting marginalized and disadvantaged communities; and SDG 13 on climate action by enforcing environmental rights<sup>18</sup>.

According to the Organisation for Economic Co-operation and Development (OECD), access to justice is integral to achieving the SDGs and inclusive growth<sup>19</sup>. It asserts that access to justice is an important tool for implementing most of the SDGs, such as eradicating poverty and hunger (SDG 1 and SDG 2) by giving farmers and other agrarian communities the tools they need to improve their tenure security; SDG 5 by helping to translate legal guarantees of gender equality into real improvements in the daily lives of women and supporting women in protecting themselves from domestic violence; and helping preserve the environment as envisaged under SDGs 14 and SDG 15<sup>20</sup>. Further, OECD points out that providing access to justice enables traditionally marginalized populations including the youth, the elderly, women, migrants to participate in legal processes that promote inclusive growth in sectors such as health, employment, education, housing, and entrepreneurship towards Sustainable Development<sup>21</sup>. Access to Justice is therefore integral in realizing the Sustainable Development agenda.

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<sup>18</sup> Ibid

<sup>19</sup> Organisation for Economic Co-operation and Development., 'Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All.' Available at <https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf> (Accessed on 04/01/2023)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

## **2.0 Access to Justice and Sustainable Development in Kenya**

Access to justice is a fundamental pillar for poverty reduction and Sustainable Development, and the Constitution of Kenya makes it the responsibility of the government to facilitate access to justice for its citizens<sup>22</sup>. It has been argued that enhancing access to justice in Kenya can ensure strong legal frameworks and effective institutions, coupled with greater levels of legal empowerment for the poor and marginalized, which ensures that the Sustainable Development objectives are achieved<sup>23</sup>. Access to justice is at the core of the Sustainable Development paradigm, driving efforts to correct artificial and harmful imbalances in economic growth, to remedy the miseries of lives lived in extreme poverty, and to ensure that natural resources and habitats are preserved for present and future generations<sup>24</sup>.

Enhancing access to justice in Kenya can foster the realization of all three dimensions of Sustainable Development being economic growth, social progress and environmental protection<sup>25</sup>. Access to justice ensures effective legislative frameworks and enhanced institutional capacity to adjudicate commercial disputes which is vital in helping to level the playing field for economic actors, and promote the growth of entrepreneurship, small and medium sized enterprises, and innovation therefore promoting economic growth<sup>26</sup>. In addition, access to justice can foster social progress by ensuring the presence of transparent and participatory dispute resolution mechanisms that allow individuals and groups to claim their rights to equal opportunity, education, health, land and other economic and social rights towards combating poverty and marginalization<sup>27</sup>. Further, access to justice ensures environmental protection through initiatives such as public

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<sup>22</sup> International Development Law Organization., 'Access to Justice in Kenya.' Op Cit

<sup>23</sup> International Development Law Organization., 'Doing Justice to Sustainable Development: Integrating The Rule of Law into the Post-2015 Development Agenda.' Available at <https://www.idlo.int/sites/default/files/pdfs/publications/Doing%20Justice%20to%20Sustainable%20Development.pdf> (Accessed on 05/01/2023)

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

participation and access to information in environmental and sustainability decision-making and legal redress in case of breach of environmental rights<sup>28</sup>.

The Constitution of Kenya sets out constitutional safeguards that are important in realizing the right of access to justice in Kenya<sup>29</sup>. In addition to article 48 which sets out the right of access to justice in Kenya, the Constitution provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened<sup>30</sup>. The Constitution also embraces the right of equality and freedom from discrimination which is vital in realizing access to justice and provides that every person is equal before the law and has the right to equal protection and equal benefit of the law<sup>31</sup>. In addition, the Constitution of Kenya envisages access to justice in environmental matters and stipulates that if a person alleges that a right to a clean and healthy environment recognised and protected under article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter<sup>32</sup>. Another fundamental provision of the Constitution geared towards enhancing access to justice is chapter ten which sets out judicial authority<sup>33</sup>. Article 159 sets out several principles that are supposed to guide the administration of justice in Kenya. These principles are to the effect that justice shall be done to all, irrespective of status; justice shall not be delayed; alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted; justice shall be administered without undue regard to procedural technicalities; and that the purpose and principles of the Constitution shall be protected and promoted<sup>34</sup>.

