

## **Rule of Law Approach for Inclusive Participation in Environmental, Social, and Governance (ESG) Accountability Mechanisms for Climate-Resilient Responses**

- ESG is a concept that seeks to achieve **sustainable, responsible and ethical investments** by incorporating **Environmental, Social and Governance** concerns in corporate decision making.
- The concept of ESG is very vital in the global response to the threat of **climate change**.
- ESG in the context of climate change refers to **environmentally sustainable practices** undertaken by companies in order to mitigate their negative environmental impacts while continuing to make profit.
- ESG practices can help companies to **identify and address climate-related risks and opportunities**.

### **The Rule of Law and ESG**

- The rule of law comprises a number of **principles of a formal and procedural character**, addressing the way in which a **society is governed**.
- The rule of law enshrines principles such as **accessibility** of the law, **equal application** of the law, **adequate protection of fundamental human rights**, **access to justice and legal remedies** and **compliance by the state with its obligations in international law and national law**.
- The rule of law is pertinent in ESG.
- Local regulation plays a key role in the standards applied with regard to ESG tenets such as **environmental compliance, labour practices, human rights concerns, health and safety and occupational health issues, union relations and the right to association, relations with communities** local to business operations among others.
- The rule of law regulates ESG issues and the extent to which they are enforced in practice.

- The rule of law and underlying legal systems also **shape other areas that are seen as part of the G in ESG**, including matters such as **anti-bribery and corruption measures, and tax responsibility**.
- Where **the rule of law and governance are strong**, the private sector benefits from state action on many fronts, from **combating discrimination and corruption to protecting human rights, maintaining security, and enforcing environmental regulations**.
- Contexts in which rule of law is weak present significant ESG challenges to which even the best compliance program is vulnerable.
- Countries with low levels of rule of law systems are faced with problems such as **corruption, poor governance, poor transparency and accountability mechanisms, abuse of human rights and depletion of natural resources** which are issues that ESG seeks to address.
- The rule of law is therefore an element not only for economic growth, but also for **environment sustainability and social justice**.

### **Embracing the Rule of Law Approach for Inclusive Participation in ESG Accountability Mechanisms for Climate-Resilient Responses**

- ESG is regarded as one of the driving forces to **realize the Sustainable Development Goals**.
- Understanding **public perceptions of ESG** is paramount to **gaining public support, advancing ESG actions, and creating a sustainable ESG policy system**.
- Public participation plays a fundamental role in **shaping environmental decision-making** and can thus be vital in **fostering ESG accountability mechanisms for climate-resilient responses**.
- Allowing impacted communities and other stakeholders to take part in decision-making is a basic component of **democracy**.
- Public participation can **improve the quality of decision-making** by providing decision-makers with **additional, unique information on local conditions**.

- Public participation can also **improve policy implementation** by **increasing the legitimacy of the decision-making process** and, in so doing, **reducing instances of conflict**.
- Embracing public participation in **climate change mitigation** can **enhance climate resilient responses, reduction of emissions, efficient waste management and effective management of natural resources**.
- Organizations and regulators can therefore enhance their standards and policies on ESG through **public advocacy and participation**.
- The rule of law can foster **public participation in ESG matters** for climate resilient responses.
- **Sustainable Development Goal 16 and 16.3** seeks to **promote the rule of law** at the national and international levels and ensure **equal access to justice for all**.
- The **Constitution of Kenya, 2010**, protects the values of the rule of law, key among them being the idea of **citizen participation in governance**.
- Constitution also envisages the role of **public participation in environmental governance** and to this extent it mandates the state to **encourage public participation in the management, protection and conservation of the environment**.
- The role of **inclusive participation in ESG sectors such as designing climate resilient responses** is also recognized under the *Climate Change Act*.
- The Climate Change Act requires national and county governments to facilitate **capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information**.
- The rule of law has also been embraced to foster inclusive participation in environmental governance through **litigation**.
- Courts in Kenya play an important role in **safeguarding environmental rights and fostering environmental justice**.

- The rule of law is therefore vital in fostering an inclusive approach in ESG accountability mechanisms for climate-resilient responses.
- The rule of law in some countries is affected by problems such as **corruption, poor governance, authoritarian leadership, poor transparency and accountability mechanisms, abuse of human rights and poor management of natural resources.**

### Way Forward

- There is need **to strengthen the rule of law** in order to enhance environment sustainability and social justice.
- This can be achieved by **strengthening the regulatory frameworks and institutional capacity** for climate -resilient development and **ensuring that justice institutions, both formal and informal, have the capacity to deliver on the promise of climate justice.**
- It is imperative to **embrace public participation** and inclusive governance in order to **enhance sustainable management of land and other natural resources.**
- It is important to curb vices that hinder effectiveness of the rule of law such as **corruption, poor governance, poor transparency and accountability mechanisms, abuse of human rights and poor governance of natural resources.**
- Fostering good governance within the 'G' pillar of ESG is therefore vital in upholding the rule of law.