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<sup>28</sup> Ibid

<sup>29</sup> Constitution of Kenya, 2010., Government Printer, Nairobi

<sup>30</sup> Ibid, Article 22 (1)

<sup>31</sup> Ibid, article 27 (1)

<sup>32</sup> Ibid, article 70 (1)

<sup>33</sup> Ibid, Chapter ten

<sup>34</sup> Ibid, Article 159 (2)



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There have been efforts towards enhancing access to Kenya as envisaged by the foregoing provisions of the Constitution towards fostering Sustainable Development. The Judiciary notes that access to justice is vital for Sustainable Development since it is essential in realizing the Social Transformation through Access to Justice (STAJ) vision particularly for the poor, marginalized, and vulnerable<sup>35</sup>. According to the Judiciary, several initiatives have been undertaken towards promoting access to justice in Kenya for Sustainable Development<sup>36</sup>. These include improving physical access through construction of more court infrastructure, operationalizing mobile courts in remote areas to enhance access to justice for the marginalized and vulnerable groups, embracing court circuits aimed at deploying judges and judicial officers to specific court stations with high caseloads in order to accelerate the determination of disputes, administration of pro-bono schemes, simplification of court procedures, embracing electronic filing (e-filing) of court documents, and the establishment of specialized courts including tribunals and small claims courts<sup>37</sup>.

In addition, enhancing access to justice for Sustainable Development in Kenya is being realized through Alternative Justice Systems(AJS)<sup>38</sup>. Alternative Justice Systems refer to the administration of justice by the people using their culture, customary law, practices and beliefs to resolve disputes<sup>39</sup>. They are a form of restorative justice that aims to ensure social inclusion, and are generally more affordable, participatory and more expeditious than court processes<sup>40</sup>. They have been described as a useful avenue of responding to the

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<sup>35</sup> Judiciary of Kenya., 'State of the Judiciary and the Administration of Justice Annual Report 2022/2023' Available at <https://judiciary.go.ke/sojar-2022-2023-2/> (Accessed on 05/01/2023)

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> Muigua. K., 'Mainstreaming Alternative Justice Systems in Africa.' Available at <https://kmco.co.ke/wp-content/uploads/2023/11/Mainstreaming-Alternative-Justice-Systems-in-Africa.pdf> (Accessed on 05/01/2023)

<sup>39</sup> United Nations Office on Drugs and Crime., 'Partners Welcome move to Mainstream Alternative Justice Systems in Kenya.' Available at <https://www.unodc.org/easternafrika/en/Stories/partnerswelcome-move-to-mainstream-alternative-justice-systems-inkenya.html#:~:text=AJS%20may%20be%20defined%20as,more%20expeditious%20than%20court%20proc esses> (Accessed on 05/01/2024)

<sup>40</sup> Ibid

challenge of backlog of court cases<sup>41</sup>. The idea of Alternative Justice Systems embraces Alternative Dispute Resolution (ADR) mechanisms in the quest towards access to justice<sup>42</sup>. ADR denotes a wide range of dispute management techniques that function outside but may be linked to formal court processes<sup>43</sup>. ADR has also been defined as a set of processes that are used to manage conflicts without resort to courts<sup>44</sup>. The term ADR encompasses many dispute resolution techniques including negotiation, mediation, arbitration, conciliation, adjudication, early neutral evaluation, expert determination, minitrials, traditional justice systems among others<sup>45</sup>.

ADR mechanisms play a fundamental role in enhancing access to justice for Sustainable Development<sup>46</sup>. These mechanisms are rooted in the culture and values of Kenyan people and emphasize harmony, humanness and togetherness over individual interests therefore creating a conducive environment for economic, social, cultural and political development towards realizing the Sustainable Development agenda<sup>47</sup>. Promoting ADR mechanisms is therefore necessary in enhancing access to justice for Sustainable Development in Kenya. The Constitution of Kenya requires the Judiciary to promote ADR mechanisms including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms<sup>48</sup>. The Judiciary notes that progress has been made towards embracing Alternative Justice Systems and ADR mechanisms in Kenya through measures such as the adoption of the Alternative Justice Systems Policy, capacity building on Alternative Justice Systems through training, and the continued implementation of the

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<sup>41</sup> Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Available at <https://judiciary.go.ke/download/alternative-justice-systems-baseline-policy-and-policy-framework/> (Accessed on 05/01/2024)

<sup>42</sup> Muigua. K., 'Mainstreaming Alternative Justice Systems in Africa.' Op Cit

<sup>43</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>44</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice.' Op Cit

<sup>45</sup> Ibid

<sup>46</sup> Muigua. K., & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-and-development-in-Kenya-Revised-version-of-20.10.14.pdf> (Accessed on 05/01/2023)

<sup>47</sup> Ibid

<sup>48</sup> Constitution of Kenya., 2010., Article 159 (2) (c)

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Court-Annexed Mediation programme<sup>49</sup>. There is need to widely embrace Alternative Justice Systems in Kenya in order to enhance access to justice for Sustainable Development in Kenya.

Further, progress has been made towards enhancing access to justice for Sustainable Development in Kenya by promoting Environmental Justice<sup>50</sup>. Environmental Justice entails the right to have access to natural resources; not to suffer disproportionately from environmental policies, laws and regulations; and the right to environmental information, participation and involvement in decision-making<sup>51</sup>. Environmental justice can be fostered through measures such as public participation, access to information and access to justice<sup>52</sup>. Courts and tribunals including the Environment and Land Court and the National Environment Tribunal are playing a pivotal role in enhancing access to justice in environmental matters for Sustainable Development in Kenya<sup>53</sup>. It has rightly been pointed out that the Environment and Land Court and the National Environment Tribunal are key actors in the Sustainable Development discourse in terms of developing environmental jurisprudence geared towards environmental protection and conservation<sup>54</sup>. These judicial entities have discharged this mandate through orders aimed at enhancing Sustainable Development and promoting environmental conservation in Kenya<sup>55</sup>. In particular, it has been pointed out that the National Environment Tribunal (NET) facilitates both distributive and procedural justice by

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<sup>49</sup> Judiciary of Kenya., 'State of the Judiciary and the Administration of Justice Annual Report 2022/2023' Op Cit

<sup>50</sup> Muigua. K., Kariuki. F., 'Towards Environmental Justice in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Towards-Environmental-Justice-in-Kenya-January-2015.pdf> (Accessed on 05/01/2023)

<sup>51</sup> Ako. R., 'Resource Exploitation and Environmental Justice: the Nigerian Experience,' in F.N. Botchway (ed), *Natural Resource Investment and Africa's Development*, (Cheltenham, UK: Edward Elgar Publishing, 2011), pp. 74- 76.

<sup>52</sup> Muigua. K., Kariuki. F., 'Towards Environmental Justice in Kenya.' Op Cit

<sup>53</sup> Muigua. K., 'National Environment Tribunal, Sustainable Development and Access to Justice in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2020/03/National-Environment-Tribunal-Sustainable-Development-and-Access-to-Justice-in-Kenya-1.pdf> (Accessed on 05/01/2023)

<sup>54</sup> Muigua.K., Wamukoya.D & Kariuki.F., 'Natural Resources and Environmental Justice in Kenya' Glenwood Publishers Ltd, 2015; See also the case of Peter K. Waweru v Republic (2006) eKLR

<sup>55</sup> Muigua. K., 'National Environment Tribunal, Sustainable Development and Access to Justice in Kenya.' Op Cit

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providing a framework through which the right to a clean and healthy environment can be enforced<sup>56</sup>. Through some of its decisions, the Tribunal has ensured that the state's obligations in respect of the environment enshrined under the Constitution have been undertaken<sup>57</sup>. The tribunal further promotes access to justice by providing an avenue through which persons who are aggrieved by some of the decisions of the National Environment Management Authority (NEMA) can seek recourse<sup>58</sup>. NET and the Environment and Land Court therefore play an important role in enhancing access to justice in environmental matters for Sustainable Development.

Despite the progress made towards enhancing access to justice for Sustainable Development in Kenya, realizing this ideal is hindered by several challenges. The right of access to justice in Kenya has hitherto been hampered by many unfavourable factors such as high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow<sup>59</sup>. In addition, it has been pointed out that access to justice in Kenya, especially by the marginalized, poor, uneducated and underprivileged in the society, is hindered by several factors including lack of infrastructure, high advocacy fees, illiteracy, lack of information, long distance to the courts and the long durations of time it takes to resolve disputes in courts<sup>60</sup>. It is vital to address these concerns in order to enhance access to justice for Sustainable Development in Kenya.

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<sup>56</sup> Ibid

<sup>57</sup> See for example the cases of *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & Another*, Tribunal Appeal No. NET 196 of 2016, (2019) *eKLR*,

<sup>58</sup> Environmental Management and Coordination Act, No. 8 of 1999, S 129 (1), Government Printer, Nairobi

<sup>59</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

<sup>60</sup> Muigua. K., 'Access to Justice and Alternative Dispute Resolution Mechanisms in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2018/09/ACCESS-TO-JUSTICE-AND-ALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA-23rd-SEPTEMBER-2018.pdf> (Accessed on 05/01/2023)

#### **4.0 Way Forward**

In order to enhance access to justice for Sustainable Development in Kenya, it is imperative to promote access to information. Access to information has been described as pivotal component in the quest towards access to justice<sup>61</sup>. It has rightly been informed that access to information is critical for the achievement of the SDGs<sup>62</sup>. Through access to information, the public is empowered to make informed choices, to effectively monitor and hold their government to account, and to be able to know about decisions affecting their lives<sup>63</sup>. It has been argued that Sustainable Development is undermined when people are unable to access information, express their views and participate freely in decisions that affect their lives and livelihoods<sup>64</sup>. Access to information for citizens, civil society and private sector groups is critical to ensuring effective use of government resources towards sustainable growth<sup>65</sup>. It is also vital for strengthening access to justice making citizens informed about their environmental, economic and social rights and the available legal and administrative remedies for fulfilling these rights towards Sustainable Development<sup>66</sup>. Making information available and accessible to any person in an affordable, effective and timely manner without proving a legal or other interest is also key<sup>67</sup>. *The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*<sup>68</sup> recognizes the importance

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<sup>61</sup> United Nations Development Programme., 'Strengthening Judicial Integrity through Enhanced Access to Justice.' Available at <https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/Access-to-justice.pdf> (Accessed on 05/01/2023)

<sup>62</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO)., 'From Promise to Practice: Access to Information for Sustainable Development.' Available at [https://www.unesco.org/en/articles/promise-practice-access-information-sustainable-development#:~:text=Access%20to%20information%20\(ATI\)%20is,about%20decisions%20affecting%20their%20lives.](https://www.unesco.org/en/articles/promise-practice-access-information-sustainable-development#:~:text=Access%20to%20information%20(ATI)%20is,about%20decisions%20affecting%20their%20lives.) (Accessed on 05/01/2023)

<sup>63</sup> Ibid

<sup>64</sup> International Development Law Organization., 'Doing Justice to Sustainable Development: Integrating The Rule of Law into the Post-2015 Development Agenda.' Op Cit

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters., Available at <https://unece.org/DAM/env/pp/documents/cep43e.pdf> (Accessed on 05/01/2023)

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of access to information in environmental matters towards realizing access to justice and Sustainable Development and urges all countries to promote access to information. It is therefore necessary to promote access to information in order to enhance access to justice for Sustainable Development in Kenya.

In addition, it is essential to enhance public participation in order to enhance access to justice for Sustainable Development in Kenya. Public participation has been identified as key pillar of access to justice across all dimensions including environmental justice<sup>69</sup>. This is succinctly captured in the Rio Declaration on Environment and Development which stipulates 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, 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 (Emphasis added)'<sup>70</sup>.*

Public participation can promote Sustainable Development and improve the quality of decision-making by providing decision-makers with additional, unique information on local conditions in the context of social, environmental and economic decision making<sup>71</sup>. In addition, public participation can also improve policy implementation and foster peace and sustainability by increasing the legitimacy of the decision-making process and,

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<sup>69</sup> Muigua. K., 'Realizing Environmental Justice through Litigation.' Available at <https://kmco.co.ke/wp-content/uploads/2023/07/Realizing-Environmental-Justice-through-Litigation.pdf> (Accessed on 05/01/2023)

<sup>70</sup> United Nations General Assembly., 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development.' A/CONF. 151/26 (Vol.1), Principle 10

<sup>71</sup> Cerezo. L, & Garcia. G., 'Lay Knowledge and Public Participation in Technological and Environmental Policy.' Available at <https://scholar.lib.vt.edu/ejournals/SPT/v2n1/pdf/CEREZO.PDF> (Accessed on 05/01/2023)

in so doing, reducing instances of conflict<sup>72</sup>. It has been asserted that citizen involvement in environmental decision making has been associated with several benefits which include: information and ideas on public issues; public support for planning decisions; avoidance of protracted conflicts and costly delays; reservoir of good will which can carry over to future decisions; and spirit of cooperation and trust between decision makers and the public<sup>73</sup>. In addition, public participation strengthens procedural access to justice across various facets including environmental justice<sup>74</sup>. It has been pointed out that public participation in environmental and sustainability decision-making often needs to be supported by legally protected access to information and access to justice measures<sup>75</sup>. It is therefore imperative to embrace public participation in order to enhance access to justice for Sustainable Development in Kenya.

Further, it is necessary to address the challenges facing access to justice through courts in Kenya. It has correctly been pointed out that the right of access to justice in Kenya has hitherto been hampered by many unfavourable factors such as high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow<sup>76</sup>. Addressing these challenges calls for the adoption of measures such as making court fees affordable for all persons, enhanced legal aid and awareness programmes, improving physical access to courts through construction of more court infrastructure, operationalizing mobile courts in remote areas to enhance access to justice for the marginalized and vulnerable groups, embracing court circuits aimed at deploying judges and judicial officers to specific court stations with high

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<sup>72</sup> Ibid

<sup>73</sup> Muigua. K., 'Towards Meaningful Public Participation in Natural Resource Management in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/TOWARDSMEANINGFUL-PUBLICPARTICIPATION-IN-NATURAL-RESOURCEMANAGEMENT-IN-KENYA.pdf> (Accessed on 05/01/2023)

<sup>74</sup> Muigua. K., 'Realizing Environmental Justice through Litigation.' Op Cit

<sup>75</sup> International Development Law Organization., 'Doing Justice to Sustainable Development: Integrating The Rule of Law into the Post-2015 Development Agenda.' Op Cit

<sup>76</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development" Op Cit

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caseloads in order to accelerate the determination of disputes, promoting pro-bono schemes, simplification of court procedures, embracing electronic filing (e-filing) of court documents and virtual court sessions to reduce the need of physically accessing courts, and the establishment of specialized courts including tribunals and small claims courts to improve the ease of managing disputes<sup>77</sup>. These measures will improve access to justice and enable citizens exercise their economic, social and environmental rights towards Sustainable Development in Kenya.

Finally, there is need to embrace Alternative Justice Systems including ADR mechanisms in order to enhance access to justice for Sustainable Development in Kenya. ADR mechanisms contain certain attributes which include informality, flexibility, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost effective management of disputes which makes them viable in enhancing access to justice<sup>78</sup>. In addition, ADR mechanisms have been practiced in Africa for many centuries and are well embedded in the culture and customary practices of the Kenyan people<sup>79</sup>. These mechanisms emphasize harmony, humanness and togetherness over individual interests therefore creating a conducive environment for economic, social, cultural and political development towards realizing the Sustainable Development agenda<sup>80</sup>. Promoting ADR mechanisms is therefore necessary in enhancing access to justice for Sustainable Development in Kenya.

Through the foregoing among other approaches, enhancing access to justice for Sustainable Development in Kenya will become a reality.

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<sup>77</sup> Judiciary of Kenya., 'State of the Judiciary and the Administration of Justice Annual Report 2022/2023' Op Cit

<sup>78</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>79</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2<sup>nd</sup> Edition, 2017

<sup>80</sup> Muigua. K., & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Op Cit



## **5.0 Conclusion**

Access to justice is a fundamental component of the Sustainable Development Agenda<sup>81</sup>. Access to justice ensures that legal systems are equitable, responsive, and accessible to all, therefore playing a critical role in achieving various aspects of Sustainable Development<sup>82</sup>. SDG 16 seeks to promote the rule of law at the national and international levels and ensure equal access to justice for all towards Sustainable Development<sup>83</sup>. There has been some progress towards promoting access to justice for Sustainable Development in Kenya. However, the right of access to justice in Kenya continues to be hampered by many unfavourable factors such as high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow<sup>84</sup>. It is imperative to address these challenges in order to enhance access to justice for Sustainable Development in Kenya. This can be achieved through promoting access to information, embracing public participation, addressing the physical, structural, capacity and technical challenges hindering access to justice through courts in Kenya and embracing Alternative Justice Systems including ADR mechanisms<sup>85</sup>. Enhancing Access to Justice for Sustainable Development in Kenya is an ideal that needs to be realized.

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<sup>81</sup> SDG Resource Centre., 'Access to Justice.' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1' Op Cit

<sup>84</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," Op Cit

<sup>85</sup> Judiciary of Kenya., 'State of the Judiciary and the Administration of Justice Annual Report 2022/2023' Op Cit

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